



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

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Committee against Torture

**Decision adopted by the Committee under article 22 (7) of the
Convention, concerning communication No. 616/2014*, ****

<i>Communication submitted by:</i>	J.I. (represented by counsel, Johan Lagerfeld)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	10 July 2014 (initial submission)
<i>Date of adoption of decision:</i>	12 August 2016
<i>Subject matter:</i>	Expulsion to the Russian Federation
<i>Substantive issues:</i>	Torture; non-refoulement
<i>Procedural issues:</i>	None
<i>Article of the Convention:</i>	3

1.1 The complainant is J.I., a citizen of the Russian Federation born in 1984. His request for asylum in Sweden was rejected and, at the time of submission of the complaint, he was awaiting forcible removal to the Russian Federation. In his complaint, he claims that his deportation would violate his rights under article 3 of the Convention. The complainant is represented by counsel, Johan Lagerfeld.

1.2 On 11 July 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the author to the Russian Federation while his complaint was being considered.

The facts as presented by the complainant

2.1 The complainant was born in the village of Gettyn Kele in Shatoy district, approximately 60 km from the city of Grozny, in Chechnya. In 2007, one person from his

* Adopted by the Committee at its fifty-eighth session (25 July-12 August 2016).

** The following members of the Committee participated in the consideration of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu and Sébastien Touzé.



village joined the rebels and, later in the same year, two of his cousins were forcibly conscripted.

2.2 In the summer of 2008, the authorities arrested the complainant, who was then interrogated by officials of the Russian security forces. The officials demanded information concerning the villager who had voluntarily joined the rebels, stating that they were aware that the complainant was in contact with him. After several hours of questioning, he was released.

2.3 After he married,¹ the complainant moved with his wife to Grozny. On an unspecified date in 2010, his wife called him at work and told him that armed men had come to their house and were looking for him. The same happened the next day. Out of fear, the complainant did not return home but stayed at work. At some point after that,² at the market in Grozny, he was arrested by a policeman in civilian clothes. He was pushed into a car with several military officers. A bag was placed over his head so he could not see where he was being taken. He later found out that he had been taken to Shatoy district.³

2.4 Upon arrival in Shatoy district, the complainant was subjected to electric shocks for approximately two to three hours. During that time, he was interrogated by the officers, who asked him about the villager who had joined the rebels. He was also kicked and beaten⁴ to the point of almost losing consciousness, then was revived by having cold water poured over his head. After that, the complainant was dragged out into the yard and left semi-conscious next to a car. He managed to leave the compound and was taken by an acquaintance to his parents. After those events, the complainant moved to Grozny and lived with his uncle for approximately one year.

2.5 While he was living in Grozny, the Russian military visited his parents on several occasions. His parents told the officers that the complainant had joined the rebels.

2.6 The complainant moved back to his home village⁵ and lived with various relatives in order to avoid being arrested again. During that time, his parents were under surveillance and were interrogated several times, which is why the complainant did not maintain contact with them. At the time of submitting the complaint, he was not talking to his parents, nor did he have any contact with his former wife, as she had left him, unable to bear the pressure and the fear. One of the complainant's brothers was arrested in 2009 and sentenced to one year of imprisonment for allegedly assisting the complainant.

2.7 On an unspecified date, the complainant arrived in Sweden and applied for asylum. On 1 July 2013, the Migration Board dismissed his application. On an unspecified date, the complainant appealed the Board's decision. On 5 November 2013, the Migration Court rejected his appeal. On 14 January 2014, the Migration Court of Appeals denied the complainant's request for a leave to appeal. The complainant claims to have exhausted all available domestic remedies.

The complaint

3. The complainant claims that his deportation to the Russian Federation would violate his rights under article 3 of the Convention because he would be at personal risk of being persecuted, tortured and ill-treated upon return.

¹ No specific date is provided for the event.

² No specific dates are provided.

³ No details or dates are provided.

⁴ The complainant does not provide additional details regarding the alleged beatings.

⁵ No dates are specified.

State party's observations on admissibility and the merits

4.1 By a note verbale dated 12 December 2014, the State party submitted its observations on admissibility and the merits. It recalls the facts of the case and also provides excerpts from relevant domestic legislation. The State party submits that the complainant's case was assessed under the 2005 Aliens Act. The State party's authorities, upon examination of the facts of the case, concluded that the complainant "has not shown that he is in need of protection".

4.2 The State party further submits unofficial translations of the proceedings of the Swedish migration authorities to show the reasoning behind the State party's decision to expel the complainant. The findings confirm that the complainant is not in need of protection and can be expelled to the Russian Federation.

4.3 The complainant arrived in Sweden on 25 October 2012 and applied for asylum the following day. The State party's migration authorities rejected the application and decided, on 1 July 2013, to expel the complainant. The decision was appealed, but on 5 November 2013 the Migration Court rejected the appeal. On 14 January 2014, the Migration Court of Appeals refused the complainant's request for leave to appeal and the decision to expel him became final.

4.4 On 4 February 2014, the complainant claimed before the Migration Board that there "were impediments to enforcement of the decision to expel him" and requested a re-examination of his case. That request was rejected on 18 February 2014 and no appeal against that decision was filed.

4.5 The State party does not contest that all available domestic remedies have been exhausted in the present case. It submits, however, that the claims presented by the complainant are "manifestly unfounded" and, therefore, that they should be considered inadmissible under article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure.

4.6 Regarding the merits of the communication, the State party explains that, in considering the present case, it examined the general human rights situation in the Russian Federation and, in particular, the personal risk to the complainant of being subjected to torture if returned there. The State party notes that it is incumbent on the complainants, who must present an arguable case, to establish that they run a foreseeable, real and personal risk of being subjected to torture.⁶ In addition, while the risk of torture must be assessed on grounds that go beyond mere theory, it does not have to meet the test of being highly probable.

4.7 Regarding the current human rights situation in the Russian Federation, specifically in the northern Caucasus, the State party notes that recent reports⁷ show that the general levels of violence have decreased during the past several years. At the same time, the State party does not underestimate the concerns regarding the human rights situation, since recent reports still contain information of human rights violations, such as arbitrary detentions, abductions, torture and extrajudicial killings, against the civilian population. The current situation in Chechnya in itself does not, however, establish a risk of torture for the complainant should he be expelled to his home country.

⁶ The State party refers, inter alia, to communication No. 178/2001, *H.O. v. Sweden*.

⁷ Reference is made to the following, among others: United States of America, Department of State, "Russia 2013 human rights report"; Amnesty International, "Annual report: Russian Federation 2013"; Human Rights Watch, "World report 2014: Russia"; and a 2011 country profile on the Russian Federation of the Swedish Migration Board.

4.8 The State party submits that several provisions of the Aliens Act reflect the principles contained in article 3 of the Convention and, therefore, that the State party authorities apply the same kind of test when considering asylum applications. According to sections 1-3 of chapter 12 of the Aliens Act, a person seeking asylum cannot be returned to a country where there are reasonable grounds to assume that he or she would be in danger of being subjected to the death penalty, to corporal punishment, to torture or to other degrading treatment or punishment.

4.9 When the complainant applied for asylum, the Migration Board conducted multiple individual interviews with him to enable him to submit the reasons for his need for protection and to explain all relevant facts. During those interviews, the complainant was represented by counsel. During the initial interview on 28 October 2012, the complainant stated that he was satisfied with his counsel. Moreover, the complainant was able to submit written briefs in addition to oral interviews. The State party therefore suggests that its authorities had enough information to make “a well-informed, transparent and reasonable risk assessment” of the complainant’s need for protection.

4.10 The State party refers to the Committee’s general comment No. 1 (1997) on the implementation of article 3 of the Convention, in which the Committee stated that, in exercising its jurisdiction, considerable weight would be given to findings of facts made by organs of the State party concerned. The State party also refers to the Committee’s jurisprudence.⁸ The Migration Board and the Migration Court are specialized bodies with particular expertise in the field of asylum law and practice. There is no reason therefore to conclude that the examination by the national authorities was inadequate or that the outcome of the examination was arbitrary or amounted to a denial of justice. In addition, absent such arbitrariness or denial of justice, the State party submits that “great weight must be attached” to the findings of its authorities.

4.11 The State party also submits that the complainant provided contradictory statements to the migration authorities. For example, to prove his identity, the complainant provided only his driver’s licence, not his passport. The complainant stated that his passport was in the Russian Federation and that he could not contact his family to have it delivered to him. The Migration Board, however, considers that the complainant did not demonstrate that his “most recent habitual residence” was in Chechnya.

4.12 Furthermore, during the interviews and hearings, the complainant had difficulty remembering exact facts, dates and details. He explained that the difficulty was caused by the great anguish he felt as a result of his injuries. That explanation did not seem plausible, however, since the complainant seemed to lack knowledge about major events in his life related to his asylum claim. The migration authorities also found it incredible that the complainant was able to escape from prison because the gate was left unlocked.

4.13 Additionally, the complainant claimed during his first interview that his two cousins were forced to join the rebels but during the second interview stated that they joined the rebels voluntarily.⁹ The complainant never claimed that he was questioned by the Russian authorities specifically regarding those cousins. In the light of these facts, it is not clear why the complainant would be of much interest to the Russian law enforcement authorities.

4.14 The complainant told the migration authorities that that after his marriage he and his wife moved to Grozny. He was then arrested in 2010, at a marketplace in Grozny, and taken

⁸ See communication No. 277/2005, *N.Z.S. v. Sweden*, decision adopted on 22 November 2006, para. 8.6.

⁹ In his submission to the Committee, the complainant again states that his cousins were forced to join the rebels.

to Shatoy district, where he claims to have been tortured. To the Migration Court, however, the complainant stated that he moved to Grozny in 2008 and that he was arrested and tortured several months after that and then managed to escape. Furthermore, he claimed that one of his brothers was arrested in 2009 and that that brother was sentenced to one year of imprisonment for having helped the complainant. The State party finds it remarkable that the complainant was not prosecuted and sentenced on the same basis as his brother. The State party further notes that the complainant did not provide any documentation to prove that his brother had indeed been prosecuted and sentenced.

4.15 In conclusion, the State party reiterates that the complainant failed to produce proper identification and proof of residence, and provided contradictory statements and facts. The State party therefore considers that the complainant failed to fulfil the requirements that the threat of torture must be foreseeable, real and personal. Consequently, his expulsion to his home country would not constitute a violation of article 3 of the Convention.

Additional information by the complainant

5.1 In reply to the State party's observations, on 16 January 2016 the complainant submits that the human rights situation in Chechnya is very different from that described by the State party. He refers to a report published by the Ministry for Foreign Affairs of Sweden that had also been cited by the State party.¹⁰ In that report, the Russian administration is characterized by widespread corruption and human rights activists, journalists and whistle-blowers are said to be harassed and subjected to violence, at times so serious as to be fatal. According to the report, the most serious violations still occur in the northern Caucasus, where, in the name of fighting terrorism, the civilian population is subjected to torture, arbitrary arrests and kidnappings.

5.2 The complainant also refers to "unconfirmed reports about political murders and disappearances" sanctioned by the authorities, which he submits clearly demonstrate a consistent pattern of gross, flagrant or mass violations of human rights. Various organizations have described the situation in Chechnya as serious, using descriptions such as an "atmosphere of terror" and a "climate of pervading fear". The United Nations High Commissioner for Human Rights has called for accountability for murders, intimidation and harassment. Similarly, Human Rights Watch, in "World report 2014: Russia", in addition to listing a similar litany of abuses, mentions sentencing to compulsory psychiatric treatment.

5.3 The complainant submits that the internal guidelines of the Migration Board call for an expert or specialist in forensic medicine to be appointed to examine applicants who claim to have been subjected to torture in the past, with the costs of such examination to be covered by the State party. The Migration Board and the Migration Court chose to ignore their own guidelines, which indeed should be construed as a denial of justice.

Additional information by the State party

6.1 In its response of 29 April 2016 to the counsel's comments, the State party reiterates its position that, while it does not wish to underestimate the concerns regarding the current human rights situation in the Russian Federation and especially in the northern Caucasus, the situation in itself does not establish the risk of a violation of article 3 of the Convention. The complainant's return to the Russian Federation would entail a breach if he could show that he is personally at risk of being subjected to treatment contrary to article 3.

¹⁰ Available only in Swedish.

6.2 The State party adds that it considers the discrepancies and contradictions in the complainant's statements to the Migration Board, the Migration Court and the Committee to be serious enough to cast doubts on the veracity of all his statements. The complainant submitted conflicting details about very important parts of his account of the facts.

6.3 Regarding the complainant's contention that the migration authorities of the State party were obliged to further examine whether he had been tortured, the State party submits that the responsibility lies with the complainant to present evidence that will substantiate the risk of being exposed to treatment contrary to article 3 of the Convention. Where such evidence is cited, it is for the State party to dispel any doubts about such evidence. The State party reiterates that there is reason to question the veracity of the complainant's claims. The State party therefore submits that the migration authorities were not obliged to further examine whether the complainant had been tortured in the past.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering a claim 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 (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.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that, in the present case, the State party has recognized that the complainant has exhausted all available domestic remedies. Accordingly, the Committee finds no obstacles to admissibility; it declares the communication admissible as far as the complainant's claim under article 3 of the Convention is concerned and proceeds with the examination of the merits.

Consideration of the merits

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

8.2 The Committee must determine whether the deportation of the complainant to the Russian Federation would violate the State party's obligations under article 3 (1) of the Convention not to expel or 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 there. The Committee recalls that the existence in a country of gross, flagrant or mass violations of human rights is not in itself sufficient ground for believing that an individual would be subjected to torture.¹¹ Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that an individual might not be subjected to torture.

8.3 Recalling its general comment No. 1, the Committee reaffirms that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk

¹¹ See communication No. 428/2010, *Kalinichenko v. Morocco*, decision adopted on 25 November 2011, para. 15.3.

does not have to meet the test of being highly probable, but it must be personal, present, foreseeable and real.¹²

8.4 The Committee takes note of the claim that the complainant was twice arrested and tortured. The Committee notes that, according to the complainant, the Migration Board and, subsequently, the Migration Court both failed to take into consideration this information.

8.5 The Committee also notes that, even if it were to accept the claim that the complainant was subjected to torture or ill-treatment in the past, the question is whether he remains, at present, at risk of torture in the Russian Federation. The Committee notes that the current human rights situation in the Russian Federation remains a matter of concern in several aspects, in particular in the northern Caucasus. The Committee recalls that, in its concluding observations on the fifth periodic report of the Russian Federation, in 2012, it expressed concern at the numerous, ongoing and consistent reports of serious human rights abuses inflicted by or at the instigation or with the consent or acquiescence of public officials or other persons acting in official capacities in the northern Caucasus, including Chechnya, including torture and ill-treatment, abductions, enforced disappearances and extrajudicial killings (see CAT/C/RUS/CO/5, para. 13).

8.6 The Committee notes that the State party has drawn attention to inconsistencies and contradictions in the complainant's accounts and submissions, which cast doubts regarding his general credibility and the veracity of his claims. The Committee notes, in particular, that the complainant could not definitively verify that his habitual and permanent place of residence was in Chechnya, nor was he able to show any evidence that his brother and other family members had been persecuted for their connections to the complainant. The complainant further failed to provide exact dates, information on locations and the names of persons involved in the events central to his claim for protection; specifically, he was unable to provide details and descriptions regarding his places of residence and his alleged arrests and instances of torture suffered at the hands of the Russian authorities.

8.7 The Committee further observes that the complainant merely stated before the Migration Board and the Migration Court that he feared being subjected to torture if returned to the Russian Federation, claiming that he had been tortured in the past, and that he would be targeted again. The Committee notes, however, that the complainant did not put forward any evidence indicating that the Russian authorities would target him should he be returned. The Committee recalls that, in its general comment No. 1, it stated that it would give considerable weight to findings of fact made by the State party concerned. The Committee considers that, in the specific circumstances of the present case, it is not necessary to challenge the State party's evaluation of the evidence presented by the complainant.

8.8 The Committee recalls that the risk of torture must be assessed on grounds that go beyond mere theory and that it is generally for the complainant to present an arguable case.¹³ In that regard, the Committee notes, in addition to the lack of information about the alleged instances of torture, also the discrepancies described by the State party.¹⁴ In the light of these considerations and on the basis of all the information submitted by the

¹² See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003; and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

¹³ See, inter alia, communications No. 298/2006, *C.A.R.M. and others v. Canada*, decision adopted on 18 May 2007, para. 8.10; No. 256/2004, *M.Z. v. Sweden*, decision adopted on 12 May 2006, para. 9.3; No. 214/2002, *M.A.K. v. Germany*, decision adopted on 12 May 2004, para. 13.5; No. 150/1999, *S.L. v. Sweden*, para. 6.3; and No. 347/2008, *N.B.-M. v. Switzerland*, decision adopted on 14 November 2011, para. 9.9.

¹⁴ See, in particular, paras. 4.12-4.14 above.

complainant, including on the general situation of human rights in the Russian Federation, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his forcible removal to his country of origin would expose him to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, therefore concludes that the complainant's expulsion to the Russian Federation would not constitute a breach of article 3 of the Convention.
