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

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**Committee against Torture**

## Communication No. 463/2011

### Decision adopted by the Committee at its fiftieth session, 6–31 May 2013

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| *Submitted by:* | D.Y. (represented by counsel, Eva Rimsten from the Swedish Red Cross) |
| *Alleged victim:* | The complainant |
| *State party:* | Sweden |
| *Date of complaint:* | 30 May 2011 (initial submission) |
| *Date of present decision:* | 21 May 2013 |
| *Subject matter:* | Expulsion of the complainant to Uzbekistan |
| *Procedural issue:* | - |
| *Substantive issue:* | Risk of torture upon return to the country of origin |
| *Article of the Convention:* | 3 |

# Annex

## Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fiftieth session)

concerning

### Communication No. 463/2011

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|---|---|
| *Submitted by:* | D.Y. (represented by counsel, Eva Rimsten from the Swedish Red Cross) |
| *Alleged victim:* | The complainant |
| *State party:* | Sweden |
| *Date of complaint:* | 30 May 2011 (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 21 May 2013,

*Having concluded* its consideration of complaint No. 463/2011, submitted to the Committee against Torture by Ms. Eva Rimsten on behalf of Mr. D.Y. 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, her counsel and the State party,

*Adopts* the following:

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

1.1 The complainant is Mr. D.Y., a national of Uzbekistan, born on 22 February 1981. He currently resides in Sweden. He claims that his return to Uzbekistan by Sweden would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel Eva Rimsten (from the Swedish Red Cross).

1.2 Under rule 114 of its rules of procedure, the Committee requested the State party, on 10 June 2011, to refrain from expelling the complainant to Uzbekistan while his complaint was under consideration by the Committee. Upon this request, on 13 June 2011, the Migration Board decided to stay the enforcement of the complainant's expulsion order.

#### Factual background

2.1 In early 2004, the complainant undertook his military service with the Air Forces, where he served as a guard (lowest rank). In May 2005, the author's unit received the instruction to go to Andizjan (Andijan or Andijon) to suppress a violent demonstration that was being held in this city. Upon arrival, the author was instructed to shoot against demonstrators. He and other soldiers refused to obey this order, since most of the persons

were women and children, and laid down their arms. When the superintendant saw this, he pointed his gun at them and threatened to shoot them. Later that same day, when he was back at the military camp, he was arrested by the police and taken to a military prison in Gubah. He was accused of not following orders and of State perfidy. While in prison, he was assaulted and insulted.

2.2 In August 2005, the complainant was released from prison but instructed to report to the police station twice a day, even if he was sick. When he reported to the police, he was often beaten and threatened by policemen. In October 2005, unknown men went to the complainant's home, one of them showed a police identification card and took him to a police station, where he was interrogated regarding the incident in Andizjan. He was locked in the basement of that police station for three days. During that time, he was beaten and insulted on several occasions. On the third day, he was transferred to a prison in Kashkadarya. He was sentenced by a military court, without a real trial and access to public defence counsel, to three years' imprisonment. He never received a copy of the judgment. While in prison, he was also beaten and threatened by prison staff. After the first year, he was forced to sign different documents. In June 2008, he was released and instructed to report to the police every day. He was not allowed to travel. Each time he reported to the police, he was insulted and humiliated by police officers.

2.3 In December 2008, the complainant left Uzbekistan for Kazakhstan. He travelled by smuggling routes and bribed a person to pass the border control. A few days after he had left, the police went to his house and threatened his wife with imprisonment and torture. Her passport, her children's birth certificates and the couple's marriage certificate were taken away. On 5 or 6 January 2009, his wife also left Uzbekistan, together with their two children, and joined the author in Kazakhstan. The complainant and his wife left their children with a cousin of hers in Kazakhstan and travelled to St. Petersburg in the Russian Federation and then to Sweden by boat, with false Russian passports. Upon arrival in Sweden on 19 January 2009, the complainant, with the false identity of J.B.M., and his wife filed an application for asylum. After informing the authorities about the events they faced in their country of origin, they claimed that they could not return to Uzbekistan as they would risk imprisonment or being killed: the author for having strayed from his obligation to report to the police and not to travel and his wife for breaking her promise to the police to disclose her husband's whereabouts. He submitted birth certificates as proof of identity as J.B.M.. No other document of identification or to support his claim was submitted in support of their asylum account.

2.4 On 5 June 2009, the Swedish Migration Board rejected the complainant's asylum application. The Migration Board stated that the narrative in the asylum request was vague and did not disclose information about any form of persecution on the grounds of race, nationality, social group, religion or political beliefs, by the authorities in the country of origin and that there were no reasons to believe that the complainant and his wife would risk any greater penalties than anyone who had committed an offence. The Board further noted that the complainant had not been able to provide any identification documents or written evidence in order to prove that he had been sentenced to three years' imprisonment and that he had travel restrictions or police reporting obligations. Although the Board did not doubt the Uzbek origin of the complainant and his wife, it concluded that his reasons to justify this lack of evidence were contradictory, not probable and therefore not credible.

2.5 According to the Migration Board's decision, the complainant made contradictory declarations as to the possession of identification documents. In his submission through his legal counsel, he stated that his passport, military identity card and driving licence had been seized by the police. However, in the interview at the Migration Board, he and his wife said that they had asked their parents to send his driving licence and his wife's diploma in order to prove their identities. The complainant also withdrew part of his statement as to the demonstration that took place in Andizjan and the location of his regiment, whereas his wife did not remember the route by which she travelled to Kazakhstan, although she alleged

that she did not have a passport and had received instructions from her husband. The Migration Board concluded that there was no evidence that they would be subjected to torture or to inhuman or degrading treatment or punishment if returned to Uzbekistan and ordered to expel the complainant and his wife, pursuant to Chapter 8, Section 7 of the Aliens Act (2005:716).

2.6 The complainant appealed the decision to the Migration Court. In his appeal he stated that he had applied for asylum under a false identity (J.B.M.) because he feared for his safety and that his real name was D.Y., born on 22 February 1981. He submitted a student card and a military booklet to prove his real identity and held that all the other information given was correct. He further held that he had two passports; the first one was taken by the military authorities when he was called to do his military service. The second one was obtained through bribery after his marriage. Although the police took his two passports, he managed to renew the second one in 2006, with a bribe, when he reported he had lost it.

2.7 On 1 June 2010, the Court conducted a hearing in the case. The complainant reiterated his previous allegations and reaffirmed that the authorities had seized his identification and personal documents. Nevertheless, he managed to hide the military booklet which he later submitted to the Swedish migration authorities. He did not disclose his real identity to the Swedish authorities because he was afraid that the Uzbek security service would also chase him in Sweden. The identity documents and diploma that he first submitted to the Swedish authorities belonged to someone else. He claimed that, if returned to Uzbekistan, he would be detained, punished and mistreated even more severely than in the past, and would be sentenced to life imprisonment for travelling abroad. He also informed the Court that his children had returned to Uzbekistan and lived with his parents. When he called them by phone they spoke no more than three or four minutes, as the telephone may be intercepted. The police came to visit his parents twice a week and asked about his whereabouts. He also alleged that he had a kidney condition as a result of torture.

2.8 On 14 June 2010, the Migration Court rejected the appeal, ordered the complainant's expulsion from Sweden, and forbade him to return to Sweden without the permission of the Immigration Board for a period of two years. The Court noted that the photo in the military booklet did not resemble him, and that he could not explain why there was a photograph in it of him when he was 18 years old, rather than a photograph at the time he entered military service. Thus, his new identity had not been proven. It further pointed out that he had not submitted any written evidence and that his narrative was vague and characterized by contradictions. Concerning the events in Andizjan, on 13 May 2005, the complainant was not able to describe the existence of road blocks in any detail, to give names of central places, such as Babur Square, where the demonstrators were, and his assertion that helicopters and airplanes shot the demonstrators was not mentioned in any country report. Furthermore, it was not credible that the complainant was able to get a new passport issued while in prison in 2006. Regarding his conviction, he had provided contradictory information. In his initial submission he stated that he was sentenced to three years imprisonment without trial or public defence counsel, but before the Court he stated that he had been convicted "behind closed doors". Therefore, his credibility was low and he was not able to show it was probable that he would risk persecution or be subjected to torture or to inhuman or degrading treatment or punishment upon return to Uzbekistan. On 16 August 2010, the decision to expel the complainant became enforceable.

2.9 On 8 November 2010, a the Swedish Red Cross' doctor examined the complainant in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), and determined the existence of marks related to kicks, punches, cuts with razor blades on the inside of the left arm, burns with a lighter on the left hip and on the right on the back of his leg, hitting with a truncheon on the backs of his legs, scars on the left buttock that could be caused by a penetrating gadget, burns caused by drops of burning plastic on the backside of

the right foot, a fracture of a finger caused by kicking. The report concluded that he had been exposed to torture or physical abuse. On 10 February 2011, a psychiatric report was issued indicating that the author suffered from post-traumatic stress disorder and depression associated to his torture history, with a high risk of suicide.

2.10 On 14 February 2011, the author submitted an application to the Migration Board invoking the existence of new circumstances that would provide reasonable grounds for believing that he would be at risk of torture if returned to Uzbekistan. He submitted the Swedish Red Cross' medical reports and argued that he had not realized the importance of proving his past record of torture during his asylum process, and that neither the Migration Board nor the Migration Court had examined whether he had been subjected to torture while in prison. He also argued that he had been afraid that the interpreter, who assisted him during the interviews, would report his statements to the Uzbek authorities. He claimed that the Uzbek authorities infiltrate the asylum processes in Western Europe to control Uzbek citizens seeking asylum. He referred to a report by the Swedish Migration Board, of June 2010, on the situation in Uzbekistan, where it was stated that the use of torture was widespread in Uzbekistan; that between 2008 and 2009 nine persons, who had been involved in the incidents of Andizjan, died as a result of torture, and that, thus, all persons connected to the Andizjan incidents could potentially be at risk.

2.11 On 14 March 2011, the Migration Board decided not to re-examine the complainant's application. It considered that the reasons given by the complainant were not of such nature or dimension as to constitute an impediment preventing the execution of the expulsion order in accordance with Chapter 12 Section 18 of the Swedish Aliens Act. The Board held that the new circumstances invoked in his new application had already been examined by the Migration Board and the Immigration Court. No new circumstances regarding the complainant's need for protection had been invoked and, therefore, there was no ground to re-examine the matter. The complainant appealed this decision to the Migration Court.

2.12 On 7 April 2011, the Migration Court rejected the appeal. The Court found that the claims that he had been severely abused while in prison had already been examined and that his new claims about torture were just a modification or supplement to his previous application. His claims that he was being searched by the police and that his father was at risk of being arrested were new. However, no written evidence thereof was provided. The complainant filed an application for leave to appeal before the Migration Court of Appeal in which he argued that he had provided relevant new evidence regarding torture. The Migration Court of Appeal rejected his application for leave in April 2011. Thus, he claims that all domestic remedies have been exhausted and that the deportation order could be enforced at any time.

**The complaint**

3.1 The complainant holds that the State party did not assess adequately the risk he would be subject to if he returns to Uzbekistan. He would be at personal risk of being persecuted and tortured, in violation of article 3 of the Convention.

3.2 He argues that, owing to his refusal to shoot at demonstrators, he was imprisoned, humiliated and tortured. He was released from prison, but instructed to report to the police station every day and forbidden to travel. While reporting to the police, he was humiliated and insulted. He left his country of origin because he feared being imprisoned and tortured again. If returned, he would be prosecuted as traitor and could be sentenced to life imprisonment for travelling abroad without authorization. After his departure, his wife was harassed by the police, who threatened her with detention and torture. Currently, the police continues to visit his parents' home and tries to force his father to provide information about his whereabouts.

**State party's observations on admissibility and merits**

4.1 On 12 December 2011, the State party submitted its observations on admissibility and merits and requested the Committee to declare the complaint inadmissible as manifestly unfounded, pursuant to article 22, paragraph 2, of the Convention. The State party acknowledges that all available domestic remedies have been exhausted.

4.2 The State party submits that the complainant's summaries of the Immigration Board's decision and Immigration Court's judgment, originally written in Swedish, were of insufficient quality and missed some relevant parts. Therefore, it attaches to its submission a translation of the above-mentioned decision and judgment.

4.3 The information submitted to the Committee about the location where he and his unit were given orders to open fire was not submitted to the Migration Board. It only emerged during the oral hearing at the Migration Court and thus at a fairly late stage in the asylum proceedings. Likewise, the complaint before the Committee states that he was degraded, humiliated, beaten and threatened by the prison guards during his imprisonment in the Kashkadarya prison. However, his written submission to the Migration Board only states that he was subjected to battering during this period.

4.4 The State party argues that, should the Committee conclude that the communication is admissible, the issue before the Committee on the merits is whether the expulsion of the complainant would violate the obligation of Sweden under article 3 of the Convention, not to expel or return 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.

4.5 As far as the general human rights situation in Uzbekistan is concerned, the State party submits that since Uzbekistan has been a Party to the Convention since 1995, it is assumed that the Committee is well aware of the general human rights situation in this State party. According to reports issued by other States it is clear that the general human rights situation is problematic.[1] It further points out that the Director-General for Legal Affairs at the Swedish Migration Board stated that the risk assessment for applicants from certain groups in Uzbekistan who are at particular risk of persecution, such as persons who have any connection with the Andizjan events, must be made with great caution. However, the assessment must, as usual, also include an examination of whether the applicant has made his asylum application credible.[2]

4.6 The State party states that, while it does not wish to underestimate the concerns that may legitimately be expressed with respect to the current human rights situation in Uzbekistan, the circumstances referred to in the above-mentioned reports do not in themselves suffice to establish that the complainant's forced return to Uzbekistan would entail a violation of article 3 of the Convention. Article 3, paragraph 1, of the Convention requires that the individual concerned face a foreseeable, real and personal risk of being tortured in the country to which he is to be returned and that the risk of torture must be

[1] The State party refers to the 2010 United States of America, Department of State, "Country Report on Human Rights Practice: Uzbekistan" (8 April 2011); the 2010 United Kingdom of Great Britain and Northern Ireland, "Foreign and Commonwealth Office Report – Uzbekistan" (31 March 2011); the *Mänskliga rättigheter i Uzbekistan 2010* – 2010 Swedish Ministry of Foreign Affairs' Report on Human Rights in Uzbekistan. It also refers to the 2011 Human Rights Watch, "World Report 2011: Uzbekistan". As to the events in Andijan and their repercussions, it refers to the report published on 21 June 2010 by the Swedish Migration Board, *Uzbekistan-Allmän background och aktuell situation*; Human Rights Watch, *"Saving its Secrets": Government Repression in Andijan* (May 2008); and the International Crisis Group, "Uzbekistan: The Andijon Uprising" (25 May 2005).

[2] The State party refers to Swedish Migration Board's document entitled *Rättschefens kommentar angående förhållandena i Uzbekistan*, published on 6 May 2011.

assessed on grounds that go beyond mere theory or suspicion, although it does not have to meet the test of being highly probable.[3]

4.7 The Swedish migration authorities and courts apply the same test in assessing the risk of being subjected to torture when considering an asylum application under the Act, as the Committee would apply when examining a subsequent communication under the Convention.[4] The national authorities are in a very good position to assess the information submitted by an asylum seeker and to appraise his or her statements and claims in view of the fact that they have the benefit of direct contact with the asylum seeker concerned. In the light of the above, considerable weight must be attached to the assessment made by the Swedish migration authorities.

4.8 Concerning the assessments of the credibility of the complainant's statements, the State party relies mainly on the reasoning contained in the decision of the Migration Board, dated 5 June 2009, and the judgment of the Migration Court, dated 14 June 2010. It further points out that the complainant initially submitted his asylum request under the identity of J.B.M. and, in support of this, provided documents that proved to be false. Afterwards, before the Migration Court, he held that his true identity was that of D.Y. and submitted a copy of his passport, a copy of his birth certificate, an original driving licence and a military service book. However, he could not produce a reasonable explanation as to how he was able to obtain a passport in 2006, while in prison, especially taking into account, that he had been prohibited from leaving the country. Nor could he explain how he got a second passport in 2003 when he got married, as passports are not issued in connection with marriages in Uzbekistan. All this gives enough grounds to question his general credibility, the veracity of his identity as well as of his claims in other respects of the case.

4.9 According to the medical certificate issued by a medical doctor of the Swedish Red Cross, on 8 November 2010, the complainant's injuries and scars *may* have been caused in accordance with his claims. Therefore, it is not possible to draw any certain conclusions regarding the cause of the complainant's injuries, and its value as evidence must be considered low. Likewise, the medical certificate indicating that he suffers from post-traumatic stress disorder cannot be conclusive as to his claims.

4.10 The complainant has not submitted any document for the purpose of substantiating that he was convicted of violating military law. Nor has he submitted any documents concerning his allegation that he was forbidden to travel and put under supervision. The complainant stated that he used to be in possession of a document substantiating that he was under supervision, but that he submitted this to the local authorities when reporting to the police. However, the State party finds it peculiar that he has not been able to provide a description of the content of that document during the interviews.

4.11 During the asylum proceedings, the complainant gave vague or contradictory information about the events in Andizjan. In the first interview before the Migration Board, he did not mention being involved in these events. Afterwards, he told the authorities that his regiment was garrisoned 500–600 metres from Andizjan, that the protesters gathered near his regiment, and that a prison was located nearby. Later, he withdrew his statement and said that the regiment was about 40 minutes to an hour from the place where the demonstration was held. He did not clearly state that the demonstration took place in the centre of Andizjan until the Migration Court's hearing. Moreover, he was not able to provide names of central places where the demonstration took place, and his statement that

[3] The State party refers to the complaint No. 103/1998, *S.M.R. and M.M.R.* v. *Sweden*, decision adopted on 5 May 1999, para. 9.7, and to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX.

[4] Reference is made to Chapter 4, Sections 1 and 2 of the Aliens Act before 1 January 2010 and to Chapter 4, Sections 1, 2 and 2a of the Aliens Act after 1 January 2010.

demonstrators were attacked from helicopters and military aircraft has not been confirmed by any report. Therefore, owing to his vague and inaccurate description of the circumstances, he has not credibly established that he was present during the events in Andizjan.

4.12 The complainant also modified his statement concerning his trial. During the second interview before the Migration Board, he said he was imprisoned with no lawyer being appointed or a trial being held. During the oral hearing before the Migration Court, he stated that a trial was held, but that the hearing took place behind closed doors.

4.13 Before the Migration Board, the complainant submitted that he was subjected to physical mistreatment by the prison guards in the Kashkadarya prison, whereas at the oral hearing before the Migration Court, he stated that he was tortured and that prison guards used chairs and bottles as weapons. Likewise, in his written submission to the Migration Board, he stated that he was *occasionally* physically mistreated, threatened and humiliated by the police while fulfilling his obligation to report to the police; however, at the Court's oral hearing he held that he was harassed and humiliated by the police on *each occasion* he appeared before the police authorities. Thus, the treatment to which he was allegedly subjected to was described in increasingly strong terms during the course of the proceedings. This fact reduces the credibility of the complainant's claim in this regard.

4.14 In the light of the above and the inconsistencies and contradictions contained in the complainant's statement to the State party's authorities, as well as the vagueness regarding central elements of his asylum story and the fact that he produced false documents regarding his identity, it cannot be concluded that the author would be at risk of treatment contrary to the Convention, if returned to Uzbekistan.

**The complainant's comments on the State party's observations**

5.1 On 15 February 2012, the complainant submitted his comments on the State party observations.

5.2 He points out that there is a consistent pattern of gross violations of human rights in Uzbekistan. The risk of being tortured in arrest or detention is overwhelming. Security officers and the police routinely beat or mistreat detainees to obtain confessions or incriminating information. According to Human Rights Watch, the Government continues to refuse to investigate the 2005 events in Andizjan or to prosecute those responsible. The authorities persecute anyone that they suspected of having participated in or witnessed the atrocities. On 30 April 2011, Ms. D.A., an Andizjan refugee who returned to Uzbekistan in January 2010, was sentence to 10 years and 2 months in prison for illegal border crossing and anti-constitutional activity, despite assurances made to her family that she would not be harmed if returned.[5] Persons who return to Uzbekistan and are brought to court are held in incommunicado detention, thereby increasing their risk of being tortured or otherwise ill-treated; and are subjected to unfair trial.[6] Furthermore, the Uzbek Government uses the so-called "mahalla system", in which local committees are in charge of controlling and identifying for the police persons that appear suspicious, in particular if they are amnestied prisoners or relatives of individuals jailed for alleged extremism.[7]

5.3 The complainant contests the State party's assertion that it applied the Convention's test when considering his asylum application. The Migration Board and Court focused most of their examination on the sole fact that he presented false documents of his identity upon

[5] The complaint refers to *2011 Human Rights Watch Report*.

[6] The complaint refers to 2009 Amnesty International's report, submitted to the Human Rights Committee.

[7] The complaint refers to 2008 United States, Department of State, "Human Rights Report – Uzbekistan".

arrival to Sweden. He argues that an untrue statement by itself is not a reason for refusal of refugee status and it is the authorities' responsibility to evaluate such statement in the light of all the circumstances of the case.

5.4 The State party's authorities should have taken into account the fact that the first interview before migration authorities was short and he did not have a legal representative. In contrast, in the second interview, held on 17 April 2009, the complainant, who had already a legal representative, answered all questions in detail and gave a clear description of what happened in Andizjan. He told the interviewer that he was tortured during imprisonment. He also pointed out that he was beaten and mistreated. Therefore, the interviewer should have asked more questions regarding these allegations, all the more so as he came from a country where gross human rights violations occur.

5.5 The complainant also noted that he was afraid that the interpreter was a spy for the Uzbek Security Service, since several reports support the fact that this Service is very active in countries where Uzbek asylum seekers are present. This fear also explains why the complainant applied for asylum with a false name. However, the State party's assessment of his credibility relies on the sole fact that he presented false documents on his arrival in Sweden.

5.6 As to his description of the events in Andizjan, he contests the State party's position that he gave unclear and contradictory information. From the protocol of the second interview, dated 17 April 2009, it is clear that there was a misunderstanding in the beginning, that was solved later in the interview, when he told the authorities that the regiment was located 40 minutes to one hour aside Andizjan. The same information was given during the Migration Court's hearings. He also gave a detailed description of the questions asked concerning the incident in Andizjan from what he saw and what was happening around him. He is not from Andizjan town and this explains why he lacked knowledge about streets' names.

5.7 The State party's argument that in the events in Andizjan, shooting from helicopter and military aircraft did not occur is contradicted by an article published on BBC News, on 17 May 2005, according to which, some persons declared that helicopters started shooting at them.

5.8 As to the complainant's contradictory information about the way he was imprisoned and whether he had a trial, he upholds that the difference between his statement in the second interview before the Migration Board, on 17 April 2009 and the information given at the Court's hearing is explained by his lack of legal background and his poor educational level.

5.9 The information given about the incidents in Andizjan and the complainant's situation should have been enough for the Migration Board's authorities to ask further questions if in doubt about his statements.[8]

5.10 The medical certificate issued by a doctor of the Swedish Red Cross supports that it is probable that the injuries and scars that the complainant has on his body have been caused in accordance with his claims. He has shown it to be probable that he was present during the incident in Andizjan; that he was sentenced to prison; and that he was tortured while in custody in Uzbekistan. In the light of the reports indicating that anyone can be connected to the incidents in Andizjan has a well-founded fear of persecution or harm if returned to Uzbekistan, the complainant claims that the State party fails to assess adequately the serious personal risk he would face if returned, in violation of article 3 of the Convention.

[8] The complaint refers to the complainant No. 149/199, *A.S.* v. *Sweden*, Views adopted on 24 November 2000.

**Further State party's observations and author's comments**

6.1 On 5 December 2012, the State party submitted further observations on the admissibility and merits of the complaint.

6.2 The State party reiterates its previous observations and submits that the NGOs' and States' reports on the deterioration of the human rights situation in Uzbekistan, to which the complainant refers, were also considered by the State party. Despite the human rights record of Uzbekistan, these reports do not in themselves suffice to establish that he would run a risk of treatment contrary to article 3 of the Convention if returned.

6.3 After the complainant applied for asylum in 2009, the Migration Board informed him of the importance of substantiating his identity. Nevertheless, in August 2009, that is, several months after his arrival in the State party's territory, he submitted false documents concerning his identity, and only in April 2010, he presented evidence of another identity. The State party further highlights that the complainant has not commented on the authenticity of these documents, and specifically on how he managed to have a new passport issued in 2006 when he allegedly was in prison. Nor has he explained how he managed to provide the immigration authorities with a copy of a passport in April 2010. Moreover, the complainant's identity is still not substantiated.

6.4 The complainant's description of the events that took place in Andizjan and of the time he spent in prison lacks details and is based on information that is accessible to the public through international news reporting. His comments to the Committee do not substantiate the reasons why the Uzbekistan's authorities would show an interest in him due to his alleged involvement in the Andizjan events. Both the Migration Board and the Migration Court met the complainant and held lengthy hearings with him. However, the vagueness of his account led them to the conclusion that his claims were insufficiently substantiated. There is no indication that the immigration authorities' decisions were inadequate or arbitrary.

6.5 The State party does not contest that the complainant was ill-treated, as indicated by the medical reports. Nevertheless, he did not substantiate his claim that he took part in the events in Andizjan and he did not present any other ground as to why the Uzbek authorities would have an interest in him if he was to return to Uzbekistan.

7.1 On 9 January 2013, the complainant submitted further comments to the Committee and asserts that at the hearing at the Migration Court, he told the authorities that he had had two passports. The first one was kept by the authorities when he was called to do his military service. The second one was obtained just after his marriage, through a bribe. He got help to renew this second passport with a bribe in 2006, when he reported that he had lost it. With the help of friends he managed to hide his military booklet at the moment of his arrest. He finally informed the Swedish authorities that both original of his passports were with the Uzbek authorities.

7.2 He argues that he was diagnosed with post-traumatic stress disorder; that victims of torture, who suffer from that disorder, rarely remember all the details and circumstance in their cases; and that this can also explain why he had such great fear of migration authorities and his lack of trust of the interpreters during the interviews.

**Issues and proceedings before the Committee**

*Consideration of admissibility*

8.1 Before considering any claims contained 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, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

8.2 The Committee recalls that, in accordance with article 22, paragraph 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 recognized that the complainant has exhausted all available domestic remedies.

8.3 The State party submits that the communication is inadmissible as manifestly unfounded. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues, which should be dealt with on the merits. As no obstacles to the admissibility of the communication exist, the Committee declares itadmissible.

*Consideration of the merits*

9.1 In accordance with article 22, paragraph 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.

9.2 The issue before the Committee is whether the expulsion of the complainant to Uzbekistan 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.

9.3 With regard to the complainant's claims that he risks imprisonment in Uzbekistan and that imprisonment would inevitably be followed by ill-treatment and torture, as he experienced while in prison between 2005 and 2008, the Committee must evaluate whether there are substantial grounds for believing that he would be personally in danger of being subjected to torture upon return to his country of origin. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination 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 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.

9.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22,[9] according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable", the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he faces a "foreseeable, real and personal" risk. While under the terms of its general comment the Committee is free to assess the facts on the basis of the full set of circumstances in every case, it recalls that it is not a judicial or appellate body, and that it must give considerable weight to the findings of fact that are made by organs of the State party concerned.

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

9.5 In the present case, the Committee notes the State party's observations regarding the human rights situation in Uzbekistan and the migration authorities' and court's conclusion that the prevailing circumstances in that country did not in themselves sufficed to establish that the complainant's forced return to Uzbekistan would entail a violation of article 3 of the Convention. The Committee has also expressed concerns for the events that took place in Andizjan in May 2005 and the subsequent behaviour of the authorities.[10] The Committee recalls its concerns at numerous and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings.

9.6 The Committee notes that the State party has drawn attention to inconsistencies and contradictions in the complainant's accounts and submissions which call into question his general credibility and the veracity of his claims. In particular, the complainant provided a false identity and documentation in his original asylum application to the Migration Board, and the documentation provided to the Migration Court in order to prove his alleged real identity was also unreliable. As a result, doubts about his real identity still persist. According to the State party, he was not able to provide any written evidence pertinent to his claims, that he was sentenced to three years' imprisonment, prohibited to travel and subjected to control by the police to whom he had to report daily. His statements concerning the alleged mistreatment varied through the proceedings and at beginning referred to acts other than torture. He was not able to provide enough details about the events that took place in Andizjan in May 2005 and changed his initial statements regarding the location of his regiment.

9.7 The Committee also notes that the complainant contests the State party assessment and argues that he did not provide his real identity until he was before the Migration Court because he feared that Uzbek Security Service might find him and take reprisals; and that he provided enough details concerning the events in Andizjan in May 2005, his participation, his imprisonment and the torture and ill-treatment to which he was subjected. The fact that he had to clarify or modify his original statements was due to his lack of legal background, his fear upon arrival in Sweden, and the lack of more specific questions posed by the migration authorities. He affirms that the medical certificate issued by the Swedish Red Cross, together with all the information provided by him, proves beyond reasonable suspicion that he was subjected to torture while in prison.

9.8 The Committee takes note of the observation by the State party that the complainant provided a false identity to the Migration Board and that afterwards the Court could not corroborate the real identity claimed by him; that he modified his original statements on more than one opportunity; that he was not able to provide some basic information as to the events in Andizjan, such as the name of the main square where the demonstration took place; that he did not submit any document as to his conviction by a military court and the prohibition to travel and was not able to provide a description of these documents; and that his allegations of torture were vague and did not provide details about the circumstances in which it was inflected. While the Swedish Red Cross' medical reports indicate that the complainant has marks in his body that could have been caused by torture, and the risk assessment for asylum seekers from certain groups in Uzbekistan, including those who had any connection with the Andizjan events, were made with great caution by the authorities, the complainant has not provided evidence regarding his allegations of participation in the Andizjan events, his imprisonment, trial and sentence. The Committee observes that, notwithstanding the complainant's allegations, his children – who initially fled with his

[10] Conclusions and recommendations of the Committee against Torture, Uzbekistan, CAT/C/UZB/CO/3, paras. 6–9. See also concluding observations of the Human Rights Committee-Uzbekistan, CCPR/C/UZB/CO/3, para. 8.

wife to Kazakhstan – returned to Uzbekistan and lived with his parents, and that he did not report any acts against members of his family other than the police requesting information about the complainant's whereabouts. Accordingly, the Committee considers that the complainant has failed to provide sufficient evidence in support of his claims to the effect that he would be exposed to a real risk of torture if he is removed to Uzbekistan.

9.9 In the light of the foregoing, the Committee finds that the complainant has not established that, in case of his expulsion to the country of origin, he would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention, that could prompt the Committee to arrive at the conclusion which would be different from that of the State party's migration authorities and the courts.

10. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Uzbekistan by the State party would not constitute a breach of article 3 of the Convention.

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