



**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. 349/2008

<i>Submitted by:</i>	Mükerrem Güçlü (represented by counsel, Ingerman Sahlström)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of the complaint:</i>	29 July 2008 (initial submission)
<i>Date of present decision:</i>	11 November 2010
<i>Subject matter:</i>	Deportation of complainant to Turkey
<i>Procedural issues:</i>	Insufficient substantiation
<i>Substantive issues:</i>	Prohibition of refoulement
<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. 349/2008

Submitted by: Mükerrerrem Güclü (represented by counsel, Ingerman Sahlström)

Alleged victim: The complainant

State party: Sweden

Date of the complaint: 29 July 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 11 November 2010,

Having concluded its consideration of complaint No. 349/2008, submitted to the Committee against Torture by Ingerman Sahlström on behalf of Mükerrerrem Güclü 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 Mükerrerrem Güclü, a Turkish national, born on 3 May 1973, is residing in Sweden and is subject to an order for her deportation to Turkey. She is living with her husband and daughter, who have also submitted a case to the Committee, Aytulun, and Güclü v Sweden, No. 373/2009. She claims that her return to Turkey would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Mr. Ingemar Sahlström.

1.2. On 31 July 2008, the Rapporteur for new complaints and interim measures requested the State party not to deport the complainant to Turkey while her case is under consideration by the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedure. On the same date, the State party acceded to this request.

The facts as presented by the complainant

2.1. The complainant joined the Kurdish Workers' Party (the PKK) in May 1990 at the age of 17. She participated in its activities for 15 years as a "guerrilla soldier", took part in a two-month training course in Iraq. Between 1991 and 1998, her role was to type articles written by other members of the PKK for magazines. She performed such work for the PKK leader Öcalan and submitted photos to the Swedish authorities, where she could be seen with him and other PKK leaders. Until 1998, she was active mostly in areas surrounding Sirnak and Diyarbakir in Turkey. Although she never participated in battle, she had to carry arms like any other guerilla soldier. She was armed with a Kalashnikov. On ten occasions, the Turkish army attacked the Guerilla camp where she was located. In 1997, her elbow was injured during an attack by the Turkish army.

2.2. In 1998, she was transferred to the main PKK base called the Academia in Syria. There she participated in a 10-month political education course. During the training, she was a leader of a group of 20. She was elected to participate in the PKK sixth congress in Iraq in December 1998 - February 1999. After that, she was active in the PKK's women department (the PJA) in Qandil in Iraq. She mostly typed articles of leaders of the party and colleagues for the magazine Tanrica Zilan, but she also wrote some articles herself.

2.3. At the end of the 1990s, the complainant started to have doubts about the ideology of the PKK. In 2002, she was detained by them for several months on suspicion of having helped a guerilla soldier escape and not supporting the PKK and the PJA. She was questioned repeatedly and humiliated in front of her comrades. She was also brought before the PKK's court called the Platform. After a while she was allowed to continue her work at the PKK Media department where she was kept under supervision. She tried to keep a low profile. Those who have tried to escape from the guerrilla camps have been executed.

2.4. In May 2004, she was permitted to meet some relatives at a refugee camp in Machmoor in Iraq. From there, she escaped with the assistance of her uncle, who is a Swedish citizen. She stayed a couple of months in Iran, than returned to Turkey with false ID papers and stayed there for a certain period of time, but was afraid to go to regions where the PKK was active for fear of being recognized and killed. She went to Sweden and applied for asylum on 14 April 2005. While in Sweden she married a man who also had an asylum application pending and with whom in 2007 she had a child. Her husband is also a former PKK guerilla soldier who fled the organization, was subsequently denied refugee status in Sweden.

2.5. The complainant believes she is wanted by the Turkish authorities, who have searched for her many times, and arrested and questioned her family members about her whereabouts. According to her, the Turkish authorities are well aware of her PKK involvement, as they told her relatives that they know she was a guerilla soldier. Her brother told the police that she is in Sweden. She argues that if returned to Turkey she risks up to 15 years of imprisonment for her activities in the PKK, as well as torture in detention. She also believes that if she is returned to Turkey she will be identified by the PKK as a defector and killed, and that the Turkish authorities will not protect her.

2.6. On 23 May 2006, the Migration Board rejected her asylum claim and her applications for residence and work permits. The Board also ordered her expulsion to her country of origin. It did not question her account of her activities with the PKK, but stated that she failed to establish that she was wanted by the Turkish authorities. The Board admitted that there is a risk that she would be arrested and tried, but saw no evidence that she would receive a "more severe punishment than other persons in the same situation".

The Board also stated that such punishment would not be disproportionate considering that she had been a member of a terrorist organization. Moreover, the Board quoted recent Turkish policies of “zero tolerance” towards torture and stated that even though isolated incidents of torture still occur, they saw no evidence indicating that it would take place in the complainant’s case. The Board also stated that she had not proven that the PKK would kill her for leaving the organization without permission.

2.7. The complainant appealed against the Migration Board decision to the Migration Court (the County Administrative Court in Stockholm). On 8 January 2007, Amnesty International filed a submission to the Court supporting the complainant’s appeal. It argued that she wouldn’t get a fair trial in Turkey and would be exposed to torture and other inhuman and cruel treatment. It stated that persons in her situation do not get legal representation and are forced to confess under torture.

2.8. On 22 November 2007, the Migration Court rejected her appeal. The complainant applied for leave to appeal the Migration Court decision in front of the Migration Court of Appeal, but she was denied such leave on 10 June 2008.

The complaint

2.9. The complainant claims that upon her return to Turkey she will be arrested and tortured by the authorities and/or by the PKK. She states that she will not get a fair trial and will be sent to prison, where she won’t be protected from the PKK.

2.10. The complainant refers to the British Home Office guidelines on the treatment of PKK members in Turkey, to the EU Commission’s report on Turkey, to Amnesty International reports from July 2007, and to Canadian immigration “guidelines” on the PKK and Turkey, all of which indicate that there are instances of ill-treatment and torture in the Turkish correctional system, two of which explicitly indicate that security forces target PKK members. Most of the reports are dated 2007.

State party's observations

3.1. On 30 January 2009, the State party partially reiterates the facts presented by the complainant in her initial communication to the Committee. It also points to the reforms that have been undertaken by the Turkish authorities to address the problem of torture, although acknowledging that incidents of torture still occur. It reiterates the reasoning of the Migration Board and states that the PKK is considered to be a terrorist organization both by Turkey and the European Union. The State party recognizes that the complainant is likely to be arrested, tried and imprisoned, but submits that refugee status cannot be solely based on the fact that a person risks punishment according to their domestic legislation.

3.2. The State party notes that the complainant’s activities were at a relatively low level and maintains that she has not demonstrated that she would risk “disproportionate punishment” if tried in Turkey. She has not demonstrated a risk of being subjected to persecution, threats and harassment from the PKK, which would make her in need of protection. Even if she were to risk such treatment, the State party maintains that it is the responsibility of the Turkish judicial and law enforcement authorities to protect her.

3.3. The State party recalls that one of the judges of the Migration Court had a different opinion, proposed in favour of the complainant and stated that the information on the complainant’s activities in the PKK is sufficient to make her a person “otherwise in need of protection” and that she should accordingly be granted residence permit in Sweden.

3.4. On admissibility, the State party acknowledges that the complainant has exhausted all available domestic remedies and is not aware of the matter having been or being subject to any other international investigation or settlement. It maintains that the complainant's assertion that she is at risk of being treated in a manner which would amount to a breach of article 3 of the Convention fails to rise to the basic level of substantiation required for purposes of admissibility. The State party therefore submits that the communication is manifestly unfounded and thus inadmissible pursuant to article 22, paragraph 2 of the Convention and rule 107 (b) of the Committee's Rules of procedure.

3.5. The State Party disputes the claims on the merits. It reiterates the reforms in Turkey in the area of human rights, including adoption of a policy of zero tolerance on torture and significant legislative reforms, which provide for avenues of complaint for victims of torture. It contends that great weight must be given to the opinion of its authorities, as the latter are in a very good position to assess the information submitted by the asylum seeker and estimate the credibility of her claim. The complainant's involvement with the PKK was at a low level and her work was limited to typing and editing. Thus, the State party denies that she would be of as much interest to the Turkish authorities as she claims. The complainant had stated that she had never been deprived of her liberty, imprisoned or arrested. In its original decision, the Migration Board had commented that the complainant could not establish by documentary evidence that she was of interest to the Turkish authorities and in particular that she had not presented an extract from the national registration authority demonstrating that she was wanted by the authorities. However, in its submission to the Committee, the State party notes that, according to their information, since 2004 it is illegal to note in the Turkish national population register that a person is so wanted. For this reason, the State Party takes no issue with her failure to provide such documentary evidence.

3.6. The State party is aware that, as the PKK is classified as a terrorist organization, under the Turkish Anti-Terrorist Law, any involvement with it is criminalized and punishable by a 50% higher sentence than would otherwise be the case. The State party also maintains that the risk of being detained does not in itself constitute a substantial ground to believe that the complainant risks being exposed to treatment contrary to article 3 of the Convention. Moreover, the State party quotes numerous reports on the issue of torture in Turkey,¹ maintains that the human rights situation in the country has improved, despite the certain increase in the torture cases reported by NGOs in 2007 and concludes that the information on the vulnerability of the PKK members in prison was somewhat contradictory.

3.7. The State party also maintains that the risk of being subjected to ill-treatment by a non-state actor or by private individuals without the consent or acquiescence of the government of the receiving country falls outside the scope of article 3 of the Convention, and therefore this alleged risk was of no relevance to the present communication. The State Party also notes that the complainant had spent 10 months in the country after leaving the PKK without any consequences and denies that she would be of as much interest to the PKK as she claims. The State party points to contradictions in the statements of the

¹ The Report on Human Rights 2007, issued by the Swedish Ministry for Foreign Affairs, the US Department of State Country Report on Human Rights Practices in Turkey 2007, the British Home Office Country of Origin Information report on Turkey, dated 29 August 2008, the British Home Office Operational Guidance Note on Turkey, dated 2 October 2008, the Amnesty International Annual Report 2008, the Human Rights Watch World Report 2008, the EC 2008 Turkey Progress Report, the Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture, dated 6 September 2006.

complainant regarding the possibilities of escaping from the PKK. During her asylum procedure, she stated that she was not allowed to leave the PKK and described the consequences for those who tried to escape. However, she also stated that she was allowed to see her uncle outside the guerrilla area and that the rules were changed in 2004 so that those who wanted to leave could do so.

Complainant's comments

4.1. On 15 April 2009, the complainant disputed the State party's arguments on the admissibility and merits of the complaint.

4.2. She provides a statement from the Diyarbakir Branch of the Human Rights Association in Turkey, dated 13 August 2008 to support her claims. This statement indicates that cruel and inhuman treatment is often used by the security forces; that people who had been denied refugee status and deported back to Turkey are frequently arrested upon arrival at the airports and questioned with the use of physical force and psychological pressure. It submits that there is a warrant against the complainant, issued on the basis of her being a member of an armed terrorist organization and quotes the number of the criminal case initiated against her by a prosecutor in Diyarbakir (2005/298). The statement declares that complaints lodged with them about torture in the region have been steadily increasing since 2004 and that these had increased by 260% between 2007 and 2008 alone (172 and 434 torture complaints registered respectively in 2007 and in 2008). With regard to former PKK members, the Association claims that they are forced to confess, provide information about the PKK and the locations of its bases and participate in combat against their former comrades. Additionally, the Association states that in the event that both the complainant and her husband are returned and arrested, their child will be left to live in the streets.

4.3. The complainant also provides copies of decisions of the Migration Board and the Migration Court on cases similar to the complainant's case, where former PKK members had been granted refugee status in Sweden. She maintains that according to their own practice the authorities should have granted asylum to the complainant.

Issues and proceedings before the Committee:

Admissibility considerations

5.1. Before considering a 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, and b), that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement and that all available domestic remedies have been exhausted.

5.2. As to the complainant's allegation that if returned to Turkey she would be killed by the PKK in retaliation for leaving the organization without permission, the Committee considers that the issue of whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention.² Thus, the Committee finds that this claim is inadmissible in accordance with rule 107 (c) of the Committee's rules of procedure.

5.3. The Committee takes note of the State party's contention that the communication is manifestly unfounded and therefore inadmissible, as the complainant's assertion that she is

² See G.R.B v Sweden, 83/1997, Views adopted on 15 May 1998.

at risk of being treated by public officials in a manner that would amount to a breach of article 3 of the Convention fails to rise to the basic level of substantiation required for purposes of admissibility. However, the Committee considers that the complainant has provided sufficient evidence to permit it to consider the case on the merits.

Consideration of the merits

6.1. The issue before the Committee is whether the forced return of the complainant to Turkey would violate the State party's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that she would be in danger of being subjected to torture.

6.2. The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture upon return to Turkey. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. In this regard, the Committee notes the State party's argument that certain improvements have been made to the human rights situation, including through a zero-tolerance policy and introduction of mechanisms for complaints against torture. It also notes the complainant's argument that the above changes have not reduced the number of reported incidents of torture in Turkey (172 and 434 torture complaints respectively registered with a local NGO in 2007 and in 2008)³.

6.3. The aim of the present determination, however, is to establish whether the complainant would be personally at risk of being subjected to torture in Turkey after her return. Even if a consistent pattern of gross, flagrant or mass violations of human rights existed in Turkey, such existence would not as such constitute a sufficient ground for determining that the complainant would be in danger of being subjected to torture after her return to that country; specific grounds must exist indicating that she 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.⁴

6.4. The Committee recalls its general comment on the implementation of article 3 in which it states that the risk of torture "must be assessed on grounds that go beyond mere theory or suspicion. However the risk does not have to meet the test of being highly probable".⁵

6.5. The Committee notes that the State party does not dispute the complainant's involvement with the PKK, but rather argues that her involvement was at a low level. It notes that while the State party denies that she would be of much interest to the Turkish authorities now, it admits, as did the Migration Board itself, that if she is pursued by the Turkish authorities, there is a risk that she will be arrested, detained pending trial and sentenced to a long term of imprisonment (para. 3.9). In addition, the State party indicates that it takes no issue with the complainant's failure to provide direct evidence of her claim that she is wanted by the authorities. It also notes that the complainant has provided information on a criminal case initiated against her, number 2005/298 (para. 4.2), which,

³ Letter of the Diyarbakir Branch of Human Rights Association in Turkey submitted by the complainant.

⁴ See decision MAK v. Germany, 214/2002.

⁵ A/53/44, annex IX, para.6.

remains uncontested by the State party. Thus, in the Committee's view, sufficient information has been provided to indicate that the complainant is likely to be arrested if forcibly returned to the State party.

6.6. The Committee observes that, according to various sources including the reports provided by the complainant, the Turkish security and police forces continue to use torture, in particular during questioning and in detention centers, including against suspected terrorists. The Committee also notes that according to the State Party's own submission in 2007 (see paragraph 3.6 above) the number of reports of ill-treatment has increased. More than one of the reports submitted by the State party⁶ describe that despite the legislative measures taken by the Turkish Government perpetrators often enjoy impunity, and question the effectiveness of the reform. Many of the recent reports quoted by the State party also indicate that there are an increasing number of reports of ill-treatment and torture committed by members of the security and police forces outside official premises and thus more difficult to detect and document.

6.7. In conclusion, the Committee notes that the complainant was a member of the PKK for 15 years; that even though she was operating at a low level, she did on occasion work for its leader Öcalan and other high profile PKK leaders; that she is wanted in Turkey, to be tried under anti-terrorist laws and thus is likely to be arrested upon arrival. In light of the foregoing, the Committee considers that the complainant has provided sufficient evidence to show that she personally runs a real and foreseeable risk of being subjected to torture were she to be returned to her country of origin.

6.8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, considers that the State party's decision to return the complainant to Turkey would constitute a breach of article 3 of the Convention.

7. In conformity with article 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 this decision.

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

⁶ See supra footnote 4.