



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 860/2018*, **

<i>Communication submitted by:</i>	T.M. (represented by counsel, Daniel Carnestedt)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of communication:</i>	21 January 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 23 January 2019 (not issued in document form)
<i>Date of present decision:</i>	6 December 2019
<i>Subject matter:</i>	Deportation to the Russian Federation
<i>Procedural issue:</i>	Admissibility – manifestly ill-founded
<i>Substantive issue:</i>	Risk of torture or inhuman or degrading treatment, if deported to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is T.M., a national of the Russian Federation born in 1981. At the time of the submission of the present communication, he was being held in detention, awaiting enforcement of an expulsion order issued against him. The complainant claims that Sweden would violate his rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment if it were to remove him to the Russian Federation. The complainant is represented by counsel.

1.2 On 23 January 2018, in application of rule 114 (1) of its rules of procedure (CAT/C/3/Rev.6), the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from returning the complainant to the Russian Federation while his complaint was being considered by the Committee. On 10 September 2018, the Committee, acting through the same Rapporteur, denied the State party's request of 19 July 2018 to lift the request for interim measures.

* Adopted by the Committee at its sixty-eighth session (11 November–6 December 2019).

** The following members of the Committee participated in the consideration of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón and Sébastien Touzé. Pursuant to rule 109, read in conjunction with rule 15 of the Committee's rules of procedure, and article 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa Guidelines), Bakhtiyar Tuzmukhamedov did not participate in the examination of the communication.



Factual background¹

2.1 The complainant, his wife and their three children arrived in Sweden in August 2012 and applied for asylum there on 25 August 2012. In his asylum application, the complainant stated that in the late 1990s his father had been an adviser to Aslan Maskhadov, the then president of the Chechen Republic. In 1999, the complainant's father, mother and siblings left Chechnya after Ramzan Kadyrov, the current head of the Republic, had ordered militia forces loyal to him to kill the complainant's father. The latter was arrested in Egypt at the request of the Russian authorities. According to the complainant, following a petition from his family and other Chechens living in Egypt, the Egyptian authorities agreed to expel the complainant's father to Turkey instead, where he still resides legally. Ramzan Kadyrov has continued to mention the complainant's father as an enemy of the regime and considers him a spiritual leader of his opponents. Because the complainant acted as the right hand to his father before the latter's flight to Egypt, the complainant claims that he also risks persecution for the same reasons. He also submits that the family belongs to the Wahhabi faith.

2.2 The complainant states that after his father fled the country, he remained in their home area for work and married there in 2001. Between 1999 and 2002, he assisted a rebel movement by taking the injured to hospitals and providing them with food and lodging. The complainant claims that the Russian authorities abducted, interrogated and tortured him in August 2002 because they wanted to know if he had helped the rebels. They released him after six days, following the payment of bribes. When a chauffeur, who had borrowed the complainant's car, was later arrested in the belief that he was the owner of the car, the complainant left the Russian Federation and travelled to Azerbaijan, where he was reunited with his wife.

2.3 The complainant subsequently resided in Azerbaijan, Turkey, Egypt and finally in Dubai, each time on the basis of residence permits. The complainant submits that the authorities in Dubai withdrew his and his family's residence permits and subsequently agreed to expel him to Azerbaijan instead of the Russian Federation after he explained to them that he could not return there.

2.4 When he entered Sweden in August 2012, the complainant hid his valid Russian passport in a bin before border controls at the airport. The border police retrieved the passport after the complainant had told them where he had hidden it. The complainant possessed a valid Russian passport and an expired one. He claimed to have obtained the passports through an agent in the Russian Federation, as he was abroad when they were issued. The Swedish authorities found that the picture on the complainant's valid passport had been tampered with and therefore confiscated the document. They found the expired passport to be an authentic, original document. The complainant also submitted two driving licences in support of his stated identity, one of which was still valid and had been issued in Dubai, while the other was an expired licence issued in the Russian Federation.

2.5 On 26 August 2013, the Swedish Migration Agency rejected the asylum applications of the complainant and his family members and decided to expel them to the Russian Federation. It found that the complainant's asylum account was neither credible nor sufficient to consider him in need of international protection. In particular, the Migration Agency questioned the complainant's claim that, upon return to the Russian Federation, he would risk treatment contrary to article 1 of the Convention at the hands of Ramzan Kadyrov's forces. It rejected the complainant's claim that his adherence to Wahhabism gave rise to a need to grant international protection. Furthermore, it questioned his account that the Egyptian authorities, who would have arrested his father at the request of the Chechen authorities, would have sent him not to Chechnya but to Turkey. The Migration Agency noted that the complainant had not submitted any written evidence of his father's activities in opposition to Akhmad Kadyrov. It found that nothing suggested that the complainant was wanted or would be subjected to treatment constituting grounds for international protection because of his father or his alleged religious affiliation.

¹ The factual background has been prepared based on the submissions of the complainant and those of the State party.

2.6 The Migration Agency further noted that the complainant's alleged collaboration with Chechen rebels occurred a relatively long time ago. The Migration Agency considered that his claim that Ramzan Kadyrov's forces had become suspicious of his collaboration with the rebels was vague and based on speculation. It found his account that in 2002, the complainant's car had been seized and the chauffeur taken for interrogation insufficient for the conclusion that the complainant would be of interest to Ramzan Kadyrov and his forces. The Migration Agency also noted that the complainant's wife and children had returned to Chechnya four or five times after 2002 for family visits, although his wife stayed inside to avoid being noticed. Almost everyone knows about her father-in-law and that she was married to his son. Once, one of Kadyrov's men asked one of her relatives who she was and why she wore a veil. On a few other occasions, people asked her who the father of her children was. Thereupon, she left Chechnya as soon as possible. The Migration Agency concluded that the complainant had not plausibly demonstrated that either his father or the complainant himself would be of interest to the Chechen authorities.

2.7 In his appeal, lodged before the Migration Court at the Stockholm Administrative Court, the complainant submitted two original certificates, one allegedly issued by the "Plenipotentiary representative of the President of the Chechen Republic of Ichkeria in Europe" and the other allegedly concerning the cancellation of his visa in Dubai. The complainant also referred to a number of websites containing articles about his father. The Migration Court held an oral hearing with the complainant on an unspecified date, during which a witness testified in support of the complainant's claims about the political activities of his family and the arrest of his father.

2.8 On 28 March 2014, the Migration Court rejected the complainant's appeal. The Court deemed that the documents submitted did not plausibly demonstrate his stated need for international protection. Further, the Court considered the complainant's oral account vague and lacking in a reasonable explanation for credibility gaps. In particular, the complainant had not reasonably explained how he and his wife had been able to obtain a marriage certificate, birth certificates for the children and passports without problems, following his departure from the Russian Federation. As for the complainant's political activities, the Court noted that he had allegedly carried these out a long time ago and that nothing suggested that he had held a prominent role in the opposition. Information on the situation in the Russian Federation did not support his claimed need for international protection on this ground either. Further, the complainant had opted to remain in the Russian Federation for three years following his father's flight and nothing during this period suggested that he had been subjected to treatment constituting grounds for international protection. The Court also rejected the complainant's argument that his affiliation with the Wahhabi faith constituted a ground for international protection, noting that he had neither had a prominent nor an active religious role. The Court concluded that the complainant had failed to demonstrate that he would be of particular interest to the authorities in his country of origin, or that he would in some other way risk treatment constituting grounds for protection upon return.

2.9 On an unspecified date, the complainant and his family appealed against the judgment of the Migration Court, but the Migration Court of Appeal decided on 12 June 2014 not to grant leave to appeal. The decisions to expel the complainant and his family thereby became final and non-appealable.

2.10 On 20 March 2015, the Migration Agency granted the complainant's wife and children permanent residence permits based on medical impediments to expelling the complainant's eldest son, who was suffering from so-called resignation syndrome.² The complainant was not granted such a permit, because he was suspected of serious criminal offences, including murder and blackmail, and because he lacked a valid passport. Instead, he was granted a 12-month temporary residence permit valid until 4 June 2016.

² The complainant's eldest son was fed through a tube for 10 months, did not react when spoken to and was essentially unresponsive during this time. In autumn 2015, it was observed that the complainant's eldest son was fully conscious, eating independently and had returned to school.

2.11 On 11 May 2016, the Solna district court found the complainant guilty of preparation to commit murder and of blackmail. It sentenced him to four years and eight months of imprisonment. One of the complainant's two co-defendants, X, also of Chechen origin, was found to risk persecution if he were to be returned to the Russian Federation owing his political affiliation as an opponent of the regime in Chechnya and for being wanted for several murders allegedly committed during the war in Chechnya. The Swedish Supreme Court had, on 22 March 2013, denied a request for X to be extradited to the Russian Federation on the grounds that he would risk persecution threatening his life or health, because he was considered an enemy of the regime.

2.12 Following advice from the Social Welfare Committee and the Swedish Migration Agency as to the potential effect on his children of the complainant's removal, the Solna district court also ordered his expulsion, together with a ban on returning to Sweden before 11 May 2026. The district court concluded that the best interests of the children, who, as the Social Welfare Committee had found, would be served by the complainant's continued stay in the State party, were outweighed by the societal interest in preventing the complainant from committing further offences. The Migration Agency had stated in its advice that it did not consider that the complainant's ties to Sweden impeded his expulsion and the district court found no reasons to deviate from this view.

2.13 In an appeal before the Svea Court of Appeal, the complainant submitted that as he had now been convicted of a crime in Sweden, together with X, he was now of additional interest to the Russian authorities. On 8 December 2016, pending the appeal, the complainant applied for a residence permit based on obstacles to the enforcement of his expulsion order, for which he submitted testimonials from several Chechen organizations. He also submitted these to the Court of Appeal in his criminal case. The complainant also submitted that there was a new circumstance in that he had now also been summoned to appear for interrogation before the Ministry of the Interior in Chechnya on 6 October 2016. He provided the original summons to the Migration Agency and shared a link to a YouTube video from February 2015 in which Ramzan Kadyrov allegedly stated that he had "previously killed people such as them", referring to the complainant's father. In a statement to the Court of Appeal dated 22 February 2016, the Migration Agency reiterated its view that there were no impediments to enforcing the expulsion order.

2.14 In its judgment of 7 October 2016, the Svea Court of Appeal reduced the complainant's penalty to imprisonment of three years and eight months, but affirmed the judgment of the district court in all other respects, including in relation to the assessment by the Migration Agency that there were no impediments to enforcing the expulsion order. The complainant appealed to the Supreme Court, which decided on 10 January 2017 not to grant leave to appeal, rendering the judgment final and non-appealable.

2.15 The Swedish Migration Agency rejected the complainant's application for a residence permit on 15 January 2018. It found no basis for a re-examination of the complainant's eligibility for a residence permit nor of the expulsion order. With regard to the 2015 video of Ramzan Kadyrov, the Migration Agency found that no such video had been made available to it. The complainant did not appeal the decision of the Migration Agency. He states that no effective legal remedy was available to him because an appeal would not have automatically suspended the expulsion order.

2.16 The Swedish police detained the complainant on 23 January 2018, the day of his planned release from imprisonment, to enforce the expulsion order. Following the Committee's request for interim measures on the same day, the Migration Agency decided to stay the enforcement of the complainant's expulsion order until further notice. The Migration Agency, which re-examines detention decisions every two months, has decided to maintain the complainant's detention.

The complaint

3.1 The complainant claims that there are substantial grounds for believing that, if returned to the Russian Federation, he risks exposure to torture and cruel, inhuman or degrading treatment. The State party's removal of the complainant would therefore violate article 3 of the Convention.

3.2 The assessment by the State party's authorities that the complainant is not in need of international protection is incorrect. The assessment failed to give due weight to his father's political activities, his own assistance to the insurgency in Chechnya prior to his flight and his affiliation with X. As recognized by the State party's authorities, X is a known opponent of the regime in Chechnya and would risk treatment contrary to article 1 of the Convention by the Chechen authorities upon return there. People previously affiliated with X have been subjected to torture.

3.3 Further, the authorities of the State party have not given due weight to the fact that Ramzan Kadyrov has continued to mention the complainant's father as an enemy of the regime, a video of which the complainant has shared with the Swedish authorities. In particular, in the context of the complainant's appeal against his criminal conviction, the advice by the Migration Agency did not take into account the additional documentation from Chechen organizations or the 2015 video of Ramzan Kadyrov, which only became available to the Migration Agency after it had already provided its advice to the Svea Court of Appeal. Additionally, the decision by the Migration Agency of 15 January 2018 wrongly states that no video had been made available to the authorities.

3.4 The complainant also refers to the general human rights situation in Chechnya, which he claims is marked by a prevalence of torture and collective punishment against opposition to the regime.

State party's observations on admissibility and the merits

4.1 In its observations on admissibility and the merits, dated 19 July 2018, the State party refers to its relevant domestic legislation and points out that the Swedish authorities considered the complainant's case in accordance with the Swedish Aliens Act of 2005 and article 3 of the Convention. It recalls the facts on which the communication is based, as well as the complainant's claim.

4.2 The State party does not contest that the complainant has exhausted domestic remedies. However, it submits that the communication should be declared inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the rules of procedure, because the complainant's claim that his expulsion to the Russian Federation would amount to a breach of article 3 of the Convention fails to rise to the minimum level of substantiation. However, in case the Committee declares the communication admissible, it should find that the complainant's expulsion to the Russian Federation would not constitute a breach of the Convention.

4.3 The assessments made by the Swedish Migration Agency and the courts reveal that they thoroughly examined the complainant's oral and written submissions. The State party recalls that the Committee has previously held that it is for the courts of States parties rather than the Committee to evaluate facts and evidence, unless this evaluation is clearly arbitrary or amounts to a denial of justice. In the case at hand, there is no reason to conclude that the assessments by the State party's authorities of the complainant's claimed need for international protection was arbitrary or amounted to a denial of justice. These assessments must therefore be accorded considerable weight.

4.4 Further, the State party submits that while it does not wish to underestimate the concerns that may legitimately be expressed with respect to the current human rights situation in the Russian Federation, the general human rights situation in the Russian Federation is not such as to entail a general need to protect all asylum seekers.

4.5 Moreover, the complainant has not shown that he personally faces a real risk of treatment contrary to article 1 of the Convention upon return to the Russian Federation. Both the Swedish Migration Agency and the courts in his immigration and criminal proceedings held hearings and interviews and conducted thorough examinations. The complainant thus had several opportunities to support his claim orally and in writing. The Swedish authorities have thus had sufficient information to adequately assess the complainant's claim for international protection.

4.6 In its overall assessment of the complainant's case, the Migration Agency found his asylum account to be neither credible nor sufficient to consider him in need of international

protection. Specifically, in its first-instance decision of 26 August 2013, the Migration Agency did not deem credible the complainant's account of his contacts with the Russian authorities or of his whereabouts when his passport was issued in 2004. It considered that the stamps in his domestic passport from 2004 and 2006, as well as the registration of his children in it, showed that the complainant was present in the Russian Federation in 2004 and 2006 and was in contact with the Russian authorities.

4.7 Further, the Migration Agency disputed the claimed authenticity of the certificate from Chechnya's representation abroad and the letter, allegedly from the representative of the Chechen Republic of Ichkeria, owing to their simple nature, lack of stamps, misspellings and lack of clarity as to their sources.

4.8 The Migration Agency also questioned the complainant's account of the decision by the Egyptian authorities to expel his father to Turkey, given that it had been the Russian authorities that had requested his arrest. The Migration Agency also found implausible the complainant's account that the authorities in Dubai had withdrawn his residence permit and decided to expel him to Azerbaijan, where he would not be entitled to stay or remain, and which furthermore had an extradition agreement with the Russian Federation. The Migration Agency disputed the complainant's claim that his involvement with the Muslim Brotherhood would have constituted a ground for his expulsion from Dubai.

4.9 Additionally, the return to the Russian Federation of the complainant and his family and the issuance of Russian travel documents and other official documentation to them shows that the Russian authorities have not had a particular interest in the complainant. The complainant has presented no new information or evidence to the Committee that would merit another conclusion.

4.10 The complainant argues that the Migration Agency incorrectly stated in its decision of 15 January 2018 that he had not shared a link to the 2015 video of Ramzan Kadyrov. However, in the complainant's criminal case, the Svea Court of Appeal expressly referred to the video in its judgment and the video must therefore be deemed to have been included in the examination by the court. Further, the complainant had the opportunity to appeal the decision of the Migration Agency of 15 January 2018. The Migration Court would then have had an opportunity to decide to stay the enforcement of the expulsion order. While an appeal would not have automatically suspended the enforcement of the expulsion order, the enforcement of the order had been suspended following the Committee's request for interim measures. Thus, the complainant had access to an effective legal remedy.

4.11 With regard to the complainant's claim for protection because of his father's political activities, the State party recalls that the complainant remained in his home town after his father's flight in 1999, got married, worked and assisted the rebel movement with food and lodging. He did not claim that he was sought out or subjected to ill-treatment on account of his father's activities or his religion during this time, or that his father continued his political activities after 1999. Moreover, the complainant did not resolve credibility issues pertaining to his account of the interrogation and torture.

4.12 The complainant's account that he risks treatment contrary to article 1 of the Convention upon return to the Russian Federation because of his association, through a criminal conviction in Sweden, with X is speculative. The alleged summons for interrogation in Chechnya does not mention the crime of which the complainant is suspected nor when it was issued. The entire summons is written in the same handwriting, even though parts must have been filled in by the person who received it. It is questionable that the Russian authorities would send the complainant a summons for interrogation in the Russian Federation knowing that he and X had been sentenced to imprisonment in Sweden and thus would be unable to abide by the summons. Further, the complainant did not know X before he entered Sweden and has not claimed any political or religious affiliation with him. If the Russian authorities were aware of the joint conviction of the complainant with X in Sweden, their association would be limited to the crime they had committed. The State party therefore contests the complainant's claim that the Russian authorities would find reason to interrogate the complainant about X or to subject him to ill-treatment.

Complainant's comments on the State party's observations

5.1 In his submission of 19 August 2018, the complainant challenges the State party's argument on the admissibility of his complaint, arguing that he has raised substantive issues under article 3 of the Convention, in particular concerning the question of whether the Swedish Migration Agency, in its decision of 15 January 2018, and the Svea Court of Appeal in his criminal case adequately assessed his stated need for international protection. The Svea Court of Appeal, as a general court not specialized in asylum cases, was obliged to request a statement from the Migration Agency before ruling on the complainant's expulsion. However, the Migration Agency did not have access to the 2015 video of Ramzan Kadyrov when it rendered its statement to the Court of Appeal. The reference to the video by the Svea Court of Appeal does not suffice to show that it included the video's content in its examination, as under Swedish law a general court is assumed to lack expertise in asylum matters. It is not stated anywhere that any Swedish court or the Migration Agency has seen the video and the decision of the Migration Agency of 15 January 2018 explicitly states that the video had not been made available to it. Furthermore, even though the Court of Appeal expressly referred to a statement from the Chechen Human Rights Centre, dated 17 June 2016, concerning the author, the same material should have been made available to the Migration Agency.

5.2 As for the complainant's continued residence in the Russian Federation until 2002, the fact that, as far as he knows, he was not wanted by the authorities does not of itself show that they had no interest in him. If the Chechen authorities had had the resources to subject everyone connected to the insurgency to persecution, there would not have been an insurgency. Further, the situation in Chechnya has changed compared to the years 1999–2002, as Akhmad Kadyrov only gained the current level of control over Chechnya after the complainant had already left the Russian Federation.

5.3 Concerning the complainant's return to the Russian Federation and his contact with the Russian authorities, that return was limited to a one-day visit to Gudermes around 2005, for which the complainant used documentation borrowed from a friend. Further, he paid an agent to obtain his international passports and to have his children and entry stamps added to his domestic passports. He was outside the Russian Federation when the authorities issued them. This account is supported by the Swedish border police's assessment that the tampering with the passport picture was "very skilful". The authorities did not explain why the complainant would resort to a counterfeit passport if he had no problems with the Russian authorities. He hid the passports in the airport only for fear of expulsion. As for the travel of his wife and children to Chechnya, the complainant states that his family's surname is not an uncommon name in Chechnya, that his wife was careful not to draw unnecessary attention to herself and that their stay in Chechnya says little about the complainant's own risk of treatment contrary to article 1 of the Convention in the Russian Federation.

5.4 As for the complainant's risk of such treatment because of his father's activities, the complainant notes that the Migration Court expressly did not question the veracity of his account of the attack by Kadyrov's forces on his father's home in 1999. Nor did the Migration Court question the claim that the complainant's father was a well-known adviser to Aslan Maskhadov. The 2015 video of Ramzan Kadyrov shows that he still considered the complainant's father a prominent enough enemy to mention, threaten and disparage in a public setting. None of the complainant's family members still resides in the Russian Federation. The practice by the Chechen authorities of collective punishment of families they regard as enemies contradicts the State party's claim that the complainant does not risk torture or ill-treatment because of the events before and during 2002.

5.5 The complainant's association with X should be considered, together with the complainant's family ties and personal history. The complainant could therefore be considered an opponent of the Chechen regime.

State party's additional observations

6. On 21 November 2018, the State party provided a further submission, in which it objects to the complainant's contention that it did not contest several of his assertions. It

contends that the complainant has not explained how he could have received a marriage certificate or his children's birth certificates without being personally present in the Russian Federation. The State party reiterates the assessment by the Migration Agency that the complainant's accounts are vague and contradictory, including with respect to his passport stamps, even though the complainant had several opportunities, orally and in writing, to explain his asylum application. There are no indications that the domestic proceedings were inadequate or arbitrary or amounted to a denial of justice.

Complainant's comments on the State party's additional observations

7.1 On 4 December 2018, the complainant provided comments on the State party's further submissions, reiterating that the State party had not provided any arguments against the complainant's account of his father's position as adviser to Aslan Maskhadov and his exile following the assault on his house by forces loyal to Ramzan Kadyrov; on the complainant's assistance in the insurgency between 1999 and 2002; and on the Migration Agency's self-stated lack of access to the 2015 video of Ramzan Kadyrov.

7.2 The complainant obtained his children's birth certificates through Russian embassies abroad and thus did not need to travel to the Russian Federation to obtain them. It was the complainant's wife who obtained the marriage certificate in Chechnya, which does not suffice to refute the complainant's assertion that he risks treatment contrary to article 1 of the Convention upon return to the Russian Federation.

Additional submissions by the parties

By the State party

8. In its further observations, dated 20 February 2019, the State party refers to the complainant's account that he obtained his children's birth certificates through Russian embassies rather than in the Russian Federation. The fact that the complainant only argued this in his comments dated 4 December 2018, after the State party had pointed out these discrepancies, undermines his credibility. The State party reiterates its objection to the complainant's assertion that it had not contested some of his statements and refers to its earlier submissions regarding the position and activities of the complainant's father.

By the complainant

9.1 In his further comments dated 11 July 2019, the complainant states that his father lives legally in Turkey under a different name. The complainant provides copies of his marriage certificate, the birth certificates of his children, the summons from the Russian authorities and the passport with which he entered Sweden.

9.2 On 8 August 2019, the complainant stated that he was unaware of any follow-up by the Russian authorities in relation to his non-compliance with the summons to appear for interrogation on 6 October 2016, noting that his detention since 2015 has rendered him unable to research this matter further. He is also unaware of the specific allegations against him, but believes that the summons relates to his association with X or to his material and financial support to the rebel movement in Chechnya. The complainant refers to publicly available information on X and the complainant, although without mentioning the latter by name, to which, in his submission, the Russian authorities also have access. The mere allegations presented against X, in addition to the murder charges, render him of great interest to the Russian authorities, and it is likely that the complainant, through his association with X, is also of interest to the Russian authorities. Furthermore, the fact that the complainant's father is a well-known opponent of Ramzan Kadyrov is likely to compound the Russian authorities' interest in and malignancy towards the complainant.

9.3 In the past, the complainant's father held refugee status in Turkey. The Turkish authorities did not accept the complainant's request for documentation of his prior status. His father had to change his name for legal reasons when he became naturalized.

9.4 The complainant married religiously in 2001, but needed to register the marriage only in 2006, when his family was preparing to move to Dubai. He was not personally present when the marriage certificate was issued. Instead, his wife was accompanied by his

cousin, because his uncle had bribed the official responsible for issuing the certificate. The complainant's passport issued in 2004 contains no Russian entry or exit stamps, showing he was not in the Russian Federation when the marriage certificate was issued. One of the complainant's children does not have a father mentioned in his birth certificate because he was feeling unsafe in that period, following his father's arrest in 2004.

By the State party

10.1 In its further observations dated 6 September 2019, the State party responds to the complainant's further submissions, dated 11 July 2019 and 8 August 2019. It refers to its prior submission on the summons and, with reference to the complainant's disagreement with the State party's appreciation of the summons, reiterates that he should have appealed against the decision of the Migration Agency of 15 January 2018. As for the complainant's confirmation that he does not know whether the Russian authorities have followed up on the summons he received in 2016 but that he has been unable to research this matter further, given his detention since 2015, the State party notes that his detention did not hinder his reception of the summons. The complainant is only speculating as to the specific allegations brought against him.

10.2 The State party reiterates its position on the complainant's contacts with the Russian authorities. The Swedish Migration Agency found the complainant's account of his contacts with the Russian authorities and his own whereabouts when he obtained his international passport in 2004 not credible. His domestic passport stamps and the entry of the children in his domestic passport show that he was in Russia and was in contact with the Russian authorities when his international passport was issued in 2004 and when stamps were entered in his domestic passport to confirm the registration of his marriage in 2006. The Swedish Migration Agency has referred to information on passport procedures in the Russian Federation indicating that one must be personally present when applying for and picking up an international passport, that one must present a domestic passport and that a check is made as to whether there is any warrant out against the applicant.

10.3 As for the complainant's stated need for protection on account of his father's position and activities in Chechnya, the State party reiterates its previous submissions in that regard and repeats that it is questionable that the Russian authorities would have had an interest in the complainant on this ground, given that the complainant remained in his home area for three years after his father fled. The complainant has thus failed to demonstrate plausibly that he runs a foreseeable, present, personal and real risk of being subjected to treatment contrary to article 1 of the Convention upon return to the Russian Federation, and the complaint should be declared inadmissible.

Issues and proceedings before the Committee

Consideration of admissibility

11.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

11.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint 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 not contested the complainant's assertion that he has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

11.3 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. Accordingly, the Committee finds no obstacles to admissibility, declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

12.2 In the present case, the issue before the Committee is whether the return of the complainant to the Russian Federation 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.

12.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to the Russian Federation. In assessing this risk, the Committee must take into account all relevant considerations pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such a 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 a sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.³

12.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, according to which the Committee will assess "substantial grounds" and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in the case of his or her deportation (para. 11).

12.5 The Committee recalls that the burden of proof is on the complainant, who must present an arguable case, that is submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real.⁴ The Committee gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings. The Committee will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.⁵

12.6 The Committee notes the complainant's submission that there are substantial grounds for believing that, upon return to the Russian Federation, he would be subjected to torture and cruel, inhuman or degrading treatment. He claims that this risk emanates from Ramzan Kadyrov's interest in the complainant because he is the son of an adviser to Aslan Maskhadov, because of his own assistance to a rebel movement between 1999 and 2002 and because of his association with X. He also claims to have been tortured by the Russian authorities in 2002 because of his assistance to rebels.

12.7 As for the complainant's claim that he was tortured in connection with his assistance to a rebel movement, the Committee observes that the authorities of the State party found the complainant's account to be vague and suffering from credibility issues for which he did not offer a reasonable explanation. The Committee furthermore recalls that previous torture, while one possible indication of a personal risk of treatment contrary to article 1,⁶ is

³ See *L.A. v. Sweden* (CAT/C/66/D/729/2016), para. 9.3, and *M.S. v. Denmark* (CAT/C/55/D/571/2013), para. 7.3.

⁴ General comment No. 4, para. 38.

⁵ *Ibid.*, para. 50.

⁶ *Ibid.*, paras. 18 (d), 29 (e) and 45 (g).

not of itself determinative in answering the question as to whether the complainant runs such a risk now.⁷

12.8 As for the complainant's fear of Ramzan Kadyrov's interest in him owing to his father's political activities, the Committee notes that while the State party objects to the complainant's assertion that it has not contested some of his claims and while it reaffirms that he has not submitted written evidence in this regard, the Swedish Migration Court, in its decision of 28 March 2014, stated that it did not question the credibility of the complainant's account that Ramzan Kadyrov's forces had assaulted his father's home in 1999. The Committee further notes that the complainant maintains that the continued interest of Ramzan Kadyrov in him is evident from the 2015 video of him stating that he "previously killed people such as them", referring to the complainant's father, and from the summons ordering the complainant to appear for interrogation.

12.9 In that regard, the Committee notes the State party's observation that much time has passed since the complainant's father was last politically active in 1999. Likewise, the complainant's claimed assistance to Chechen rebels occurred a long time ago and ceased 14 years before he received the summons to appear for interrogation in 2016.

12.10 Further, the Committee takes note of the State party's argument that the complainant has returned to the Russian Federation and that his wife and children, two of whom bear the complainant's last name, obtained passports from Russian embassies in 2006, 2011 and 2012, that they had no problems in doing so and returned to the Russian Federation four or five times for family visits. Moreover, as noted by the Swedish Migration Agency in its decision of 26 August 2013, the complainant's wife had stated that almost everyone knew of her father-in-law and that she was married to his son, and while she tried to avoid attention while in Chechnya, she did obtain a marriage certificate from the local authorities. While the complainant's wife was questioned about her identity, her veil and the father of her children, the complaint does not state that during their visits to the Russian Federation they suffered any problems that would support the complainant's claim that he runs a risk of treatment contrary to article 1 of the Convention. The Committee further notes that the complainant and the State party disagree as to whether, in addition to his return for one day in 2005, the complainant also returned to the Russian Federation on other occasions. The Committee observes that the complainant's domestic and international passports appear to contradict each other in that regard and that the State party's authorities did not find the complainant's account of how he obtained his international passport to be credible. It also observes that the State party concluded that his domestic passport had been tampered with. It further observes that the repeated contacts of his wife and children, two of whom bear his last name, with the Russian authorities and their visits to the Russian Federation, in a context where their identities are well-known but did not lead to problems, does not support the complainant's contention that he runs a foreseeable, present, personal and real risk of being subjected to treatment contrary to article 1 upon return to the Russian Federation on account of the events prior to those contacts.

12.11 As for the complainant's claim concerning his association with X, through a joint conviction and as further suggested by the summons, which he believes to relate either to his assistance to the rebel movement or to his association with X, the Committee notes the State party's contention that the complainant's explanation of the summons is speculative and does not demonstrate that he is being sought in the Russian Federation in connection with X. It also notes the State party's contention that the Russian authorities would have no reason to associate the complainant with X, other than the fact that they were convicted together in Sweden. Furthermore, the Committee notes, as observed by the State party, that the summons was drafted in the same handwriting throughout and does not mention the crime of which the complainant is suspected. It also notes that while the complainant explains that he does not know if the Russian authorities have followed up on his non-compliance with the summons given that his detention since 2015 has rendered him unable to research the matter further, the State party observes that the complainant's detention clearly did not preclude him from receiving the summons in the first place. The Committee

⁷ See, for example, *X, Y and Z v. Sweden* (CAT/C/20/D/61/1996), para. 11.2; and *B.N.T.K. v. Sweden* (CAT/C/64/D/641/2014), para. 8.7.

finds that the apparent absence of subsequent efforts by the Russian authorities to have the complainant appear as a suspect in a criminal case since 6 October 2016 and the absence of links between the complainant and X, other than their conviction, does not support his contention that he runs a foreseeable, present, personal and real risk of being subjected to treatment contrary to article 1 upon return to the Russian Federation on account of his association with X.

12.12 In the light of the above, including the absence of any problems on the part of the complainant's wife and children in the Russian Federation and with the Russian authorities and of any indications that the Russian authorities have followed up on the complainant's non-compliance with the 2016 summons, whose probative value has been questioned by the State party, the Committee considers that it is not in a position to conclude that Ramzan Kadyrov's alleged statement in 2015 that he had "previously killed people such as" the complainant's father indicates such a risk either.

12.13 The Committee refers to paragraph 38 of its general comment No. 4, according to which the burden of proof is upon the complainant, who has to present an arguable case. In the Committee's opinion, in the present case, the complainant has not discharged that burden of proof. The Committee therefore concludes that the complainant has not adduced sufficient grounds for it to believe that he would run a real, foreseeable, personal and present risk of being subjected to torture upon return to the Russian Federation.

13. The Committee against Torture, acting under article 22 (7) of the Convention, concludes that the complainant's removal to the Russian Federation by the State party would not constitute a breach of article 3 of the Convention.
