



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

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Committee against Torture

Communication No. 312/2007

**Decision adopted by the Committee at its forty-seventh session, 31
October to 25 November 2011**

Submitted by: Hamid Reza Eftekhary
Alleged victim: The complainant
State party: Norway
Date of the complaint: 24 October 2006 (initial submission)
Date of present decision: 25 November 2011
Subject matter: Deportation of the complainant to the Islamic Republic of Iran
Procedural issue: Insufficient substantiation
Substantive issue: Risk of torture or cruel, inhuman or degrading treatment or punishment in the event of deportation
Article of the Convention: 3

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-seventh session)

concerning

Communication No. 312/2007

Submitted by: Hamid Reza Eftekhary
Alleged victim: The complainant
State party: Norway
Date of the complaint: 24 October 2006 (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 25 November 2011,

Having concluded its consideration of complaint No. 312/2007, submitted to the Committee against Torture by Hamid Reza Eftekhary 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, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1. The complainant is Hamid Reza Eftekhary, an Iranian national born in 1979, at risk of deportation from Norway to the Islamic Republic of Iran. Although in the initial submission he invokes only rule 114 (previously rule 108) of the Committee's rules of procedure (CAT/C/3/Rev.5), the complainant's arguments amount to a complaint that his deportation to Iran would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As of September 2008, he is unrepresented before the Committee.

The facts as submitted by the complainant

2.1 The complainant is a journalist who previously worked for the newspaper *Asia* in the Islamic Republic of Iran. The newspaper was closed in the spring of 2003, allegedly for having published "false information and for having conducted activities which disturb people's thinking". In June/July 2003, the complainant was arrested and his house was searched. During the search of his house, government officers confiscated documents and a computer belonging to the complainant. During his arrest, the complainant was interrogated by the authorities on the subject of his journalistic activities for approximately 14 hours.

2.2 After his release, the complainant went into hiding in the Islamic Republic of Iran. During the time that he was in hiding, two summons for him to appear before the Revolutionary Court in Tehran were received at his house. Following the receipt of these summons to appear at court, the complainant decided to flee Iran. The complainant applied for asylum in Norway on 11 October 2003.

2.3 The complainant states that, once in Norway, he discovered that he had been sentenced in absentia to five years' imprisonment by the Revolutionary Court in Tehran, on account of his alleged cooperation with "counter-revolutionary groups" and for "publishing articles against the Islamic Republic". He subsequently obtained the relevant court documents regarding his sentence through relatives in the Islamic Republic of Iran, who sent him copies of these documents to support his asylum application in Norway. The complainant states that the Revolutionary Court does not normally provide copies of its judgments, and therefore the complainant's relatives had to pay a bribe to obtain the documents.

2.4 On 4 January 2006 the Norwegian Immigration Authorities (UDI) decided to reject the complainant's application for asylum. On 18 September 2006 the Norwegian Immigration Appeals Board (UNE) confirmed the decision to reject the complainant's application for asylum. The decisions were based mainly on the fact that the UDI and UNE found that the complainant had not substantiated his concrete and individual risk of persecution, torture or ill-treatment if returned to the Islamic Republic of Iran. However, both bodies placed a special emphasis on a verification report conducted by the Norwegian Embassy in Tehran, dated 5 September 2004. The verification report found that the court documents presented by the complainant to prove that he had been sentenced in absentia to five years' imprisonment were false.

2.5 The complainant was ordered to leave Norway on 19 October 2006. In order to avoid police arrest and deportation, the complainant went into hiding.

2.6 The complainant continued his journalistic activities after his arrival in Norway, maintaining weblogs, wherein he published articles providing critical and provocative views on political and religious topics, and in particular criticizing the Government of the Islamic Republic of Iran. The complainant signed the weblog articles using his real name. In addition, he gave interviews and wrote short articles for a local Norwegian newspaper. The complainant states that both his weblogs were closed by the Iranian authorities while he was in Norway.

2.7 Following the rejection of the complainant's applications for asylum by the immigration authorities, the complainant would have wished to pursue his asylum case before the Norwegian courts. In order to pursue his case before the courts, the complainant applied for legal aid. The complainant was denied legal aid by the Fylkesmannen on 7 December 2006, and this decision was confirmed by the administrative appeals instance, the Justissekretariatene, on 26 January 2007. In the light of the fact that the complainant would not be able to pursue judicial remedies without legal aid, the denial of free legal aid to the complainant effectively barred the complainant from further pursuing his case before the Norwegian courts.

The complaint

3.1 The complainant claims that his life would be threatened, and that he would be at risk of imprisonment and torture if returned to the Islamic Republic of Iran, and that this would constitute a violation of article 3 of the Convention by Norway. The claim is based on the complainant's activities as a journalist both while still in Iran, as well as his continued activities as a blogger and journalist after his arrival in Norway in 2003. In support of his claim, the complainant highlights the two summonses for him to appear

before the Revolutionary Court in Tehran, as well as the sentence in absentia to five years' imprisonment by the Revolutionary Court, with reference to the general treatment of journalists and the current serious human rights situation in Iran.

3.2 The complainant submits that the Norwegian asylum authorities failed to ensure that the consideration of his asylum case respected due process, by focusing solely on the verification of the court documents from the Revolutionary Court in Tehran. In this regard, he maintains that the authorities placed a disproportionate weight on the alleged forgery of the court documents that the complainant presented in support of his asylum application, and did not conduct any further investigation of his case. The complainant submits that he had no control over the content of the court document providing the sentence in absentia, since it was sent to him by his relatives, after his arrival in Norway.

3.3 The complainant further maintains that the two summons to appear before the Revolutionary Court in Tehran are uncontested, and the fact that he did not appear before the Revolutionary Court following those summons, in and of itself substantiates the risk that he will be arrested and subjected to torture or other cruel, inhuman or degrading treatment or punishment, if he is returned to the Islamic Republic of Iran.

3.4 According to the complainant, the case is not under consideration by any other international procedure of investigation or settlement, and all available domestic remedies have been exhausted.

3.5 Interim measures were requested by the complainant in the initial submission of the complaint dated 23 October 2006, but were denied by the Committee, since at the time of the request the author was in hiding.

State party's observations on admissibility and merits

4.1 On 16 October 2007, the State party challenged the admissibility of the complaint for lack of substantiation even on a prima facie basis in relation to the complainant's claims under article 3 of the Convention, and argued that the complaint should be declared inadmissible under article 22, paragraph 2, of the Convention, as manifestly unfounded.

4.2 On the exhaustion of domestic remedies, the State party does not submit that the author has failed to exhaust domestic remedies, in the light of the fact that the complainant exhausted all administrative remedies and that the complainant's request for legal aid was rejected, effectively barring him from pursuing judicial remedies before the Norwegian courts. The State party refers to the Committee's jurisprudence regarding the exhaustion of judicial remedies in the absence of legal aid.¹

4.3 The State party submits that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture upon his or her return to that country, and recalls the Committee's jurisprudence in that regard.² Additional grounds must exist to show that the individual concerned would be personally at risk. As regards the current human rights situation in the Islamic Republic of Iran, the State party acknowledges that the working conditions for journalists and other media representatives in that country are generally poor.

4.4 The State party notes, however, that in its view, the complainant did not present any reliable facts to support his claim that he would be at a personal and foreseeable risk of

¹ Communication No. 238/2003, *Z.T. (No. 2) v. Norway*, decision adopted on 14 November 2005.

² Communications No. 233/2003, *Agiza v. Sweden*, decision adopted on 20 May 2005, and No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006.

persecution, torture or ill-treatment upon his return to the Islamic Republic of Iran. In that regard, the State party reiterates the views adopted by the Norwegian Immigration Appeals Board as well as the Norwegian Immigration Authorities, that although the working conditions for journalists and other media representatives in Iran are poor, the complainant had not generated journalistic activities of a nature or scope that could be deemed to draw the continued attention of the authorities, and place him at personal and foreseeable risk. The State party argues that the journalistic activities conducted by the complainant, even after his arrival in Norway, do not constitute the type of activities that would be subject to monitoring by the Iranian authorities, since the latter are primarily preoccupied with monitoring activities by Iranians in exile that may pose a concrete risk to the regime.

4.5 Regarding the complainant's allegation that he was sentenced in absentia to five years' imprisonment by the Revolutionary Court in Tehran, and that consequently, he would be likely to be imprisoned and tortured if he were returned to the Islamic Republic of Iran, the State party submits that the court documents provided by the complainant to support his case were found to be false by the Norwegian Embassy in Tehran. The verification of the documents was conducted by the Norwegian Embassy, and the verification report was submitted to the complainant through his counsel at the time, for comment. The State party notes that the complainant challenged the verification report, maintaining the authenticity of the court documents. Nevertheless, the authorities found that the complainant did not present any substantial arguments to doubt the verification. The State party considers the essential documents in the case to be false; consequently it questions the credibility and reliability of the complainant's submissions in their entirety.

4.6 By letter dated 2 December 2008, the State party informed the Committee that on 5 November 2008, the Norwegian Immigration Appeals Board rejected the complainant's request for reopening of the case, dated 2 January 2007, on the basis that no new information had been put forward to warrant a different assessment from the Board's assessment in its previous decisions. The State party further informed the Committee that the complainant was registered with an address in Norway as from 20 November 2007, and was therefore no longer in hiding.

Author's submissions

5.1 On 18 April 2009, the complainant sought to refute the observations submitted by the State party. He argues that the court documents presented in support of his asylum application are authentic, and that the State party did not give due regard to the submissions presented by his previous counsel on the authenticity of the documents.

5.2 The complainant also submits further documentation of his activities as a journalist both in the Islamic Republic of Iran and Norway, including Internet and newspaper articles that he had written on the subject of religion and politics in Iran, and signed by him using his real name. The complainant argues that the content and nature of his writing and the ideology represented therein would be considered sufficiently grave for the Iranian authorities to persecute, imprison and torture a person. He recalls that two of his weblogs were closed and blocked by the Iranian authorities after he fled to Norway.

5.3 Finally, the complainant draws attention to the current increasingly grave human rights situation in the Islamic Republic of Iran, with particular focus on the arrest, torture and killing of journalists, bloggers and persons engaged in political activism and criticism of the Government. According to the complainant, the current situation in Iran would undoubtedly lead to his persecution if he were returned to the country.

Issues and proceedings before the Committee

Consideration of admissibility:

6.1 Before considering any claim contained in a communication, the Committee 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 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any complaint unless it has ascertained that the complainant has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of those remedies has been unreasonably prolonged, or that it is unlikely to bring effective relief to the alleged victim.

6.3 The Committee notes that the complainant exhausted all administrative remedies. The Committee takes note that the complainant was denied legal aid by the Fylkesmannen in its decision dated 7 December 2006, and that this decision was confirmed following an administrative appeal to the Justissekretariatene, in its decision dated 26 January 2007. The Committee considers that, in the light of the fact that the complainant would not be able to pursue judicial remedies without legal aid, the denial of free legal aid to the complainant effectively renders the possibility of judicial review unavailable, and that accordingly, the complainant must be considered to have exhausted all available domestic remedies.³

6.4 The Committee takes note of the State party's argument that the communication should be declared inadmissible as manifestly unfounded. The Committee considers, however, that the complaint raises substantive issues under article 3 of the Convention, which should be examined on the merits. Accordingly, the Committee finds the communication admissible.

Consideration of merits:

7.1 The Committee must determine whether the forced return of the complainant to the Islamic Republic of Iran would violate the State party's obligations under article 3, paragraph 1, of the Convention not to expel or return ("refouler") an individual to another State, where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 The Committee recalls its general comment No. 1 (1996) on the implementation of article 3 of the Convention,⁴ and its case law, which state that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable, the Committee recalls that the burden of proof is generally placed on the complainant, who must present an arguable case establishing that he runs a "foreseeable, real and personal" risk.⁵ Furthermore, in its general comment No. 1 the Committee states that it must also determine whether the complainant has engaged in political activity within or outside the State concerned that would appear to make him particularly vulnerable to the risk of being subjected to torture (para. 8 (e)). The Committee also recalls that, while it gives considerable weight to the findings of fact of the

³ *Z.T. (No. 2) v. Norway* (footnote 1 above).

⁴ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.*

⁵ See general comment No. 1 of the Committee, and communication No. 203/2002, *A.R. v. The Netherlands*, decision adopted on 14 November 2003, para. 7.3.

State party's bodies, it is entitled under article 22, paragraph 4, of the Convention, to freely assess the facts of each case, based upon the full set of circumstances in every case.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon his return to the Islamic Republic of Iran. In assessing the risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence, in the State concerned, of a consistent pattern of gross, flagrant or mass violations of human rights.

7.4 Referring to its recent jurisprudence,⁶ the Committee recalls that the human rights situation in the Islamic Republic of Iran is extremely worrisome, particularly since the elections held in the country in June 2009. The Committee has received many reports describing, in particular, the repression and arbitrary detention of many reformers, students, journalists and human rights defenders, some of whom have been detained in secret and others sentenced to death and executed. The Committee also notes that on 7 July 2009, six special procedures mandate holders of the Human Rights Council (in the areas of arbitrary detention; extrajudicial, summary or arbitrary executions; right to freedom of opinion and expression; torture and other cruel, inhuman or degrading treatment or punishment; the situation of human rights defenders; and enforced or involuntary disappearances) expressed their concern regarding the protests linked to the Iranian presidential elections of 2009, following which at least 20 people were killed and hundreds of others seriously injured in clashes with security forces, who allegedly used live ammunition and rubber bullets. The same experts also expressed their concern about reports of arrests and detention without charge and ill-treatment of detainees.⁷

7.5 In addition, the Committee takes note of the concluding observations on the Islamic Republic of Iran adopted by the Human Rights Committee on 2 November 2011, in which the latter Committee stated that it "is deeply concerned about the frequent violations of fair trial guarantees provided for under the Covenant, especially in the Revolutionary Courts" (CCPR/C/IRN/CO/3, para. 21), and that it "is deeply concerned at reports of the widespread use of torture and cruel, inhuman or degrading treatment in detention facilities, particularly of those accused of national security-related crimes or tried in Revolutionary Courts, which in some cases have resulted in the death of the detainee" (ibid., para. 14).

7.6 The Committee further notes that the Human Rights Committee expressed its concern that:

Many newspapers, magazines, as well as the Journalists Association, have been closed by the authorities since 2008, and that many journalists, newspaper editors, film-makers and media workers have been arrested and detained since the 2009 presidential elections. The Committee is also concerned about the monitoring of Internet use and contents, blocking of websites that carry political news and analysis, slowing down of Internet speeds and jamming of foreign satellite

⁶ See communications No. 357/2008, *Jahani v. Switzerland*, decision adopted on 23 May 2011, para. 9.4, and No. 381/2009, *Faragollah et al. v. Switzerland*, decision adopted on 21 November 2011, para. 9.4.

⁷ See also the documents prepared by the Office of the United Nations High Commissioner for Human Rights for the universal periodic review in respect of the Islamic Republic of Iran: A/HRC/WG.6/7/IRN/2, for example paras. 28, 31 and 56; and A/HRC/WG.6/7/IRN/3 and Corr. 1, paras. 28–29. Finally, see also the statement made by the High Commissioner for Human Rights on 2 February 2011 on the execution of at least 66 persons in the month of January 2011, including at least 3 political prisoners (available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10698&LangID=E).

broadcasts, in particular since the 2009 presidential elections (art.19) (*ibid.*, para. 27).

7.7 The Committee takes note of the previous interest of the Iranian authorities in the complainant, as demonstrated by his arrest and interrogation, and the summons received by him in 2003 to appear before the Revolutionary Court in Tehran, due to his journalistic activities. The Committee notes that the complainant does not submit that he was tortured at any time by the Iranian authorities during his arrest and interrogation in 2003. However, the Committee notes the complainant's submission of his continued journalistic activities since his arrival in Norway, and the submission that his weblogs were shut down by the Iranian authorities during that time. The Committee is therefore of the opinion that the complainant could well have maintained the continued attention of the Iranian authorities.

7.8 In relation to the alleged sentence in absentia to five years' imprisonment, the Committee notes the State party's submission that the court documents presented in support of the asylum application, and in support of the complainant's claim that he would be at risk of imprisonment and torture if returned to the Islamic Republic of Iran, are not authentic, in accordance with a verification conducted by the Norwegian Embassy in Tehran. On the other hand, the Committee notes that the complainant contested the verification of the documents conducted by the State party, and maintains that he has been sentenced to five years' imprisonment by the Revolutionary Court in Tehran. The Committee is not in a position to assess the verification of the court documents regarding the alleged sentence in absentia to five years' imprisonment, taking into consideration that the State party and the complainant have presented contradictory statements, without corroborating evidence.

7.9 The Committee notes however that the two summons for the complainant to appear before the Revolutionary Court have not been contested, and that these summons, combined with the fact that the complainant did not appear before the Revolutionary Court in Tehran at the time that he was summoned, in themselves constitute an element of high risk to the complainant. Finally, the Committee notes that, since the Islamic Republic of Iran is not a party to the Convention, the complainant would be deprived of the option to address the Committee for protection of any kind, if he were to be deported to Iran.

8. In the light of the above, and taking into account all the circumstances of the case and the information presented before it, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the complainant to the Islamic Republic of Iran would constitute a breach of article 3 of the Convention.

9. In conformity with rule 118 (formerly rule 112), paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, on the steps taken by the State party to respond to the present decision.

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