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SWEDEN

**The case of Mohammed El Zari and
Ahmed Agiza: violations of fundamental
human rights by Sweden confirmed**



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The case of Mohammed El Zari and Ahmed Agiza: violations of fundamental human rights by Sweden confirmed

Introduction

On 10 November 2006, one of the foremost UN human rights bodies confirmed that the Swedish authorities were responsible for multiple violations of some of the most fundamental human rights of Mohammed El Zari,¹ a male Egyptian asylum-seeker, in connection with his and Ahmed Agiza's summary expulsion from Sweden to Egypt in December 2001.²

The UN Human Rights Committee (HRC)³ made public its decision on the communication against Sweden, for alleged violations of the International Covenant on Civil and Political Rights (ICCPR), submitted to the HRC in July 2005 on behalf of Mohammed El Zari.⁴

Following their forcible return to Egypt, Mohammed El Zari and Ahmed Agiza alleged that they were tortured while in custody. This case -- in which Sweden relied on "diplomatic assurances" purporting to sufficiently reduce the well-founded risk of torture faced by the two men upon return to Egypt -- illustrates the flaws inherent in resorting to such assurances. Diplomatic assurances are, in effect, attempts to replace insistence on full, state-wide implementation of binding multilateral treaties and customary obligations prohibiting torture and other ill-treatment absolutely, with bilateral arrangements secured

¹ El Zari is Amnesty International's chosen transliteration from Arabic. However, the English spelling used in the UN Human Rights Committee's decision is Alzery.

² In May 2005 the Committee against Torture (CAT) already concluded that Sweden was in breach of both substantive and procedural provisions of Article 3 (i.e. the prohibition on expelling, returning or extraditing a person to another state where there are substantial grounds for believing that s/he would be in danger of being tortured or otherwise ill-treated, also known as the prohibition on *refoulement*) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in respect of the summary expulsion of Ahmed Agiza for which it still bore responsibility. It also found Sweden in violation of Article 22 (the right to individual petition); *Agiza v. Sweden*, 24 May 2005, Communication No. 233/2003, UN Doc. CAT/C/34/D/233/2003.

³ The HRC is the body of independent experts that monitors implementation of and compliance with the ICCPR by its State parties. In addition, under the First Optional Protocol to the ICCPR (the Optional Protocol), the Committee has competence to examine individual complaints with regard to alleged violations of the ICCPR by States parties to the Protocol. Sweden ratified both the ICCPR and the Option Protocol to it in 1971.

⁴ HRC Communication No. 1416/2005: Sweden; CCPR/C/88/D/1416/2005; 10 November 2006.

with states which fail to respect their multilateral international obligations in the first place.

Diplomatic assurances' inherent flaws have prompted Amnesty International and other human rights non-governmental organizations, as well as UN and other international experts and mechanisms, to oppose their use in principle, and to denounce them as practices that circumvent, and therefore undermine, the absolute prohibition on torture and other ill-treatment generally, and the prohibition of *refoulement*, in particular.

Factual background

Mohammed El Zari and Ahmed Agiza had both sought asylum in Sweden. In December 2001 they were awaiting a decision on their asylum claims. At the time, neither was being detained, and they were lawfully at liberty in Sweden. At some point, most likely in the aftermath of 11 September 2001, the US authorities expressed concern to their Swedish counterparts about the presence of Mohammed El Zari and Ahmed Agiza in Sweden – in particular that they were at liberty.

On 5 December 2001, the Swedish Foreign Affairs Ministry announced that a decision on the asylum claims of Ahmed Agiza and Mohammed El Zari was not expected before 20 December of that year.

However, on 18 December 2001, on the basis of secret intelligence, allegedly provided by foreign intelligence agencies -- believed to be the Egyptian and US intelligence services -- to Säpo (Sweden's Security Police), including information about Mohammed El Zari's and Ahmed Agiza's background that had originated from US intelligence, the Swedish government, without any prior warning or notification to either the men or their lawyers, decided to:

- refuse Mohammed El Zari and Ahmed Agiza residence permits to remain in Sweden on "security grounds";
- reject Mohammed El Zari's and Ahmed Agiza's asylum claims, despite the fact that both men had successfully established that their fear of persecution in Egypt, including the risk of being tortured, was well-founded;
- deny them protection against forcible return to Egypt. This decision was reached by the Swedish authorities on the grounds that the real risk of serious human rights violations to which both men would be exposed upon return to Egypt was "sufficiently" reduced by certain diplomatic assurances procured by the Swedish government from Egyptian authorities. These assurances purported to guarantee that Mohammed El Zari and Ahmed Agiza would "be awarded a fair trial"; would "not be subjected to inhuman treatment or punishment of any kind"; and that they

would “not be sentenced to death or if such a sentence has been imposed that it will not be executed”;

- deny them access to a court or an independent administrative body to challenge the above-mentioned decisions;
- ignore the advice received from at least one of the men’s lawyers that they intended to pursue international remedies in the event of a negative decision;
- tell Mohammed El Zari’s lawyer, at least, that decisions had not been taken, despite the fact that they had; and
- execute the expulsion decision immediately, without even letting Mohammed El Zari and Ahmed Agiza speak with their lawyers. The latter, in fact, were notified of the Swedish government’s decisions after the two men had already been expelled.

On the very same day, only a few hours after the Swedish government had made these decisions, Mohammed El Zari and Ahmed Agiza were picked up by Swedish Security Police personnel and, within hours, they were chained inside the back of a small CIA-leased plane, surrounded by US and Egyptian agents, heading for Cairo in Egypt. The same plane has been used in other known rendition cases.⁵

Notwithstanding the fact that at the time of his arrest Mohammed El Zari was on the phone with his then lawyer, their communication was cut short. He also stated that his subsequent request to contact his lawyer was refused.

After being detained for a few hours by Swedish Security Police, during which they were body-searched, Mohammed El Zari and Ahmed Agiza were taken separately to Bromma airport in Stockholm. There, Swedish Security Police handed them over to a security team of some 10 US and Egyptian security agents wearing civilian clothes and hoods.

The security team – communicating to one another largely through hand signals – subjected Mohammed El Zari and Ahmed Agiza to a so-called “security check”, in the presence of Swedish Security Police personnel and two representatives from the US Embassy in Sweden. In fact, this procedure amounted to an extremely serious physical assault on Mohammed El Zari and Ahmed Agiza.

The “security check” consisted of the following:

⁵ See, for example, *Partners in crime: Europe’s role in US renditions*, published by Amnesty International on 14 June 2006, AI Index: EUR 01/008/2006, and available at [http://web.amnesty.org/library/pdf/EUR010082006ENGLISH/\\$File/EUR0100806.pdf](http://web.amnesty.org/library/pdf/EUR010082006ENGLISH/$File/EUR0100806.pdf); for the case of Mohammed El Zari and Ahmed Agiza, see pp. 34-42.

- their clothes were cut off with a pair of scissors, and placed in a plastic bag;
- their hair, mouth and ears were thoroughly examined;
- they were then handcuffed and shackled;
- Mohammed El Zari was then forced to bend over, had a tranquilizer -- apparently some kind of muscle relaxant -- inserted into his anus, and was placed in waterproof underpants. Other reports indicate that both men underwent this;⁶
- they were dressed in boiler suits, blindfolded and hooded; and
- one of the foreign agents took photographs of it.

Then, barefoot, despite the freezing temperature, they were escorted onto the waiting plane; once on it they were forced in an uncomfortable and painful position. A Swedish Security Police officer and a civilian interpreter were also on the flight to Cairo. They subsequently confirmed that both men had been strapped to mattresses in the rear of the plane, and remained handcuffed and shackled during the entire flight to Egypt.

Mohammed El Zari was kept blindfolded and hooded throughout the transfer, including when, approximately five hours later, Egyptian military security at Cairo airport took charge of him and Ahmed Agiza.

Upon arrival in Cairo, they were taken off the plane by Egyptian officials, and were driven away in a bus.

The Swedish government has stated that there had been discussions with the Egyptian government about the right to visit them in prison. The Swedish authorities also requested that personnel from the Swedish Embassy in Egypt would be allowed to attend their trial. However, there was no agreement over what steps could be taken if the Egyptian authorities did not fulfil their purported commitments to the Swedish government.

In the end, notwithstanding the diplomatic assurances, Mohammed El Zari and Ahmed Agiza were, in fact, held incommunicado after their summary expulsion to Egypt. When they did get to see the Swedish Ambassador during his first visit, which only took place five weeks after they had been returned to Egypt, they both told him that they had been tortured or otherwise ill-treated in detention.

⁶ See, for example, *Swedish TV4, Kalla Fakta Program: "The Broken Promise"*, Part I (English Transcript), 17 May 2004, available at <http://hrw.org/english/docs/2004/05/17/sweden8620.htm>.

During the Swedish ambassador's first prison visit to Ahmed Agiza on 23 January 2002, Ahmed Agiza complained of being forced to remain in a painful position during the flight from Sweden to Egypt, of being blindfolded during interrogation, of beatings by prison guards and of threats against his family by interrogators.

Mohammed El Zari has subsequently complained that he was interrogated for a further five weeks during which he was subjected to torture or other ill-treatment, including by having electric shocks applied to his genitals, nipples and ears. Further, he has stated that his torture was monitored by doctors who made sure that it would not leave him with visible scars. He has recounted how, eventually, he was forced to confess to crimes that he had not committed. Mohammed El Zari has also stated that he continued to attempt to alert the Swedish Ambassador to what was going on.

After the first meeting, the Swedish Ambassador met with the Egyptian security services to discuss the men's allegations. However, the denials offered by the Egyptian authorities were accepted by the Swedish authorities who failed to do anything else about the torture allegations they had received.

In addition, the Swedish Ambassador's first and subsequent prison visits were not conducted in private; Egyptian prison personnel were present and took notes.

Furthermore, the Swedish government withheld relevant information given by the Swedish Ambassador in his report of his first visit. This information included Mohammed El Zari's and Ahmed Agiza's complaints of mistreatment. In January 2002, Gun-Britt Anderson, Sweden's State Secretary, assured Mohammed El Zari's then Swedish lawyer that neither he nor Ahmed Agiza had complained of any ill-treatment to the Ambassador.

In an official report in 2003, the Swedish authorities expressed their view that the assurances they had received from the Egyptian government in respect of Mohammed El Zari and Ahmed Agiza were "satisfactory and irrevocable and that they are and will be respected in their full content. The government has not received any information which would cast doubt at this conclusion."⁷

On 10 April 2004 Ahmed Agiza was re-tried before a military court in Egypt on charges of joining and leading an illegal group or organization and criminal conspiracy.⁸ Later that month, after an unfair trial, he was convicted and again sentenced to 25 years' imprisonment without the possibility of appeal. The court refused to investigate Ahmed

⁷ CCPR/CO/74/SWE/Add.1.

⁸ In 1998 Ahmed Agiza had been tried *in absentia* before a military court in Egypt "for terrorist activity directed against the state". He had been found guilty of belonging to an illegal group, *Al Jihad*, and had been sentenced to 25 years' imprisonment without the possibility of appeal.

Agiza's complaint that he had been tortured, or to order a medical examination, as requested by his lawyer during the trial. His sentence was reduced to 15 years' imprisonment in June 2004 by Egypt's President Hosni Mubarak. Ahmed Agiza remains in prison in Egypt. In 2005 his wife, Hanan Attia, and their five children were granted refugee status in Sweden.

Eventually, Mohammed El Zari was brought before a prosecutor in March 2002 to whom he complained of the treatment he had suffered. However, the prosecutor continued to uphold the decision to detain him without formal charges, relying on emergency legislation. Mohammed El Zari was released from prison in Cairo on 27 October 2003 without ever having been charged with a crime.

The HRC confirms that Sweden committed multiple violations of Mohammed El Zari's fundamental human rights

In respect of the prohibition of *refoulement*, enshrined in Article 7 (i.e. the prohibition of torture and other ill-treatment) of the ICCPR, the UN Human Rights Committee (HRC) concluded that:

1. Sweden had already itself conceded that there was a risk of ill-treatment;
2. this risk prevented the expulsion of Mohammed El Zari without breaching Sweden's international human rights obligations;
3. Sweden relied on diplomatic assurances because it believed that the risk of ill-treatment would be sufficiently reduced to avoid breaching the *refoulement* prohibition;
4. Sweden had failed to show that in fact the diplomatic assurances it had obtained were sufficient to eliminate the risk of ill-treatment to a level consistent with its obligations under Article 7 of the ICCPR;
5. in light of the above, Sweden's summary expulsion of Mohammed El Zari violated the prohibition of *refoulement*.

With respect to the treatment at Bromma airport, the HRC concluded that:

1. as far as acts of foreign officials exercising sovereign authority on its territory, Sweden was responsible for such acts, since they had been performed with its consent or acquiescence;
2. it was evident that the use of force was excessive and amounted to a breach of Article 7 of the ICCPR;
3. in light of the above, therefore, Sweden had violated Article 7 of the ICCPR as a result of the treatment to which Mohammed El Zari had been subjected at Bromma airport.

With respect to the effectiveness of the investigation into the treatment at Bromma airport, the HRC found that:

1. the Swedish authorities were aware of the treatment suffered by Mohammed El Zari at Bromma airport from the moment it took place, as indeed their officials had witnessed it;
2. instead of submitting a complaint disclosing allegations of criminal nature -- as it was clearly well-arguable at the time -- to the appropriate authorities, the Swedish authorities waited over two years for a private complaint before instigating a criminal process;
3. by this delay alone Sweden had breached its obligation to carry out a prompt, independent and impartial investigation into the events at Bromma airport;
4. Sweden's failure to ensure that its investigative apparatus was capable of preserving its capacity to investigate, as far as possible, the criminal responsibility of all relevant officials, domestic and foreign, for conduct in breach of Article 7 that had taken place within its jurisdiction, and to bring appropriate charges accordingly, amounted to a violation of Article 7, read in conjunction with Article 2 (i.e. the obligation to respect and ensure respect to everyone within the state's territory and subject to its jurisdiction, for all the rights enshrined in the ICCPR without discrimination).

As far as the absence of an independent review of the government's decision to summarily expel, the HRC found that:

1. despite "the presence of an arguable risk of torture", Sweden had failed to provide any opportunity for an effective, independent review of the decision to expel Mohammed El Zari. Therefore, Sweden had violated Article 7, read in conjunction with Article 2 of the ICCPR.

Finally, the HRC also found that:

1. since Mohammed El Zari's then lawyer had expressly informed the Swedish government of his intention to pursue international remedies in the event of a negative outcome;
2. given that after the decision to expel had been taken, Mohammed El Zari's lawyer had been incorrectly told that a decision had not, in fact, been taken; and
3. since the expulsion had been executed immediately in the full knowledge that news of it would reach Mohammed El Zari's lawyer after it had taken place;
4. Sweden had also violated Mohammed El Zari's right of complaint, including to seek interim measures of protection, guaranteed by Article 1 of the Optional Protocol to the ICCPR.

The HRC's recommendations

In light of its decision, the HRC stated that:

- Sweden was under an obligation to provide Mohammed El Zari with an effective remedy, including compensation;
- Sweden was under an obligation to avoid similar violations in the future; and that
- it wished to receive from Sweden, within 90 days, information about the measures taken to give effect to its views.

The reaction of the Swedish government to date

Despite the fact that, even prior to the HRC's decision on the complaint brought by Mohammed El Zari, Sweden had accepted that it had violated its obligations under the ICCPR, the Swedish government has:

- failed to acknowledge that Mohammed El Zari and Ahmed Agiza were in fact tortured or otherwise ill-treated in Egypt;
- asserted that, if they had been so ill-treated, then the primary responsibility for such treatment lay with the Egyptian authorities, and that it believes it bears no responsibility for what happened to Ahmed Agiza and Mohammed El Zari in Egypt;
- tried to pass as adequate various domestic investigations into these events, including by prosecuting authorities, on the grounds that none had decided to take further action;
- dismissed the assertion that either the CAT or the HRC's decisions give rise to a legal obligation to pay compensation to the men, reiterating, in mid-November 2006, in the aftermath of the HRC's decision, that the Committees' recommendations are not legally binding; and
- to date, refused to pay any compensation to either man, and to lift the ban on Ahmed Agiza's and Mohammed El Zari's return to Sweden.

To date, various investigations have been carried out by the Swedish authorities, domestically. However, the 7 June 2006 draft report by Senator Dick Marty, Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, notes:

different aspects of the case need further investigation. This disguised extradition, without any possibility of appeal and judicial scrutiny, and the ill-treatment at

*Bromma Airport, still on the ground, under the eyes of Swedish officials are serious matters which require that the whole truth be exposed.*⁹

Amnesty International's conclusions and recommendations to the Swedish authorities

Sweden has violated its obligations under international refugee law by failing to provide a fair and full asylum determination procedure, as well as under international refugee and human rights law by failing to respect the prohibition of *refoulement*. Further, the Swedish authorities failed to grant the men an opportunity for an independent and effective review of the decision to expel them.

Sweden has also violated the prohibition of torture and other ill-treatment by failing to prevent ill-treatment by foreign agents on its soil and on the plane. When Swedish Security Police personnel at Bromma airport handed over both men to some 10 foreign agents, that relinquishment of responsibility amounted to acquiescing, if not aiding and abetting, in ill-treatment by foreign agents of Mohammed El Zari and Ahmed Agiza. The Swedish authorities' handing over of Ahmed Agiza and Mohammed El Zari to the custody of US and Egyptian agents, outside the rule of law, makes Sweden complicit in their rendition to US custody.

Sweden bears responsibility for the human rights violations suffered by the two men in Egypt, including their alleged torture and other ill-treatment in custody and the unfair trial of Ahmed Agiza.

Sweden has also breached its obligations under international law to guarantee the effective right of individual communication, including to seek interim protection measures.

In respect of the Committee against Torture, Sweden also breached its obligation to cooperate with the Committee.

In light of the HRC's findings, Amnesty International reiterates the recommendations the organization addressed to the Swedish authorities on 14 June of this year, on the occasion of the publication of its report *Partners in crime: Europe's role in*

⁹ *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, 7 June 2006 Draft report – Part II (Explanatory memorandum), Dick Marty, Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, para. 243.

US renditions, and in particular, in the section of that report dealing with the case of Ahmed Agiza and Mohammed El Zari.

Amnesty International calls on the Swedish authorities to:

- Immediately establish an independent investigation with a view to determining the criminal responsibility, including the dereliction of duty, of those individuals directly or indirectly involved in the failure to prevent the ill-treatment of Ahmed Agiza and Mohammed El Zari at the hands of US agents both at Bromma Airport and on the plane, as well as with a view to determining any criminal responsibility on the part of US and Egyptian agents in the treatment of Ahmed Agiza and Mohammed El Zari;
- Instigate an urgent review of Sweden's investigative apparatus with a view to identifying what is attributable to wrongful decisions, and what is attributable to systemic flaws, if any, in order to ensure that any breach of Sweden's investigative obligations is not repeated in the future;
- Investigate the exact role played by the Swedish authorities in the transfer of Ahmed Agiza and Mohammed El Zari to US custody with a view to determining any criminal responsibility;
- Ensure that adequate reparation is provided to Ahmed Agiza and Mohammed El Zari and others whose human rights have been violated, including when the determination of such violations is made by an international or regional body such as the HRC or the CAT;
- Lift the expulsion order prohibiting Ahmed Agiza and Mohammed El Zari from returning to Sweden for 10 years. Ensure that Mohammed El Zari and, upon his release, Ahmed Agiza, be permitted to enter Sweden, where Ahmed Agiza can be reunited with his family. In addition, both men should be allowed to apply for asylum in Sweden, if they so choose, and their application should be assessed in a full and fair asylum determination procedure;
- Do not seek or accept diplomatic assurances or similar bilateral agreements as a way of circumventing the prohibition of *refoulement*;
- Support the efforts of the Secretary General of the Council of Europe Terry Davis in ensuring that the Council of Europe's Committee of Ministers initiate a transparent process for the drafting of standards proposed by Terry Davis, aiming at ensuring that secret detentions, enforced disappearances, and renditions cannot take place in Europe or with European collusion, and that those involved cannot continue to operate under the shield of immunity;
- Respond within 90 days from the date of the HRC's decision to the decision itself, as instructed in the decision;
- Give full effect to the HRC's and CAT's decisions;

- Press for the Egyptian authorities to:
 1. establish an independent and impartial investigation into the allegations that Ahmed Agiza and Mohammed El Zari were tortured or otherwise ill-treated;
 2. grant Ahmed Agiza unfettered access to his lawyers, regular family visits and appropriate and adequate medical care;
 3. grant Ahmed Agiza, if he is not to be promptly released, a new trial before an independent and impartial civilian court in proceedings that meet internationally recognized fair trial standards;
 4. if Ahmed Agiza is not tried promptly and fairly, press for his release;
 5. provide details of their purported investigation (mentioned in the HRC and the CAT decisions) into Mohammed El Zari's and Ahmed Agiza's allegations of torture and other ill-treatment, and its outcome, including whether any Egyptian security or other officials are to be prosecuted in connection with the alleged torture and other ill-treatment of Mohammed El Zari and Ahmed Agiza;
 6. clarify whether they are considering allowing a joint independent Swedish-Egyptian expert investigation into Mohammed El Zari's and Ahmed Agiza's allegations to take place in Egypt;
 7. immediately cease all torture and other ill-treatment of detainees and prisoners;
 8. investigate all allegations of torture and other ill-treatment with a view to identifying those responsible and prosecuting them; and
 9. ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and implement it in full.