



**Convention against Torture
and Other Cruel, Inhuman or
Degrading Treatment
or Punishment**

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Committee against Torture

Communication No. 607/2014

**Decision adopted by the Committee at its fifty-eight session
(25 July – 12 August 2016)**

<i>Submitted by:</i>	R.K. (represented by counsel, Niels Erik Hansen)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Denmark
<i>Date of communication:</i>	30 May 2014 (initial submission)
<i>Date of decision:</i>	12 August 2016
<i>Subject matter:</i>	Deportation to Iran
<i>Procedural issues:</i>	insufficient substantiation of complaint
<i>Substantive issues:</i>	Risk of torture
<i>Articles of the Convention:</i>	Article 3

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Decision on admissibility*

1.1 The complainant is R.K., an Iranian national born in 1947 and subject to a deportation order from Denmark to Iran. He claims that his deportation would constitute a violation by Denmark of his rights under article 3 of the Convention. The complainant is represented by counsel.

1.2 On 2 June 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to issue a request for interim measures under rule 114 (1) of the Committee's rules of procedure and requested the State party not to deport the complainant to Iran while the complaint was being considered by the Committee.

1.3 On 18 March 2015, the Committee decided to deny the State party's request to lift interim measures.

Factual background

2.1 The complainant is an Ethnic Persian and a Shia Muslim from Teheran, Iran. He claims to have been detained and tortured by the Iranian police in the 1980s for having assisted persons with a travel ban, including non-Muslims and political opponents, in obtaining passports. As a result, he fled the country and applied for asylum in Greece, where he obtained refugee status in 1991. He was then resettled in Denmark as a quota refugee and obtained a Danish residence permit under the Danish Aliens Act. He entered Denmark in June 1992 with a valid residence permit. The complainant claims that he became addicted to drugs around this time, due to the after effects of torture.

2.2 On 25 March 1995, the complainant was issued a permanent residence permit. On 4 December 2004, he left Denmark to return to Iran with his mother, who, after several years of having resided in Denmark, was ill and wanted to return to Iran. She died in Iran in December 2009. The complainant stayed in Iran and during the Green revolution in 2009/2010 was arrested, allegedly for having participated in post-electoral demonstrations against president Ahmadinejad.

2.3 On 17 September 2010, the Danish Immigration Service (DIS) decided that the complainant's residence permit had lapsed.¹ This decision was upheld by the RAB on 27 April 2011.²

2.4 On 8 August 2010, the complainant returned to Denmark, where his family was still residing. However, on 27 April 2011, he was informed by Danish authorities that his residence permit had been withdrawn because it had lapsed. On 28 April 2011, the complainant applied for asylum in Denmark. He claimed that he was arrested in Iran in 2009 for having participated in a demonstration and was released the same day without having given his real name. He noted that, at another demonstration, the police had marked with a pen all demonstrators in order to track them and arrest them later. The authorities put his name on a list and he had to bribe somebody to have his name deleted from the list and be issued a passport. His application was rejected by the DIS on 6 December 2011.

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Ana Racu, Claude Heller Rouassant, Abdelwahab Hani and Sébastien Touze. In accordance with Rule 109(1)(c) of the Committee's Rules of procedure, Jens Modvig did not take part in the examination of the communication.

¹ Under section 17 (1) of the Danish Aliens Act, a residence permit lapses when an alien gives up residence in Denmark or when an alien lives outside the country for over twelve consecutive months.

² The RAB considered that the complainant had voluntarily given up his residence in Denmark under section 17 (1) of the Danish Aliens Act based on the fact that the author had returned his apartment to the housing association and had sold his belongings.

2.5 On 6 September 2012, the Refugee Appeals Board (RAB) rejected the complainant's request for a new residence permit. The RAB considered that the complainant's statements relating to his arrest during a demonstration in 2009 were implausible and inconsistent. It noted that the complainant had stated before the Danish police that he had been detained and tortured for two months, whereas before the DIS and the RAB he had stated that he had never been imprisoned or tortured during his stay in Iran but just arrested for a few hours. The RAB further noted that the complainant had stayed in Iran for several years without experiencing any problems with the authorities, other than this incident in 2009, that he was issued a passport and was able to enter and leave the country legally. The complainant's abuse of methadone or the general human rights situation in Iran could not lead to a different conclusion. The RAB concluded that the facts of the case provided no basis for carrying out an examination for signs of torture.

2.6 On 30 May 2014, the RAB rejected the complainant's request to reopen the asylum proceedings, as no new information had been provided.

2.7 The complainant notes that, since decisions by the RAB are final and cannot be submitted to judicial review, he has exhausted all domestic remedies.

The complaint

3.1 The complainant claims that his rights under article 3.1 of the Convention would be violated by the State party in the event of his deportation to Iran. The complainant fears that, if he were to be deported, he could be subjected to torture again. He further notes that, as a torture victim, he is in need for protection and rehabilitation, which he would not be able to obtain in Iran.

3.2 The complainant argues that Danish authorities have not disputed the fact that he was subjected to torture in Iran in the past. Nevertheless, the RAB rejected the possibility of submitting the complainant to a torture examination without justifying that decision, which amounts to a violation of article 3.2 of the Convention.

State party's observations on admissibility and merits

4.1 On 2 December 2014, the State party noted that the complainant had not provided substantial grounds to support the risk of being subjected to torture in case of his return to Iran and that the communication was therefore ill-founded. It added that the complainant was attempting to use the Committee as an appellate body and have the factual circumstances advocated in support of his asylum claim reviewed. The RAB decision was adopted after a comprehensive and thorough examination of the evidence of the case and a procedure during which the complainant was able to present his views with the assistance of a counsel. The complainant's communication before the Committee does not contain any new information.

4.2 On the merits, the State party argued that the RAB relied on the complainant's contradictory statements and the lack of a satisfactory explanation for them to find that the complainant lacked credibility. Neither the alleged torture experienced by the complainant over 25 years ago nor the general human rights situation in Iran could lead to a different assessment of the matter.

4.3 With regard to the author's complaint regarding the RAB's failure to conduct a medical examination to identify signs of torture, the State party submitted that such examination was not required in the present case given the complainant's clear lack of credibility on a number of fundamental issues, as concluded by the RAB. The State party added that the RAB does not undertake such examinations where it has been unable to find any grounds for asylum as a proven fact or where, even if past torture as is considered proven or possible, the RAB concludes that a current risk of torture is inexistent.

Complainant's comments on the State party's observations

5. On 7 February 2015, the complainant noted that his past torture in Iran was confirmed by a medical examination practiced in Greece in 1991 and that it was on that basis that Denmark granted him and his family refugee status. He noted that he never argued before Danish authorities that he was tortured when he was detained in 2009 but he feared that, if detained again, Iranian authorities would evoke the circumstances that led to his detention in the eighties, would subject him to torture and would bar him from receiving rehabilitation in the form of medical treatment. He argued that the need for a medical examination by the RAB was not to prove that he was a torture survivor but to determine that he needed rehabilitation treatment. When considering whether his residence permit had lapsed, the RAB should have taken into consideration his need for such treatment.³

Issues and proceedings before the Committee

6.1 Before considering any claim submitted in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a) of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that the State party has not contested that all available domestic remedies have been exhausted in the present case and concludes that it is not precluded from examining the communication by the requirements of article 22 (5) (b) of the Convention.

6.3 The Committee takes note of the State party's argument that the complaint is insufficiently substantiated and therefore inadmissible. The Committee notes the complainant's argument that article 3 of the Convention would be violated if he were to be deported to Iran based on his past torture suffered back in the 1980s and on the inability to obtain medical treatment required as a torture victim. The Committee notes, however, that the complainant has not provided the Committee with any information relating to the events occurred in the 1980s and how those events would still put him at a personal risk of torture in Iran today. The Committee further notes that the complainant lived in Iran for several years and that his short detention in 2009 was not of such nature as to suggest that, in case of return, he would be at risk of treatment contrary to article 3 of the Convention. . As to the complainant's argument relating to the RAB's failure to undertake a medical examination to determine the need for him to follow a rehabilitation treatment for the torture he would have experienced in the eighties, the Committee considers that this argument is of no relevance for the purpose of determining whether he would be at risk of being subjected to torture, at present, upon return to Iran, in particular since he has not specified the required medical treatment, related to the after-effects of torture, that he was allegedly receiving in Denmark, and would be unable to obtain in Iran, and in light of the fact that he voluntarily left Denmark and has presumably been without any such treatment since 2004.

6.4 The Committee concludes, in accordance with article 22 of the Convention and rule 107(b) of its Rules of Procedure, that the complaint is manifestly unfounded.

³ The complainant cites a decision where the RAB requested ex officio a torture medical examination of an applicant and based its decision not to deport him on the result of such examination. He notes that this was the correct procedure that should have been applied in his case.

7. The Committee against Torture therefore decides:
 - (a) That the communication is inadmissible under article 22 of the Convention;
 - (b) That this decision shall be transmitted to the State party and to the complainant.
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