



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

Distr.: General
12 August 2016

Original: English

Committee against Torture

**Decision adopted by the Committee under article 22 of the
Convention, concerning communication No. 593/2014*, ****

| | |
|------------------------------------|--|
| <i>Communication submitted by:</i> | I.M. and V.Z. (represented by counsel) |
| <i>Alleged victim:</i> | The complainants |
| <i>State party:</i> | Denmark |
| <i>Date of complaint:</i> | 24 March 2014 (initial submission) |
| <i>Date of present decision:</i> | 6 May 2016 |
| <i>Subject matter:</i> | Extradition to Romania |
| <i>Substantive issue:</i> | Risk of torture upon return to the country of origin |
| <i>Procedural issue:</i> | Non-substantiation of the claim |
| <i>Article of the Convention:</i> | 3 |

1.1 The complainants are I.M. and V.Z., both nationals of Romania, born in 1967 and 1968, respectively. At the time of the submission of the present complaint, both complainants were detained at the Center Jelling of the Danish Red Cross, awaiting deportation to Romania. They claim that, if Denmark proceeds with their deportation, it will violate their rights under article 3 of the Convention. The complainants are represented by counsel, Niels-Erik Hansen.

1.2 On 28 March 2014, in application of rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party not to deport the complainants to Romania while their communication was being considered by the Committee.

1.3 On 29 September 2014, the State party submitted its observations on admissibility and merits, and asked the Committee to review its decision for interim measures of

* Adopted by the Committee at its fifty-seventh session (18 April-13 May 2016).

** The following members of the Committee participated in the examination of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Felice Gaer, Abdoulaye Gaye, Claudio Grossman, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

GE.16-14002(E)



* 1 6 1 4 0 0 2 *



protection.¹ On 6 November 2014, the complainants provided their comments on the State party's request to lift interim measures. Having considered both parties' submissions, the Committee decided to lift its request for interim measures of protection.

Factual background

2.1 In Romania, the complainants used to own a private business. In 2001, their business faced "serious financial obstacles". As a result, the complainants, as owners of the business, were sued by their creditors, principally by someone called M.C. The complainants claim that M.C. is an influential person who had connections with "political opposition parties". The complainants claim that they received threats from M.C. and, as a result of this pressure, V.Z. attempted suicide in February 2002.² He was admitted to a psychiatric hospital for six months, at which time he was interrogated by police officers concerning his debt to M.C.

2.2 The complainants further submit that their company went bankrupt in February 2002. Due to this bankruptcy and threats from M.C., they had to leave their home; I.M. and her son went to stay with her mother, and V.Z. moved in with his sister. Criminal investigations against the complainants were initiated in March 2002 for allegations of fraud and they were detained for five days. I.M. claims that, during the detention, she was subjected to inhuman conditions, such as overcrowded detention cells with no windows, and had no access to counsel or family. She also claims that she was coerced into signing a confession on behalf of her husband, as he was in state of shock and could not understand what was happening. The complainants further claim that their son was bullied by the principal of his school, who happened to be a colleague of M.C.³

2.3 In 2003, M.C. started blackmailing the mother of I.M., who owned a store at which I.M. worked. At some point in October 2003, the mother's store was attacked and damaged, while I.S. was subject to a bodily injury.⁴ She claims that M.C. was behind this attack, as he was not happy about not being able to recover his money from the complainants. The complainants filed a police complaint,⁵ but no perpetrator was identified.

2.4 In 2004, the complainant's son came home crying after having been taken into a car by unknown persons. At that point, I.M. decided to seek asylum in Canada, together with her mother and son.⁶ They arrived in Canada in 2004 and applied for protection. I.M., her son and her mother were granted asylum in Canada in May 2005.⁷ V.Z. remained in Romania, as the complainants were not officially married and he could not obtain a visa.

2.5 The complainants further submit that, in 2006, they were convicted of fraud by the tribunal of Galati (in Romania) and sentenced to 11 years of imprisonment. They also claim that the course of the trial was affected by M.C., who was well connected with the police, prosecution and "political circles". I.M. claims the judge was corrupt.⁸ In August 2006, I.M. returned to Romania from Canada, as V.Z. was having health issues. The complainants got married in Romania, planning to apply for family reunification in Canada. During her stay in Romania, I.M. was not subjected to harassment but was confined to her home.

¹ The State party claims, inter alia, that the complainants were not able to show that they are at risk of suffering "irreparable damage" if returned to Romania.

² The complainants do not provide the exact date and details of this incident.

³ The complainants provide no further details on this.

⁴ The specific nature of the property damage, as well as bodily injuries, is not provided.

⁵ A copy of the complaint is not provided.

⁶ The complainant does not explain why she chose Canada in which to seek asylum.

⁷ The complainants provide no information on asylum proceedings in Canada.

⁸ This claim is not supported by any evidence.

2.6 In January 2007, I.M. returned to Canada and applied for the family reunification with her husband. In the same year, the second-instance court in Galati upheld the complainants' conviction and sentence. According to the complainants, M.C. exerted influence on the appeal court as well. In August 2007, I.M. travelled from Canada back to Romania, as V.Z.'s grandmother was very sick. The grandmother died in December 2007. I.M. claims that, in the meantime, she received a notice that her husband could reside in Canada with her. The Embassy of Canada in Romania, however, refused to issue him a visa to enter Canada.

2.7 The complainants submit that, in 2008, a third-instance appeal court quashed the lower court's sentence and ordered a retrial. This was possible because at that time M.C. had resigned from his political party and was unable to exert political influence on that court. In 2010, the Court of Appeals of the city of Galati acquitted the complainants of all charges. M.C. did not hold any political position and wasn't able to have an impact on the court. After the acquittal, the complainants wanted to depart for Canada; however, the prosecution appealed the acquittal and they had to remain in Romania.

2.8 On 2 March 2011, the Supreme Court of Romania convicted the complainants of fraud and sentenced them to 7 and 8 years of imprisonment, respectively. The complainants claim that a couple of judges in the Supreme Court were involved in corruption scandals in Romania. At the time of conviction, M.C. held the position of Secretary of the Ministry of Interior and therefore could again exert pressure on judges. They claim that the new conviction was based on the same evidence brought before the court that had acquitted them. The prosecution did not provide any new evidence. Their case was covered in the media, and it was claimed that M.C. was involved. They also refer to the decisions of the European Court of Human Rights, in which the Court concluded that Romania had failed in its duty to ensure the right to a fair trial.

2.9 The complainants also submit that on 3 March 2011, a day after their verdict was announced, they fled to Denmark. They travelled to Denmark without holding valid passports. They immediately started checking options on how to travel to Canada from there and contacted the Embassy of Canada in Copenhagen, which invited them to visit a consulate but refused to issue a visa. They travelled to Berlin and met with officials of the consulate of Canada there with the aim of getting a travel document based on the residence approval V.Z. had received in 2007.

2.10 However, the consulate of Canada in Berlin also refused to issue them a visa and requested them to come back with valid passports. The complainants were not able to obtain passports through the Embassy of Romania, as they would have been arrested if they had approached the Embassy. As M.C. was still holding the position of Secretary at the Ministry of Interior, they decided to hide in Denmark under different identities with no legal status. This lasted for two years.

2.11 The complainants claim that, on 2 January 2013, they were arrested by the police based on an international arrest warrant issued against them by Romania. They informed the police that they were fleeing the authorities of Romania after the conclusion of an unfair trial against them. During their arrest, they sought police protection and stated their wish to be taken to Canada and not to stay in Denmark. They were interviewed separately by immigration service officers on 30 and 31 January 2013, and again in February 2013.

2.12 Around that time, the extradition request of Romania was rejected by Denmark. The reason given was that the authorities of Romania could not show in their request for extradition that the complainants had been present during all the judicial proceedings that had led to their conviction on 2 March 2011, and that it was not possible from the evidence before the court to determine the precise extent of their participation in the trial.

2.13 On 1 October 2013, the Danish Immigration Service rejected the complainants' asylum application. The Service did not find that, if returned to Romania, the complainants would be subject to persecution, the death sentence, torture or inhuman treatment. The Service concluded that fear of M.C. could not lead to protection under the Convention, and that the conflict involving that individual had happened a long time ago.

2.14 The Danish Immigration Service also concluded that there was no evidence that the complainants or members of their family had been attacked or threatened in 2003 and 2004, or that M.C. had been involved in the alleged attacks or threats. As for their conviction and sentence, the Service did not find that the sentence was unfair in that particular case. The Service stated that the complainants had been represented by a lawyer and had the opportunity to submit evidence to court and to give statements during the trial. As concerning the general detention conditions in Romania, the Service did not find that this claim by itself could justify protection under the Convention. It also took into consideration the fact that the complainants had arrived in Denmark in March 2011 while the protection claim had been submitted only in January 2013.

2.15 On 25 February 2014, the Refugee Appeals Board upheld the decision issued by the Danish Immigration Service. It also requested that the complainants leave the country within 15 days of the said decision. The Board did not question the claim that the complainants had a dispute with a former business associate, but it did not consider that this conflict was of such a nature or intensity as to justify issuance of residence permits pursuant to paragraph 7 of the Aliens Act. The Board also stated that the complainants had submitted vague and general statements regarding threats. While the threats had started in 2001, the complainants had chosen to leave Romania only after they had become aware of their criminal sentence of 2 March 2011.

2.16 The Refugee Appeals Board further stated that, although the complainants had entered Denmark in March 2011, their first asylum application had been submitted in January 2013 after they had been arrested pursuant to an international arrest warrant. They had spent long periods in Romania since their company's bankruptcy in 2001. Moreover, the Board found some discrepancies in I.M.'s claims. Concerning the complainants' claim that they had faced an unfair trial in Romania, it was noted that the criminal proceedings against them had been considered by several courts in Romania. They had been present during criminal proceedings, had been represented by a lawyer and had had the opportunity to present evidence in their defence and testify. It was solely their presumption that the outcome of the criminal proceedings, in whole or in part, had been a result of corruption.

2.17 The fact that Romania, in several cases before the European Court of Human Rights, has been held of violation of article 6 does not lead to a different assessment. Finally, the complainants pointed out that they feared having to serve prison sentences under conditions that were contrary to article 3 of the European Convention on Human Rights. They referred to the general background information on prisons in Romania, together with the fact that Romania, in several cases before the European Court of Human Rights, had been held in violation because of poor conditions of detention.

2.18 Finally, the Refugee Appeals Board did not consider that the general background information and the cited judgments of the European Court of Human Rights constituted a sufficient basis for believing that the complainants, if they were to serve prison sentences in Romania, would be exposed to treatment contrary to article 3 of the European Convention on Human Rights. On 13 March, the complainants met with the police to arrange for their voluntary return to Romania, and were informed that as of 11 March 2014 they were staying illegally in Denmark, and therefore their forcible deportation to Romania was imminent.

The complaint

3.1 The complainants claim that the Refugee Appeals Board ignored their political asylum status in Canada, as well as the decision by Denmark not to extradite them to Romania. They claim that, if deported to Romania, they would risk persecution and be subjected to torture.

3.2 This belief arises from that fact that they published their story in the media in Romania while exposing M.C. as corrupt. Because of that disclosure, coupled with the refusal of Denmark to extradite them, they are convinced that, if returned, they would be tortured, beaten, punished or even killed in prison. They also refer to many cases of death in custody in Romanian prisons. They further claim that the reasons for their prosecution in Romania were caused by corruption.

State party's observations on admissibility and the merits

4.1 By a note verbale of 29 September 2014, the State party submitted its observations on the admissibility and merits of the communication. It recalled the facts of the case and also provided excerpts from relevant domestic legislation and international law. The State party submitted that the complainants had been arrested on 2 January 2013, based on the European arrest warrants issued on 16 September 2011.

4.2 By letters of 17 January 2013, 25 January 2013 and 1 February 2013, the Ministry of Justice of Denmark asked the authorities of Romania whether the complainants had appeared in person in court proceedings in Romania, in accordance with the requirements of the Act on Extradition of Offenders (Denmark). Based on the replies from the authorities of Romania, the Justice Ministry decided not to extradite the complainants, since "it had not been possible to determine the scope" of the participation of the complainants in the court proceedings. The State party submits that the Ministry of Justice of Denmark did not make any other findings, including with regard to the risk of torture or persecution or other inhuman or degrading treatment or punishment relevant under asylum law.⁹

4.3 On 24 January 2013, the complainants applied for asylum in Denmark. On 1 October 2013, the Danish Immigration Service rejected the complainants' asylum applications. The case was then brought to the Refugee Appeals Board. On 25 February 2014, the Board upheld the decision of the Service.

4.4 On 25 February 2014, the Board found that the applicants had given "vague and general" statements about threat of persecution in Romania. It also noted that the applicants had given inconsistent statements about the alleged kidnapping of I.M.'s son, the duration of the period in which threats had been made against them, threats after their departure and other details.

4.5 The Refugee Appeals Board specifically noted that, while the threats had started in 2001, the complainants had not left Romania until the imposition of a criminal sentence on

⁹ While acknowledging that the Ministry of Justice of Denmark refused to extradite the complainants based on the failure by the authorities of Romania to satisfy the requirements of the European arrest warrant, the State party argues that the Ministry of Justice of Denmark did not make any other determinations. For example, the State party argues, the Ministry did not determine whether, in addition to the requirements of the European arrest warrant, there were other grounds for refusing extradition, including the question whether there was a risk that, following extradition, the complainants would be subjected to persecution or torture, or other inhuman or degrading treatment or punishment relevant under asylum law. The State party claims that, independent of the Ministry of Justice, the Danish Immigration Service and the Refugee Appeals Board made a finding that the complainants' request for asylum should be rejected as manifestly ill-founded.

them on 2 March 2011. The Board also stated in its decision that the complainants had applied for asylum only after being arrested on 2 January 2013. Moreover, the Board emphasized that the complainants had stayed in Romania for long periods of time since initially reporting their problems in 2001.

4.6 As indicated in the submissions, the criminal case against the complainants was adjudicated by several judicial instances in Romania. The complainants were present during those hearings, and were represented by lawyers. The notion that the outcome of the criminal case was the result of corruption, in full or in part, is based solely on the complainants' assumptions.

4.7 The State party therefore claims that the complainants failed to establish a prima facie case for the purposes of admissibility. It has not been established that there are substantial grounds for believing that the complainants are in danger of being subjected to torture or other cruel, inhuman or degrading treatment if they are returned to Romania.

4.8 The State party relies entirely on the Refugee Appeals Board decision of 25 February 2014, in which the Board gave a thorough account of facts and assessed the evidence presented. The complainants also had an opportunity to argue their case both in writing and orally in front of the Board, with the assistance of counsel. The State party further submits that the fact that I.M. has obtained asylum in Canada does not lead to a different assessment of the facts at stake.

4.9 The State party submits that the complainants have failed to establish a prima facie case for the purpose of admissibility and that the communication is therefore manifestly ill-founded and should be declared inadmissible.

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

5.1 On 30 December 2014, in reply to the State party's observations, the complainants submitted that they remained at risk of torture if returned to Romania. The fear of persecution was well grounded, given the fact that I.M. had already received protected status in Canada. I.M. had to travel back to Romania "in order to rescue" V.Z. from persecution in Romania and take her with her to Canada.

5.2 The complainants further submitted that the initial request by the authorities of Romania to extradite the couple had been denied by the Ministry of Justice of Denmark on 14 February 2013. Nevertheless, the complainants had been arrested and had to seek asylum in order to avoid being extradited to Romania. The complainants did not seek to stay in Denmark; their intention was to depart for Canada as soon as they could.

5.3 The Danish Immigration Service had rejected their asylum application as manifestly unfounded. The Refugee Appeals Board had upheld that decision, stating that widespread corruption might have influenced the outcome of the criminal case against the complainants.

5.4 The mere fact that I.M. had already received international protection under the Convention relating to the Status of Refugees meant that the authorities in Canada had made a finding of an established fear of persecution. There was no question that, upon return to Romania, the complainants would be placed in detention. The conditions of detention, as stated before, violated the requirements of article 3 of the Convention.

5.5 The Danish Immigration Service and the Refugee Appeals Board had failed to make a risk assessment as required by general comment No. 1 (1997) on the implementation of article 3 of the Convention. There had been a pattern of gross, flagrant and mass violations of human rights in Romania. Especially with regards to prison conditions in Romania, there

were still major problems. As the complainants had already experienced similar problems in Romania before, that went beyond a simple theory or suspicion.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 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, in the instant case, the State party has not contested that the complainants have not exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

6.3 The Committee takes note of the State party's argument that the communication should be declared inadmissible as manifestly ill-founded. The Committee notes that, on 2 January 2013, the complainants were arrested based on a European arrest warrant. Based on that warrant, and on the decision by the Refugee Appeals Board of 25 February 2014, both complainants were extradited to Romania to serve the sentences imposed on them pursuant to the court verdict. The Committee notes that all arguments presented by the complainants do not specifically relate to allegations of violations under the Convention, as the complainants only refer to claims relating to their conditions of detention, without describing these conditions. The Committee considers that the complainants have failed to present substantiation of any of their claims under article 3 of the Convention. Accordingly, it concludes that the communication is manifestly unfounded under rule 113 (b) of its rules of procedure and, therefore, inadmissible under article 22 (2) of the Convention.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (2) of the Convention;

(b) That the present decision shall be communicated to the complainants and to the State party.