



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

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Committee against Torture
Forty-fifth session
1–19 November 2010

Decision

Communication No. 339/2008

<i>Submitted by:</i>	Said Amini (represented by counsel, Jens Bruhn-Petersen)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Denmark
<i>Date of the complaint:</i>	16 April 2008 (initial submission)
<i>Date of present decision:</i>	15 November 2010
<i>Subject matter:</i>	Deportation of the complainant from Denmark to Iran
<i>Procedural issues:</i>	Request for interim measures of protection; non-substantiation of claim
<i>Substantive issues:</i>	Risk of torture upon return to country of origin
<i>Articles of the Covenant:</i>	3

[Annex]

* Made public by decision of the Committee against Torture.

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-fifth session)

concerning

Communication No. 339/2008

Submitted by: Said Amini (represented by counsel, Jens Bruhn-Petersen)

Alleged victim: The complainant

State party: Denmark

Date of the complaint: 16 April 2008 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 November 2010,

Having concluded its consideration of complaint No. 339/2008, submitted to the Committee against Torture by Said Amini under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1.1 The complainant is Said Amini, born in 1979, currently awaiting deportation from Denmark to Iran, his country of origin. He claims that his deportation to Iran would constitute a violation by Denmark of article 3 of the Convention against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee requested the State party under rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant to Iran while his complaint was under consideration by the Committee.

The facts as presented by the complainant

2.1 The complainant was born in Ghazvin in Iran. He is an Iranian national and a Shia Muslim. He attended school for eleven years and completed two years of military service. After having completed his military service, he worked as a shop manager in one of his

family's shops. He is unmarried and has no children. His mother, father and 9 brothers and sisters all live in Iran.

2.2 In July 2002, the complainant became actively involved in a monarchist group called "Refrondom Komite" (the Committee for Reformation on the Wall), a sub-group of the Royalist Party. The group consisted of three persons, including the complainant. One of the three had contact with a person from the monarchist group "Hzbe-Mashrutekhanan Iran/Saltanat Talab" (the Royalist Party of Iran). Two or three times a week, the complainant and his two fellow group members would hand out leaflets, write slogans and put up posters, etc.

2.3 On 22 December 2002, while handing out leaflets, the group was surrounded and detained by representatives from the authorities in civilian clothes. The complainant was isolated in a cell and tortured. He was subjected, inter alia, to threats, kicks, beatings, electric torture, cuts on both nipples, suspension of heavy objects by his genitals and water torture. As a result of health problems caused by the torture, the complainant was transferred to a hospital in mid-February 2003. He managed to escape from the hospital, with the help of his father, his brother and hospital staff.

2.4 The complainant was driven to the city of Makoo where he stayed with one of his father's friends while his flight from Iran was being arranged. On 16-17 May 2003, the complainant entered Turkey illegally from Iran. From there, he travelled through the Netherlands to Denmark, where he arrived on 18 August 2003. On 19 August 2003, he contacted Danish police and applied for asylum. He was subsequently arrested and imprisoned until 16 December 2003. On 17 December 2003, the day after his release, he joined the Danish branch of CPI (the Constitutional Party of Iran). From that point on, he has been an active member of CPI Denmark. On 18 December 2003, after his release, he was medically examined by the Danish Red Cross.

2.5 On 4 March 2004, the complainant was interviewed by the Danish Immigration Service and was denied asylum on 17 May 2004. This decision was appealed to the Refugee Board. On 27 September 2004, he was denied asylum by the refugee Board, who found his statement to be untrustworthy. The Board stated in its findings that his explanation seemed unlikely based on the available background material concerning the level of activity of the monarchist movement in Iran, and that he had not appeared politically well-informed.

2.6 The Refugee Board denied a request from the complainant's attorney to stay the proceedings while the complainant underwent a medical examination. On 30 December 2004, the medical team of Amnesty International Denmark concluded that the complainant's pains were consistent with the violence he stated he had been subjected to, and that his psychological symptoms were consistent with the diagnosis of posttraumatic stress disorder, and typical symptoms of persons who have been subjected to torture.

2.7 Based on the medical examination by Amnesty International, a request to reopen the case was sent to the Refugee Board on 25 April 2005. The request was denied on 24 January 2006.

2.8 From 19 to 29 July 2006, the complainant participated in a hunger strike in front of the Danish Parliament, which was widely covered by the Danish media, and on 3 August 2006 the Refugee Board stayed the removal date again. On 5 September 2006, the complainant once again requested the reopening of his case. This was rejected on 22 December 2006, on the basis that the complainant had not been exposed to an extent that might warrant a revised decision.

2.9 On 22 January 2007, the complainant requested the Refugee Board to reopen his case for the last time. The request was based solely on the fact that the Refugee Board had

not given decisive importance to the information demonstrating that he had been tortured and the fact that the Refugee Board had not given any reason why this information had been disregarded.

2.10 On 10 July 2007, the Refugee Board once again denied to reopen the case. It repeated that the medical report could not result in a revised decision, and that the complainant had not given a trustworthy statement about his political activities in Iran. It also stated that even if he had been subjected to torture in Iran, they did not find that he, if returned to Iran, would be at risk of any physical or mental harm that might warrant granting asylum.

2.11 The complainant submits that it is clear that political activities for different groups, including various monarchist groups, take place in Iran. He acknowledges that the information in the background material is sometimes, contradictory, but it is a fact that in several decisions made by the Danish Refugee Board, the Board has recognized such activities. For instance, in a decision of 9 October 2006, an Iranian man was granted a residence permit as the Refugee Board found that he was at risk of persecution in Iran, as a result of his activities when handing out leaflets for a small monarchist group.

The complaint

3.1 The complainant claims that he is at risk of being subjected to torture if returned to Iran. This fear is based on the fact that he was tortured in the past as a result of his political activities, and recommenced such political activities from Denmark. He reiterates that he escaped from the hospital, and that the torture took place during imprisonment immediately prior to his flight, thus indicating that his case remains open before the Iranian authorities.

3.2 According to the complainant, when evaluating whether he is at risk of being subjected to torture, decisive importance should not be given to whether or not he appeared politically well-informed.

State party's observations on the admissibility

4.1 In its submission of 22 July 2008, while acknowledging that the complainant had exhausted domestic remedies, the State party challenged the admissibility of the case as manifestly unfounded. It stated that there were no substantial grounds for believing that returning the complainant to Iran would imply that he would be in danger of being subjected to torture. The State party based this statement first and foremost on the four decisions of the Refugee Appeals Board.

4.2 Concerning the alleged torture, the State party emphasized that the Refugee Appeals Board did not, as such, dismiss the statement that the complainant had been subjected to the "outrages" described in the report by Amnesty International. However, this did not demonstrate that the complainant faces a foreseeable, real and personal risk of being subjected to torture if returned to Iran.

4.3 In support of the claim that the complainant is still at risk of being subjected to torture in Iran, the State party noted that he referred to the allegation that he had escaped from the hospital where he was admitted, and that the torture had taken place during imprisonment immediately prior to his flight from Iran. The State party noted that these allegations had not been substantiated by the complainant.

4.4 With regard to the decision of the Refugee Appeals Board of 9 October 2006, relating to another asylum seeker and referred to by the complainant, the State party explained that the Board makes a decision in each asylum case on the basis of the applicant's statements and the background information about the applicant's country of

origin. The fact that the Board may have granted asylum in another case, unrelated to the complainant's, could in itself lead to a revised assessment of the complainant's case.

4.5 Concerning the complainant's alleged political activities in Iran for a monarchist organization, the State party submitted that the Refugee Appeals Board conducted a detailed assessment of this submission, and concluded that it seemed improbable, based on information on the level of activity of that organization in Iran from UNHCR and other sources. The State party also referred to the initial submission page 6, where the complainant's attorney stated that "it cannot be ruled out that [the complainant] has exaggerated the extent of his political activities".

4.6 Concerning the complainant's alleged political activities after his arrival in Denmark, the State party submitted that he had failed to demonstrate the substantial political character of the majority of these activities. For instance, the purpose of the hunger strike the complainant participated in was to draw society's attention to the conditions of asylum-seekers in Denmark, and was in no way related to the situation in Iran.

4.7 In sum, the State party submitted that the complainant has not sufficiently demonstrated that he had engaged in sustained political activities either in Iran or in Denmark, or any other activities for that matter, which would, at present, give substantial grounds to believe that his return to Iran would expose him to a real, specific and personal risk of torture, within the meaning of article 3 of the Convention.

Complainant's comments on the State party's observations on the admissibility

5.1 On 6 October 2008, the complainant submitted that the key to understanding the handling of this case by Danish authorities appears from the decisions by the Danish Immigration Service dated 17 May 2004 and the Danish Refugee Board on 27 September 2004. In both decisions, the application for asylum was refused, and the complainant's statements about torture were not mentioned at all. In its three decisions not to reopen the case, the Danish Refugee Board did not consider the case, but it merely defended its original decision of 27 September 2004, in which it completely omitted to deal with the issue of torture.

5.2 The complainant argued that as he had fled from his country of origin, he was unable to produce evidence other than the oral information provided. The State party had the opportunity to let the complainant undergo a medical examination concerning torture, but had chosen not to do so. He also added that the Iranian authorities were aware of his political activities outside Iran, including an article published in a German monarchist newspaper.

Decision on admissibility

6.1 At its forty-second session, the Committee considered the question of the admissibility of the complaint and ascertained that the same matter had not been and was not being examined under another procedure of international investigation or settlement. On the issue of domestic remedies, the Committee noted the State party's acknowledgment that domestic remedies had been exhausted, and thus found that the complainant had complied with the requirements in article 22, paragraph 5 (b).

6.2 The Committee took note of the State party's contention that the complaint should be declared inadmissible under article 22, paragraph 2, of the Convention, on the basis that it failed to rise to the basic level of substantiation required for purposes of admissibility under article 22, paragraph 2, of the Convention. It considered, however, that the complainant had made sufficient efforts to substantiate his claim, particularly in light of his account of previous torture (see A.A.C. v Sweden Communication N° 227/2003), and the medical certificate which supported this contention, of a violation of article 3 of the

Convention, for purposes of admissibility. Accordingly, the Committee declared the communication admissible and requested the State party to provide its observations on the merits of the case. The Committee also wished to receive additional information on why the State party chose not to take into account the medical examination performed by the Danish Red Cross and the torture examination performed by Amnesty International Denmark. In particular, the Committee wished to know why the State party only considered whether the complainant had been politically active, and not whether he had been tortured, taking into account the possible relationship between political activities and torture.

6.3 Accordingly, the Committee found the communication admissible and requested the State party to provide its observations on the merits, as well as written explanations and statements on the request for specific information in paragraph 6.2. It was also stated that these observations would be transmitted to the complainant.

State party's observations on the merits

7.1 On 14 September 2009, the State party submitted that following the Committee's admissibility Decision it requested a supplementary opinion from the Danish Refugee Appeals Board. On 25 August 2009, without revising its assessment of the case the Board made the following comments on the Decision. It submits that the complainant's statement that he was tortured was taken into account in assessing his original asylum application and in subsequent requests for reopening his case. It notes that the Board had included the medical report from the Red Cross of 18 December 2003 in its original assessment of 27 September 2004. In its three decisions (24 January 2006, 22 December 2006 and 10 July 2007) denying the complainant's requests to reopen the case on the basis of the medical evidence on torture, the Board concluded that this information could not lead to a reassessment of his credibility regarding this political activities and detention in Iran. Thus, regardless of whether it was considered a fact that the complainant had been subjected to torture in the past, the Board found that past torture in and of itself was insufficient to warrant asylum under section 7 (1) and/or (2) of the Aliens Act. The Board also draws attention to the government's submission of 22 July 2008 in which it states that the Board does not, as such dismiss the statement that the applicant has been subjected to the "outrages" as described in Amnesty International medical report. The Board also adds that the decision of 24 January 2006 was made by the entire Board in writing rather than the Chairman alone, thus ensuring that the original members of the Board carefully assessed the significance of the medical report in question.

7.2 As to the relationship between the complainant's alleged political activities and torture, the Board submits that although torture may contribute to evidence of political persecution, the conditions for asylum are not necessarily satisfied in all cases where an asylum-seeker has been subjected to torture.¹ In its original decision on 27 September 2004, the Board had found that the complainant's claims with respect to his activities for a monarchist organization seemed improbable based on information on the level of activity of that organization in Iran from the UNHCR as well as other sources, the stereotypical statement regarding the political purposes of that organization and the fact that the complainant seemed to be politically ill-informed. The background information available to the Board at the time it made its decision provides a homogenous and unambiguous

¹ The Board refers to the Committee's Decision in *N.Z.S. v. Sweden*, Decision no. 277/2005, adopted on 29 November 2006, which referred to a case of forced removal to Iran, and in which the Committee found no potential violation of article 3, despite the fact that it was probable that the complainant had been tortured as the alleged events had taken place six years prior to the deportation decision and amongst other things he had failed to adduce any evidence of political involvement of such significance as would still attract the attention of the authorities.

impression of a practically non-existent monarchist movement in Iran.² The complainant himself had admitted that he did not know very much about the party as it was an underground movement. He stated that its purpose was to overthrow clerical rule and put power into the hands of the people but was uncertain about who had founded the party, when it was founded and the possibility that it had been banned by clerical rule. He did not know any other members of the organisation apart from the two people with whom he had participated in the alleged activities and could not specify further what activities took place in Iran, as the organisation was secret. For these reasons amongst others, the Board states that the complainant had not rendered it probable that he had become an object of interest to the Iranian authorities as a result of political activities for the monarchist organization. The Board refers to Amnesty's medical report arguing that it cannot be concluded from this report that the torture alleged was inflicted, as a result of his participation in the political activities described by him. In the context of a reference to the Committee's jurisprudence that complete accuracy is seldom to be expected from people suffering from post-traumatic stress disorder, the State party submits that the complainant has not made inconsistent or incoherent statements about his alleged political activities in Iran.

7.3 The State party submits that it relies on the view of the Board as set out above. As to the issue of background material at the Board's disposal, it states that this material is updated on an ongoing basis and that it is considered very important that it is of the highest quality. It provides the website where the material in question may be found, describes the basis upon which such information is relied upon and provides an annex of all of the information made available to the complainant when considering his case. To conclude, the State party submits that the two medical reports in question were taken into account by the Board; that the question of whether there is any connection between the torture alleged and the complainant's alleged political activities in Iran was carefully considered; that the Danish authorities have been unable to establish the veracity of the complainant's statements regarding his alleged political activities; that the authorities have been unable to establish whether he was tortured by the Iranian authorities for political or other reasons; that even if it were accepted that he was tortured in Iran he has not sufficiently demonstrated that he has engaged in sustained political activities either in Iran or Denmark, which demonstrates that a return to Iran would expose him to a real, specific and personal risk of torture; and that the Board has had access to comprehensive and sufficient background material on Iran when considering the complainant's case.

Complainant's comments on the State party's observations on the merits

8.1 On 20 November 2009, the complainant states that the State party's most recent submission does not include any new information and despite maintaining that the complainant's statements on torture were included in the authorities' evaluation of the case, the fact remains that this information is neither mentioned in the decision of the Danish immigration Service or the Danish Refugee Board. In addition, in its decisions denying reopening the case, the Board has failed to take any position on the allegations of torture and rejected his information on his political activities regardless of his objective evidence on torture. If it had accepted the evidence, it would have required a justification of a different character in refusing to grant him asylum. It would in fact have been required to deal with the potential correlation between torture and his political activities. In its latest submission the State party submits that the complainant has not given a varying or incoherent statement about his alleged political activities in Iran. Thus, the Board's denial of asylum relies on the argument that the complainant has not shown any particular

² The Board refers to the information at its disposal at the time.

knowledge of political matters and that today Iranian Monarchists do not carry out political activities in Iran.

8.2 As to the issue of his lack of political knowledge, the complainant argues that he was not so questioned during his hearing by the Board and that the type of work he undertook was the only type of political work possible in Iran i.e. underground propaganda work. Due to the political situation in Iran, he did not have the opportunity to study and his lawyer considers that it is possible that his political knowledge is limited but does not take away from his claim that he was politically active. As to whether the Monarchists carry out activities in Iran, the complainant submits that since the Revolution in 1979, the Board has consistently recognized that limited activities including the distribution of leaflets and other propaganda work is carried out by Monarchists. As to the fact that six years have passed since the alleged torture, the complainant argues that the lapse of time will have no bearing on the possibility of him being once again being subjected to torture.

Issues and proceedings before the Committee

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

9.2 The issue before the Committee is whether the forced return of the authors to Iran would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

9.3 In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

9.4 The Committee recalls its general comment No. 1 on implementation of article 3 in the context of article 22, which states that the Committee is to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if deported to the country concerned. The risk need not be highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be “foreseeable, real and personal”.³

9.5 With regard to the burden of proof, the Committee also recalls its general comment and its previous decisions, according to which the burden is generally on the complainant to present an arguable case and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

³ Communication No. 203/2002, A.R. v. The Netherlands, Views adopted on 21 November 2003, para. 7.3.

9.6 In assessing the risk of torture in the present case, the Committee notes the complainant's contention that there is a foreseeable risk that he will be tortured if returned to Iran based on his claims of past detention and torture, as a result of his political activities, and the recommencement of his political activities upon arrival in Denmark. It notes his claim that the State party did not take his allegations of torture into account, and that it never formed a view on the veracity of the contents of his medical reports, which allegedly prove that he had in fact been tortured.

9.7 Following a request by the Committee in its Admissibility Decision, for further clarification from the State party on the allegations of past torture, the latter referred to an advisory opinion from the Refugee Board. The Board indicated that it had in fact taken the complainant's allegations into account, including the medical reports in question and that in fact it had referred to these reports in its decisions of 27 September 2004, 24 January 2006, 22 December 2006 and 10 July 2007. Although the State party does not come to a decision on the veracity of the contents of the medical reports, it neither confirms nor denies the allegations of torture. On two occasions it states that it does not "dismiss" these allegations. It questions the complainant's claims relating to his involvement in political activities and is of the view that even if it were to accept that he had been tortured in the past, he has failed to relate these allegations to any political involvement.

9.8 The Committee finds that it is probable, based on the medical reports provided by the complainant, which indicate that his injuries are consistent with his allegations, that he was detained and tortured as alleged. It also notes that the State party does not dispute this claim of past torture but argues that he was unlikely to have been subjected to torture on the basis of involvement with the monarchists, given their low level of activity in Iran. As to the general human rights situation in Iran, the Committee is concerned with the deteriorating situation since the elections of June 2009, including with respect to a report of six independent UN experts in July 2009, who questioned the legal basis for the arrests of journalists, human rights defenders, opposition supporters and scores of demonstrators, giving rise to concern for the arbitrary detention of individuals legitimately exercising their right to freedom of expression, opinion and assembly⁴. In particular, the Committee is concerned about reports that monarchists have been recently targeted in Iran. In light of the above, including the complainant's corroborated claims of past torture, the Committee is of the view that there are sufficient arguments to conclude that the complainant would face a personal risk of torture if forcibly returned to Iran.

9.9 The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the forcible return of the complainant to Iran would constitute a breach by Denmark of his rights under article 3 of the Convention.

10. In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

[Adopted in English, French, and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Russian and Chinese as part of the Committee's annual report to the General Assembly.]

⁴ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8383&LangID=E>. Also see the compilation for the Universal Periodic Review of Iran in November 2009. A/HRC/WG.6/7/IRN/2 (25 novembre 2009), par exemple paras. 28, 31 et 56 ; et A/HRC/WG.6/7/IRN/3 (30 novembre 2009), para. 28-29.].