



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 801/2017*, **

<i>Communication submitted by:</i>	E.T. (represented by counsel Judith Pieters)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Netherlands
<i>Date of complaint:</i>	23 February 2015 (initial submission)
<i>Date of decision:</i>	26 November 2018
<i>Subject matter:</i>	Deportation from the Netherlands to Armenia
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Risk of torture and ill-treatment
<i>Article of the Convention:</i>	Article 3

1.1 The complainant is E.T., born on 8 August 1984, a national of Armenia. His application for asylum has been rejected by the Netherlands. The complainant claims that his deportation to Armenia would constitute a violation of his rights under article 3 of the Convention. The complainant is represented by counsel.

1.2 On 6 February 2017, the Committee, acting through its Rapporteur on new complaints and interim measures, informed the complainant that it had denied his request for the provision of interim measures consisting of the issuance of a request to the State party to refrain from removing him to Armenia pending the examination of his complaint.

The facts as presented by the complainant

2.1 The complainant was a member of the Republic party, an opposition party in Armenia. His task was to distribute flyers and pamphlets and he participated in demonstrations. On 15 October 2010, the complainant was arrested during a demonstration on charges of having disturbed the public order. He was detained for five days at a police station in Yerevan where he was severely beaten by police officers. When the complainant was released he stayed at home for a couple of days because he was badly injured and as he was working as a driver for someone “who worked for the Government” he did not want the reason for his injuries to be known. When the complainant went back to work, his manager was furious as he had found out why he had been absent from work. The manager

* Adopted by the Committee at its sixty-fifth session (12 November–7 December 2018).

** The following members of the Committee participated in the examination of the communication:
Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu,
Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

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told the complainant that he should stop attending demonstrations as “he was working for someone from the authorities”.

2.2 On 9 November 2010, the complainant attended another demonstration and was again arrested. He was held at the police station in Yerevan for three days and was badly beaten by the police. After his release, he stayed at home for two more days so that his injuries would be less visible. However, his manager found out about the complainant’s arrest and told him that he could only make it up to him by making false allegations against his uncle, who was also an active member of the Republic party. The manager told the complainant to make a statement alleging that his uncle was trading in illegal weapons, that he had paid people to attend demonstrations and to vote for the Republic party. The complainant refused and resigned from his job, but the manager told him that he had to stay until the end of the month.

2.3 On 29 November 2010, the complainant was driving his manager home. After having dropped him off at his home, the complainant was asked to pick up the manager’s wife at the manager’s summer house. On the way there, a police car pulled the complainant over. When the police searched the car they found a weapon. The complainant had not known there was a weapon in the car. However, when questioned, the manager told the police that the weapon was not his and that it probably belonged to the complainant. The complainant was arrested on weapons charges and held in custody in Ashtarak for 40 days. He was severely beaten every day with a police stick on his hands, fingers, stomach and back. He was released on bail on 10 January 2011 on condition that he handed in his passport, which he did.

2.4 The complainant’s uncle advised him to report his manager to the police for having framed him on the weapons charges. On 13 January 2011, the complainant filed a complaint against his manager with the police. On 15 January 2011, the complainant was taken by his manager’s bodyguard to an unknown place. The manager was at the location, he threw a paper at the complainant and told him to eat it. The paper was the complaint against the manager that the complainant had filed with the police. The bodyguard threatened the complainant with a gun and forced him to eat the paper. The complainant was then held hostage for 15 or 16 days and beaten every day. At the end of January 2011, he was brought to the police station in Yerevan and forced to withdraw his complaint against the manager.

2.5 After the complainant had withdrawn his complaint, he was arrested for having made a false statement to the police and was again beaten by police officers. On 2 February 2011, he was brought to the police station in Ashtarak because of the weapons charges against him. He was again beaten by the police. His condition deteriorated and on 24 February 2011 he was taken to a hospital psychiatric ward. The police officers told the doctors that he had tried to commit suicide, which was not true. The complainant was held on the psychiatric ward for seven to eight days. On 4 March 2011, a doctor came to visit him. He was a friend of his uncle and he helped the complainant to escape from the hospital. His uncle advised the complainant that he should leave the country. On 24 April 2011, the complainant left Armenia. He applied for asylum in the Netherlands on 16 June 2011.

2.6 The complainant notes that during the asylum proceedings the authorities found that he had been admitted to a psychiatric ward in Ashtarak from 24 February to 3 March 2011 and that he had worked as a driver in a ministry office. The Dutch Ministry of Foreign Affairs provided the Dutch Immigration and Naturalization Service with further information on the complainant’s asylum application. The authorities found that he was not credible as they could not confirm that he had been held in police custody in Armenia and because they could not confirm that there was an ongoing investigation against the complainant. The Immigration and Naturalization Service therefore rejected his application for asylum on 23 March 2012. The complainant’s subsequent application for judicial review of the decision was rejected by the district court in The Hague on 10 January 2014 and his appeal against that decision was declared unfounded by the Administrative Jurisdiction Division of the Council of State on 26 August 2014.

2.7 The complainant argues that the Armenian authorities would not admit to unlawful acts and that they therefore would not confirm that he had been held in custody in 2010 and

2011. The complainant further claims that the Dutch authorities did not allow him to know who had provided them with information about him, as he was not allowed to examine the underlying investigation report relied upon by the Dutch Ministry of Foreign Affairs in the report to the Immigration and Naturalization Service.

The complaint

3.1 The complainant claims that there is a consistent pattern of gross and massive violations of human rights in Armenia and submits that on this basis alone the State party should refrain from expelling him to Armenia.¹

3.2 He also claims that there is an ongoing investigation against him in Armenia and that there is a real risk that he would be subjected to torture and that his safety would be endangered by the authorities if he were returned to Armenia, where he fears being beaten by the police again if detained. He further claims that as a government official was involved in framing him on weapons charges, he would not receive a fair trial in Armenia. The complainant further claims that because of the independent investigation into his background conducted by the Dutch authorities, he has been placed in greater danger, since the Armenian authorities would have been made aware of the fact that the complainant had fled the country and applied for asylum abroad.

State party's observations on admissibility and the merits

4.1 On 4 August 2017, the State party submitted its observations on the admissibility and merits of the complaint. The State party submits that the complaint is without merit.

4.2 The State party refers to country reports on Armenia issued by the Dutch Ministry of Foreign Affairs. It notes that according to those reports, as well as other country reports on Armenia, the human rights situation in the country gives some cause for concern.² The State party notes that the country report issued by the Ministry of Foreign Affairs reveals that although membership of an opposition party in itself does not lead to problems with the authorities, during the period under review members of the opposition and political activists were threatened, intimidated and physically attacked in connection with the activities they were involved in. The report also shows, however, that activists were not subjected to violence during demonstrations but that they were confronted with negative consequences in the aftermath. For example, problems included difficulties in finding a job. The State party therefore submits that there is no reason to conclude that expulsion to Armenia would in itself involve a risk of a contravention of article 3 of the Convention, as the threshold for accepting that such a risk exists is high. The State party submits that it is therefore for the complainant to make a persuasive case for his fear of a breach of article 3 of the Convention on the basis of personal facts and circumstances.

4.3 The State party notes that the complainant claims that substantial grounds exist for believing that he would be in danger of being subjected to torture upon return to Armenia as he claims that there is a consistent pattern of gross and massive violations of human rights in Armenia. In that connection he states that he was threatened and physically abused by his manager and that there may be a warrant against him. He further believes that the person-specific investigation that the Dutch authorities carried out in Armenia to gather information about him may have put him at risk. The State party argues that the complainant's account in support of his asylum application is not credible and that it has not been satisfactorily established that the complainant would face a risk of treatment contrary to article 3 of the Convention upon returning to Armenia.

¹ The complainant refers to the United States Department of State country report on Armenia of 2013, according to which the torture and ill-treatment of persons arrested by the police continued to be reported.

² The State party refers to the United States Department of State country report on Armenia of 2016; Amnesty International report 2016/2017, *The State of the World's Human Rights*, section on Armenia; Human Rights Watch, *World Report 2017*, section on Armenia; and Council of Europe, "Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 October 2015".

4.4 The State party notes that the complainant states that he is possibly being sought by the authorities and that he refers to publicly available information that indicates that torture still takes place at police stations on a large scale. The State party notes that it does not doubt that the complainant has been a member of the opposition party Republic since 2009. However, it argues that this fact alone does not constitute sufficient grounds for assuming that if he were returned to Armenia he would be in danger of being subjected to treatment in violation of article 3 of the Convention. It notes that, according to various country reports, it cannot be deduced that any member of an opposition party, including Republic, who takes part in demonstrations has a reason to fear treatment contrary to article 3 of the Convention.³ The State party submits that the complainant has failed to substantiate his fear of a breach of article 3 of the Convention with specific, individual facts and circumstances.

4.5 The State party notes that the complainant also refers to the problems he claims to have had in the past with his manager and the Armenian authorities, and that he would therefore be unable to obtain protection from the authorities upon return to Armenia. It notes that he also claims that the investigation carried out by the Dutch authorities in Armenia to gather information for the person-specific report could lead to problems for him if he returned. The State party submits that these claims lack credibility. The State party notes that the person-specific report drawn up on 10 February 2012 in response to the investigation carried out in Armenia by the Ministry of Foreign Affairs includes the following findings: (a) the complainant was not detained in Yerevan at any time from 15 to 20 October 2010 or from 9 to 12 November 2010; (b) the complainant was not detained at the police station in Ashtarak at any time from 29 November 2010 to 10 January 2011 or from 2 to 24 February 2011; (c) the complainant did not lodge a criminal complaint against his manager on 13 January 2011; (d) the complainant worked as a driver at a government office and was reported to have resigned from his job on 1 April 2011; (e) the complainant is not being sought by the Armenian authorities; (f) the complainant was issued with an Armenian passport on 12 March 2001 and 11 March 2011.

4.6 The State party notes that it attaches great importance to the general country reports issued by the Ministry of Foreign Affairs and person-specific reports, which are based on thorough investigations. It notes that such reports draw on a range of reports by other organizations, such as the Office of the United Nations High Commissioner for Refugees, the United States Department of State, the British Home Office and Human Rights Watch. Person-specific reports are researched with the assistance of the Dutch diplomatic missions in the countries concerned. In investigating information and documents submitted by asylum seekers, the Ministry of Foreign Affairs enlists the services of confidential agents, who are carefully screened for objectivity and reliability on the basis of information supplied by institutions such as non-governmental organizations (NGOs), international organizations, such as the International Organization for Migration, and third-country embassies that can make impartial, informed assessments. Confidential agents must satisfy exceptionally high requirements: they must be discreet and meticulous and have extensive networks and access to sources of information. The use of confidential agents protects asylum seekers and their relatives by ensuring that no one in their country of origin associates them with the Netherlands. Confidential agents receive instructions before they begin their investigation and their findings are discussed in meticulous detail when they report back to the embassy. The investigation is carefully organized in such a way that the authorities are never made aware of the identity of the person in question so as to ensure that the investigation does not cause any problems for that person in their country of origin. The State party submits that there is no credence to the statement by the complainant that the investigation by the Dutch authorities in Armenia would cause problems for him if he were to return.

4.7 The State party notes that its authorities rely on the information in a person-specific report, as long as there are no specific reasons to doubt its accuracy or completeness and provided that the report conveys the information impartially, objectively and clearly and indicates the sources of the information insofar as it is possible and responsible to do so. There is also a small unit of specialized staff at the Immigration and Naturalization Service

³ Ibid.

who make sure that the report has been drawn up carefully with regard to both its substance and the procedure followed, and that its content is clear. The staff member who conducts the check sees the documents on which the report is based. Only after the check has been done is a person-specific report used in reaching a decision. The Ministry of Foreign Affairs never provides information to the asylum seeker concerned or their authorized representative about the identity of the agents or informants who have assisted with the investigation, because this could expose the agents or informants to serious danger from the authorities or from the asylum seeker or his or her relatives or associates. The Ministry of Foreign Affairs does not provide information about the methods and techniques used to examine the information and documents submitted by asylum seekers, to avoid facilitating the making of forgeries or false accounts of events. The State party notes that the district courts and the Administrative Jurisdiction Division are able to base their judgments concerning a person-specific report in part on the documents used in drawing up that report, provided that both the asylum seeker and the State Secretary for Security and Justice have given their consent. Before the documents are examined, the district court or the Administrative Jurisdiction Division, with a judge or panel of judges different from those judging the asylum seeker's application for judicial review or appeal in his or her asylum proceedings, decides whether the restrictions that have been placed on the asylum seeker's access to the documents on which the person-specific report is based are justified. When the rejection of an application for a residence permit is based in part on a person-specific report, therefore, the way the Dutch asylum procedure is organized offers sufficient safeguards that an investigation can be conducted to ensure that the report was drawn up with due care.

4.8 The State party argues that the complainant has not adduced any specific reasons to doubt the accuracy or completeness of the person-specific report in his case. It argues that the confidential agents whose services were enlisted by the Ministry of Foreign Affairs are well informed about the local situation and the local networks and are fully capable of assessing whether information is reliable and whether well-founded conclusions can be drawn. The State party submits that the complainant's claim that the information provided to the Ministry of Foreign Affairs is likely to be unreliable is entirely unsubstantiated and is of such a speculative nature that it cannot undermine the conclusions of the report and the decisions of the domestic authorities on the complainant's application for asylum.

Complainant's comments on the State party's observations

5. On 5 September 2018, the complainant submitted his comments on the State party's observations. He reiterates the arguments of his initial submission and maintains that he has established that he would be at a real and foreseeable risk of treatment contrary to article 3 of the Convention if returned to Armenia.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint 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 present case, the State party has not contested that the complainant has 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 As the Committee finds no further obstacles to admissibility, it declares the complaint submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 In accordance with article 22 (4) of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 In the present case, the issue before the Committee is whether the return of the complainant to Armenia would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.3 In the present case, the Committee must assess whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture upon return to Armenia. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of return. The Committee recalls that the aim of the assessment is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.⁴

7.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group which may be at risk of being tortured in the State of destination. The Committee recalls that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real" (para. 11). Indications of personal risk may include, but are not limited to: the complainant's ethnic background; previous torture; incommunicado detention or other form of arbitrary and illegal detention in the country of origin; and clandestine escape from the country of origin because of threats of torture (para. 45).

7.5 The Committee also recalls that the burden of proof is on the author of the complaint, who must present an arguable case, namely that he or she must submit arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when the complainant is in a situation where he or she cannot elaborate on his or her case, for instance when the complainant has demonstrated that he or she has no possibility of obtaining documentation relating to his or her allegation of torture, or is deprived of his or her liberty, the burden of proof is reversed and it is up to the State party concerned to investigate the allegations and verify the information on which the complaint is based.⁵ The Committee further recalls that it gives considerable weight to findings of fact made by organs of the State party concerned, however it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.⁶

7.6 In the present case, the complainant claims that there is a consistent pattern of gross and massive violations of human rights in Armenia and submits that, on this basis alone, the State party should refrain from expelling him to Armenia. In that connection, the Committee notes the current human rights situation in Armenia and refers to its concluding observations on the fourth periodic report of Armenia, in which it expressed concern, inter alia, about the persistent allegations of torture and ill-treatment perpetrated by law

⁴ See, inter alia, *S.K. and others v. Sweden* (CAT/C/54/D/550/2013), para. 7.3.

⁵ General comment No. 4, para. 38.

⁶ *Ibid.*, para. 50.

enforcement officials during arrest, detention and interrogation, and at the remaining deficiencies in investigating and prosecuting such complaints effectively (CAT/C/ARM/CO/4, para. 17). However, the Committee recalls that the occurrence of human rights violations in the country of origin is not sufficient in itself to conclude that a complainant runs a personal risk of torture and that additional grounds must be adduced to show that the individual concerned would be personally at risk.

7.7 The Committee further notes that the complainant also claims that he would risk being subjected to torture or ill-treatment owing to the ongoing investigation against him in Armenia and the treatment to which he claims to have been subjected when previously detained in the country. The Committee also notes the State party's submission that the State party authorities found the complainant's account in support of his asylum application to be not credible as, according to the findings of the investigation carried out in Armenia on behalf of the Ministry of Foreign Affairs, he had not been detained by the police during the specific time periods in question; he had not lodged a criminal complaint against his manager; he had not resigned from his job in November 2010, as claimed, but had stayed in employment until 1 April 2011; and he was not being sought by the Armenian authorities. The Committee notes the complainant's argument that the findings of the person-specific investigation carried out by the State party authorities are not reliable as he was not provided with any information on how the information had been gathered and was not allowed to examine the underlying investigation report relied upon by the Dutch Ministry of Foreign Affairs in its report to the Immigration and Naturalization Service. It further notes the State party's argument that in investigating the information and documents submitted by asylum seekers, the services of the confidential agents enlisted are carefully screened for objectivity and reliability on the basis of information supplied by NGOs, international organizations and third-country embassies. The Committee also notes the State party's argument that in examining an asylum application, both the district court and the Administrative Jurisdiction Division are able to base their judgments concerning a person-specific report in part on the documents used in drawing up that report. The Committee further notes the State party's argument that the complainant's claim that the information provided to the Ministry of Foreign Affairs is likely to be unreliable is unsubstantiated and of a speculative nature. The Committee notes in this regard that the complainant has not presented any specific reason, argument or documentation that would indicate that the findings of the report in question are unreliable. The Committee further notes that in his asylum application the complainant claimed that he was being sought by the Armenian authorities. In that connection, the Committee notes his claim that when he was released on bail on 10 January 2011, his passport was confiscated. The Committee however notes that, according to the findings of the person-specific report, the complainant was issued with a new passport on 11 March 2011, after which he left the country. The Committee notes that the complainant has not provided any information or argumentation as to why the authorities would issue a new passport to him after his previous one had been confiscated. The Committee is therefore of the opinion that the complainant has failed to submit arguments showing that the risk for him of being subjected to torture is foreseeable, present, personal and real if he is returned to Armenia.

7.8 The Committee notes that the complainant further claims that he will not receive a fair trial if returned to Armenia. However, the Committee notes that the complainant has not provided any specific information in that regard, and therefore finds that he has failed to substantiate this part of the complaint.

8. On the basis of the above, and in the light of the material before it, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his forcible removal to his country of origin would expose him to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, decides that the complainant's removal to Armenia by the State party would not constitute a violation of article 3 of the Convention.