



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

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**Committee against Torture**  
**Forty-sixth session**  
9 May – 3 June 2011

**Decision**

**Communication No. 310/2007**

<i>Submitted by:</i>	Tony Chahin (represented by counsel, Mr. Bo Johansson)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	20 December 2006 (initial submission)
<i>Date of present decision:</i>	30 May 2011
<i>Subject matter:</i>	Deportation of complainant from Sweden to Syria
<i>Procedural issue:</i>	Substantiation of claim for purposes of admissibility
<i>Substantive issues:</i>	Deportation of person to another State where there are substantial grounds for believing that complainant would be in danger of being subjected to torture.
<i>Article of the Convention:</i>	3

[Annex]

\* Made public by decision of the Committee against Torture.

## Annex

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

concerning

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<i>Submitted by:</i>	Tony Chahin (represented by counsel, Mr. Bo Johansson)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	20 December 2006 (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 30 May 2011,

Having concluded its consideration of communication No. 310/2007, submitted to the Committee against Torture by Tony Chahin 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, his counsel and the State party,

Adopts the following:

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

1.1 The complainant is Tony Chahin, a Syrian national born in 1964, currently illegally residing in Sweden, where he returned in 2003, despite a lifetime prohibition to re-enter the country, and where he has since been living in hiding. He claims to be a victim of torture suffered following his deportation from Sweden to Syria in 1997 and that his anew deportation to Syria would again expose him to a risk of being subjected to torture, in violation of article 3 of the Convention. He is represented by counsel.

1.2 In his initial submission dated 20 December 2006, the complainant asked the Committee to request the State party to take interim measures by not deporting him to Syria until the Committee has taken a final decision on his communication. On 10 January 2008, the Special Rapporteur on New Communications and Interim Measures informed the complainant and the State party of his decision not to accede to the request for interim measures, while indicating that this decision could be reviewed and a request for interim measures formulated once the complainant would quit hiding. On 13 December 2007,

counsel informed the Committee that he had been unable to convince the complainant to quit hiding due to the latter's fear of being returned to Syria.

### **The facts as submitted by the complainant**

2.1 The complainant belongs to the Christian minority in Syria. In 1975, his family moved to Lebanon, where he joined the Lebanese Forces during the civil war in the 1980s, i.e. the Samir Jahjahs military group, an organization hostile to Syria. He took part in armed combat against the Syrian forces.

2.2 On 10 June 1989, the complainant married Mrs. Fehima Melki in Beirut. Before that, in May 1989, Mrs. Melki was informed that she had been granted a residence and work permit in Sweden, where her family had lived since 1986. In September 1989, following her arrival in Sweden, she applied for residence and work permits on behalf of the complainant, which were granted for a period of six months in December 1989 and later extended until January 1991 based on their marriage. In 1989 or 1990, the complainant arrived in Sweden. On 14 November 1990, he applied for a resident permit, a work permit and an alien's passport.

2.3 On 1 September 1991, the complainant had a fight with two men in a café in Norrköping, during which he stabbed one of the men in the back with a sharp object. As a result, the man died.

2.4 By judgment of 3 October 1991, the District Court of Norrköping convicted the complainant of manslaughter, sentenced him to 8 years' imprisonment and ordered his expulsion from Sweden once he served his prison sentence. The expulsion order included a permanent prohibition to return to Sweden. When determining the length of the prison sentence, the Court considered as a mitigating factor that the complainant would be expelled. During the proceedings, the Swedish Immigration Board submitted an advisory opinion, noting that the complainant had not applied for asylum and that there were no impediments to him being expelled.

2.5 On 18 October 1991, the Swedish Immigration Board rejected the complainant's application for a resident and a work permit because of the expulsion order against him.

2.6 The complainant appealed the judgment of the District Court only insofar as it concerned his expulsion. On 12 November 1991, the Göta Court of Appeal confirmed the lower court's judgment. On 20 December 1991, after the Supreme Court had decided not to grant leave to appeal, the expulsion order became final.

2.7 In August 1993, while serving his prison sentence, the complainant lodged an application for his expulsion order to be revoked, submitting that in 1979, he had been recruited by force by a Christian Falangist-Assyrian military organization, Rabeta El-Soryanie, and had been involved in armed combat against Muslim forces during the Lebanese civil war: On several occasions, he was wounded by shell splinters and gunshots. In 1989, he was captured by other Christian forces under General Aoun's command, detained, tortured with electrical shocks and by suspension in a water-filled tyre, and forced to fight on their side. After six months, he managed to escape and return to his own forces, and later to Sweden. He contended that, as Syria occupied most of Lebanon, he would be at risk of being persecuted, tortured and executed upon return to Lebanon due to his engagement in the Falangist forces during the civil war. On 3 February 1994, the Government rejected the application finding that there were no special grounds to revoke the expulsion order.

2.8 On 11 November 1996, the complainant lodged another application to have the expulsion order revoked, invoking his ties to his wife and three children in Sweden, as well as his engagement in armed combat as a member of a Christian military group and as a bodyguard of two high-ranking Christian politicians during the Lebanese civil war, which would expose him to a risk of torture and execution on return to Syria or Lebanon. On 19 December 1996, the Swedish Government rejected the application.

2.9 On 27 December 1996, a priest at the Norrköping prison, where the complainant was serving his sentence, lodged a further application with the Government on behalf of the complainant to have his expulsion order revoked. On 16 January 1997, the Government rejected the application.

2.10 On 5 January 1997, the complainant was deported to Syria, escorted by Swedish police, a Syrian security guard and an interpreter. Upon arrival at Damascus airport, he was accused of having participated in armed combat against the Syrian forces in Lebanon, thereby collaborating with "Zionist and Israeli interests". During long interrogations, he was questioned about the military group he had joined in Lebanon, and was forced to confess his guilt. He was subjected to torture.

2.11 On 7 October 1997, the Supreme State Security Court sentenced the complainant to three years' imprisonment with hard labour for membership in an organization pursuing the aim of overthrowing the social and economic order of the Syrian State. By joining the terrorist Samir Jahjahs group within the Lebanese Forces, which aimed at dividing Lebanon, he had committed high treason with the intention to undermine the Syrian State.

2.12 The complainant served his sentence in Saydnaya prison in Damascus. He spent the first nine months in solitary confinement, before he was placed in an ordinary cell. During imprisonment, he was subjected to torture and other inhuman and degrading treatment. However, the torture was not as frequent as during the interrogation by the security service. After serving his sentence, he was handed over to the army in 2000 to perform his military service for three years (one year more than the normal military service, in accordance with his sentence) in the town of Homas, where he worked under harsh conditions in an unarmed military construction unit.

2.13 In the beginning of 2003, the complainant finished his military service and settled in his home town Al-Jazire in northern Syria, where his family was living. On arrival, he was summoned to the local office of the security service, where the following restrictions were imposed on him: (a) to report to the security service every other day; (b) to apply for special permission any time he would leave Al-Jazire; and prohibitions (c) to leave Syria; and (d) to apply for state employment.

2.14 The complainant feared for his security and contacted a professional human smuggler who provided him with a forged Syrian passport and visa for France. He left Syria by plane and arrived in Paris, via Cyprus, in May 2003. After one or two days, he travelled to Hamburg, from where he went to Sweden in July 2003. After his departure from Syria, members of the security service regularly visited his family in Al-Jazire asking for him. On one occasion, the complainant's 80-year old father became so frightened that he required medical treatment in a hospital.

2.15 On 28 May 2003, the complainant's wife lodged an application on his behalf requesting that his expulsion order be revoked in light of his conviction in Syria and in order to allow him to reunite with his family. By decision of 10 July 2003, the Ministry of Justice rejected the application.

2.16 On 23 November 2004, the complainant lodged another application for revocation of the expulsion order, claiming that he had been (a) tortured through lashes with belts and sticks, electric shocks, squeezing into tyres, suspension by his arms and hands, and beating

of the soles of his feet (“falaka”) during interrogations by the Syrian security service in 1997 on the suspicion that he had fought against the Syrian forces during the Lebanese civil war; (b) convicted of membership in a terrorist group; and (c) that he had violated three of the four restrictions imposed on him. He claimed that he would face a risk of torture if returned to Syria, where he would be considered a security risk owing to his past activities in Lebanon and the fact that he had served a prison sentence for having committed a crime against the State. He would be detained and interrogated about his activities abroad. In support of his claim, he presented a copy of the judgment of the Supreme State Security Court, as well as a forensic medical report dated 7 September 2004 (examination on 26 August 2004) and a psychiatric report dated 15 September 2004 (examination on 25 August 2004), issued by experts of the Centre for Treatment of Crisis and Trauma Victims in Stockholm. The forensic medical report confirms that several scar formations on his body are consistent with the complainant’s description of his torture. The psychiatric report states that it is very likely that he suffers from a post-traumatic stress syndrome as a consequence of his experience of war and torture and, possibly, from a personality disorder. The complainant concluded that his risk of being subjected to torture constitutes an absolute impediment to his expulsion to Syria under the Swedish Aliens Act and articles 3 of the Convention and of the European Convention for Human Rights.

2.17 The Ministry of Justice sent the copy of the Syrian judgment and other documents to the Swedish Embassy in Damascus to verify their authenticity. On 16 March 2005, the Embassy confirmed that the judgment was authentic but not that he was prohibited from leaving Syria.

2.18 On 12 April 2005, counsel for the complainant commented on the information received from the Embassy, questioning its source and reliability.

2.19 On 11 October 2005, the Migration Board, at the request of the Ministry of Justice, submitted an opinion on the case. Based on the Swedish Embassy’s advice that no restrictions had been imposed on the complainant, the Board concluded that he would not face a risk of torture upon return to Syria. Therefore, there were no impediments to the enforcement of the expulsion order.

2.20 In a submission to the Government dated 9 November 2005, the complainant maintained that he had been prohibited to leave his home town, as well as Syria, and that he had been required to regularly report to the authorities. He argued that the imposition of restrictions on him was plausible in light of the political nature of the crime for which he had been convicted, and reiterated that it was unclear how any information to the contrary had been obtained by the Embassy.

2.21 On 21 June 2006, the Government rejected the complainant’s application, concluding that there were no special grounds for revoking the expulsion order against him.

### **The complaint**

3.1 The complainant claims that his deportation to Syria in 1997 constituted a violation by the State party of article 3 of the Convention. Despite the fact that his torture in Syria was foreseeable, as it was known that he had been engaged in the Lebanese Forces, that Syria considered such engagement as treason, and that torture was common in Syria according to international human rights reports, particularly in cases related to national security, the State party had summarily rejected his applications only to return him to Syria. His subjection to torture on return to Syria had been confirmed by two medical and psychiatric expert reports, had not been refuted by the State party, and must be attributed to the State party, in accordance with article 3 of the Convention.

3.2 The complainant claims that the State party would violate article 3 of the Convention, if it were to deport him to Syria again. It was an established fact that he had been gravely tortured and sentenced to three years' imprisonment for treason in Syria in 1997. International human rights reports indicated that the frequent use of torture by Syrian security forces had not changed since then. He argues that the Syrian security service considered him a security risk and as someone who could join political groups hostile to the regime in power and engage in activities against national interests. It was therefore plausible that the security service would keep him under surveillance by requiring him to regularly report to it and by restricting his freedom of movement. The imposition of restrictions on him was a logical consequence of his past engagement in the Lebanese Forces. He reiterates that the Swedish authorities have failed to refute his *prima facie* case of a risk of torture in Syria, in particular that he had violated the restrictions on him by fleeing the country.

3.3 For the complainant, it is inevitable that if he were to be returned, the Syrian authorities would investigate his activities abroad, suspect him of conspiracy against the Syrian State, and consider him a valuable source of information about anti-Syrian political circles abroad. Therefore, it was likely that he would be detained, interrogated and subjected to torture, which formed a routine part of the investigation process in Syria. The Syrian authorities' motive to extract information from him was considerable; and it was unlikely that they would refrain from using torture. Even in the absence of restrictions, there would still be a high risk that the Syrian security service would arrest him on arrival at Damascus airport and interrogate and torture him. The fact that he had previously been convicted of treason and that he had been expelled from a third country after a prolonged stay abroad for "unclear" reasons, made him a politically suspicious person.

3.4 The complainant submits that he has exhausted all available domestic remedies in Sweden, as the decision of the Ministry of Justice rejecting his application to revoke the court orders against him and to grant him a residence permit was final and not subject to any appeal. He also submits that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

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

4.1 On 10 October 2007, the State party made a submission on the admissibility and the merits of the communication, arguing that the complainant's claims about his present risk of being subjected to torture and that in 1997 are inadmissible under article 22, paragraph 2, of the Convention, for being manifestly unfounded. Subsidiarily, the State party submits that his claims are without merit.

4.2 On admissibility, the State party, after describing the relevant domestic legislation (the Penal Code and the 1989 and 2005 Aliens Acts), does not challenge that the complainant has exhausted all available domestic remedies in Sweden and that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. However, it considers that his claims about the incompatibility with article 3 of the Convention of his deportation in 1997, as well as of a possible second deportation, fail to rise to the basic level of substantiation required for purposes of admissibility. The State party concludes that the communication is inadmissible for being manifestly unfounded under article 22, paragraph 2, of the Convention and under rule 107(b) of the Committee's rules of procedure.

4.3 On substance, the State party recalls the Committee's General Comment on the implementation of article 3 of the Convention: While the Committee must take into account all relevant considerations when determining whether the forced return of a person to another country would violate article 3, including, where applicable, the existence of a

consistent pattern of gross, flagrant or mass violations of human rights, the aim of the determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in his or her country of origin. By reference to several human rights reports, the State party acknowledges that the, albeit somewhat improved, human rights situation in Syria continues to be problematic. At the same time, it recalls that such situation does not in itself suffice to establish that the forced return of the complainant was or would be in violation of article 3. In assessing whether the complainant faced or would face a foreseeable, real and personal risk of being subjected to torture on return to Syria, due weight must be attached to the credibility of his statements before the domestic authorities.

4.4 The State party submits that the complainant made incorrect, incomplete and contradictory statements about his nationality, age and family on several occasions:

(a) In his application for a resident and work permit in 1990, he stated that he was born in Beirut, Lebanon, in 1964, that his parents were of unknown citizenship and lived in Beirut, and that he had eight brothers and sisters, one of whom was Gabi C., who lived in Syria;

(b) During a supplementary investigation by the police in May 1991, he denied that he and his siblings came from Syria;

(c) During the criminal proceedings in 1991 and the proceedings concerning his applications for revocation of the expulsion order in 1993 and 1996, he claimed that he was a stateless Christian Syrian, born in Lebanon, brought up in the home of an older sister in Beirut, and unaware of the fate of his parents;

(d) During an interview in 1996, he denied that he was a Syrian citizen and stated that he had never seen his parents or been to Syria.

4.5 According to an inquiry report dated 17 June 1992 prepared by the Swedish Embassy in Damascus at the request of the Swedish police, the complainant was born in Malkie, northern Syria, as the son of Ibrahim C. and Myriam Y.; he had no brother named Gabi and left Syria at the age of 12 for Lebanon where he stayed for eight years until he went to Sweden. An excerpt from the Syrian family registry provided to the Swedish Embassy in 1996 contains information about a family called Chahin, registered as 773/Malkie, and consisting of two parents and 10 children, including one Anton Chahin born in 1968. However, it was not until the enforcement of the expulsion order in 1997 and his return to Sweden in 2003, that the complainant stated that he had been in possession of a Syrian passport and that he was a Syrian citizen born in Syria. In his November 2004 application for revocation of the expulsion order, he mentioned that his parents and siblings lived in Syria.

4.6 The State party submits that the complainant also provided contradictory information about his journey to Sweden:

(a) After initially stating that the time of his arrival in Sweden was August or September 1990, the complainant, in his August 1993 application for revocation of the expulsion order, changed that date to October 1990;

(b) In his November 2004 application for revocation of the expulsion order, he referred to the records of his examination at the Centre for Treatment of Crisis and Trauma Victims, according to which he had travelled back and forth between Lebanon and Sweden from 1984 to 1987 and, after two more years in Lebanon, had settled in Sweden in 1989;

(c) In his communication to the Committee, he repeated that he had arrived in Sweden in 1989;

(d) During the criminal proceedings in 1991, he stated that he had fled from Lebanon to Sweden in 1990 together with his family.

4.7 The State party challenges the complainant's claim that he had left Beirut on a Lebanese "laissez passer passport", based on information from the Swedish Embassy in Damascus that he was not registered with relevant authorities in Beirut.

4.8 The State party argues that it cannot be excluded that the complainant's scar formations result from causes other than torture suffered between 1997 and 2000. Even assuming that he was tortured on return to Syria in 1997, the compatibility of his deportation with article 3 of the Convention must be decided in light of the information that was known, or ought to have been known, to the State party at the time of the expulsion, although subsequent events are relevant to the assessment of the State party's knowledge. The State party argues that, prior to his expulsion in 1997, there were no substantial grounds for believing that the complainant would be tortured in Syria because:

(a) He had never applied for asylum in Sweden. During a supplementary investigation by the police in May 1991, the investigator specifically noted that since the complainant had applied for a residence permit in Sweden based only on his ties to Sweden, his political activities had not been examined in detail.

(b) It was not until his August 1993 application for revocation of the expulsion order that the complainant claimed that he would be at risk of being subjected to torture, and only if returned to Lebanon (rather than to Syria).

(c) It was only in April 1996, in an interview with the Swedish Immigration Board, and in his November 1996 application for revocation of the order, that he claimed a risk of torture if returned to Syria. However, he neither mentioned any torture suffered during the civil war in Lebanon nor did he submit any evidence to that effect.

(d) On several occasions before his expulsion, he had provided the Swedish authorities with contradictory, incorrect and incomplete information concerning his birthplace, age and family, the time of his arrival in Sweden and his travel documents. This had considerably complicated the authorities' task of making an adequate risk assessment prior to his expulsion to Syria.

(e) Prior to 1997, he had never claimed that he was wanted by the Syrian authorities for fighting against Syria during the Lebanese civil war or that he was at risk of being convicted of a State crime if returned to Syria. According to a protocol dated 8 January 1997 of the Norrköping police, he merely expressed concern during the journey to Damascus in January 1997 that he would be arrested for failing to perform his military service in Syria. However, he told the Syrian security guard escorting him that he had served a prison term in Sweden. At Damascus airport, he was welcomed by his brother, who gave him a Syrian birth certificate and identity card. He was handed over to the Syrian security service. When he told the immigration police that he had been in possession of a Syrian passport, the police replied that no Syrian passport had been issued for him and that he had failed to report for military service. The complainant stated that he had travelled to Sweden from Beirut on a Lebanese "laissez passer passport". The immigration police then informed the security service that he had served a prison sentence in Sweden for killing a Turkish Kurd and that the authorities in his home town Kamishli had requested his transfer to that town.

(f) The Swedish authorities could not foresee that the complainant would be detained by the Syrian security service and later be convicted of a State crime by the Supreme State Security Court. Similarly, they could not anticipate that he would incriminate himself by informing the Syrian security guard during the flight to Damascus that he had



been in prison in Sweden and by telling the immigration police upon arrival at Damascus airport that he had killed someone in Sweden.

4.9 In addition, the State party submits that the complainant has never applied for political asylum in Sweden and that it was not until he applied for revocation of the expulsion order in 1993 and in 1996 that he claimed to have a well-founded fear of being tortured on return to Syria and/or Lebanon, without providing any medical certificates or other evidence in support of his claim.

4.10 As regards the pending expulsion order, the State party challenges that any restrictions were imposed on the complainant after finishing his military service in Syria. Had he failed to report to the security service despite an order to do so, he would now be wanted and his name would be registered in a special database for in- and outward journeys. However, there was no indication that he was wanted, required to report to the security service or to apply for special permission to leave his hometown, or prohibited from holding state employment. Such restrictions would have been registered by the Syrian authorities. According to information received on 16 March 2005 from the Swedish Embassy in Damascus, no arrest warrant had been issued against the complainant in Syria. While it was likely that the security service would summon him for several years, the Embassy could not confirm that he was prohibited from leaving Syria. In the absence of any evidence, the complainant had failed to substantiate that he was wanted by, or otherwise of interest to, the Syrian security service.

4.11 The State party does not contest that the complainant was tortured in the past, as confirmed by the medical records of the Centre for Treatment of Crisis and Trauma Victims. However, from those records, it was not possible to draw any conclusions about when and where he had been tortured. The State party reiterates that it cannot be excluded that the torture took place before 1997, when he was captured by enemy forces in Lebanon in 1989, and that some of the scar formations result from war injuries. Moreover, it was not until August 2004, i.e. one year after his arrival in Sweden, that he went to see a doctor, and not until his application dated 23 November 2004 for revocation of the expulsion order that he claimed to have been subjected to torture in Syria in 1997.

4.12 The State party argues that, having served his prison term and having performed his military service, the complainant was no longer in default vis-à-vis the Syrian State. It was unlikely that he would still be considered a security risk by the Syrian authorities, given that the judgment of the Supreme State Security Court concerned acts dating back to the 1980s, and that he had apparently not been engaged in anti-Syrian activities in the recent past.

4.13 The State party concludes that the enforcement of the expulsion order in 1997 was not in violation of article 3 of the Convention; nor would the enforcement of the pending expulsion order against the complainant constitute a violation of that article.

#### **Complainant's comments on the State party's observations**

5.1 On 13 December 2007, the complainant commented on the State party's observations: On the facts, he submits that he was granted residence in Sweden in 1990 due to his marriage with Fehima Melki. In the 1980s, he lived in Lebanon where he joined one of the armed fractions of the Lebanese Forces. A military superior helped him to leave Lebanon for Cyprus, where he lodged an application for a resident permit at the Swedish diplomatic representation.

5.2 The complainant submits that the reason why he concealed his Syrian nationality and first told the Swedish authorities that he was born in Beirut, where he pretended his parents and siblings were living, was that for obtaining a resident permit, it was more

favourable to be a Lebanese citizen or a stateless person from Lebanon at the time. Thus, it was a common strategy among Syrian Christian asylum seekers to pretend to be Lebanese. Moreover, he self-identified as Lebanese. After his criminal conviction in 1991, he was afraid of being returned to Syria because of his engagement in a Syria-hostile fraction of the Lebanese Forces.

5.3 The complainant submits that before his criminal conviction, he had contacted the Swedish police to submit an application for refugee status under the 1951 Geneva Convention. However, he was advised that such an application was unnecessary, since he already had a resident permit.

5.4 The complainant states that on arrival at Damascus airport in 1997, he was brought to a special interrogation room where he was forced to disclose that he had served a prison term in Sweden.

5.5 The complainant explains that the reason why he stated that he had raised his torture in Syria in 1997 only in his November 2004 application, was that the May 2003 application that his wife had lodged on his behalf had been prepared by a non-lawyer. Only after receiving funds from Amnesty International in Sweden, he was able to undergo a medical and psychiatric examination at the Centre for Treatment of Crisis and Trauma Victims in August 2004 and to have the judgment of the Syrian Supreme State Security Court translated into Swedish to substantiate his torture claims.

5.6 The complainant reiterates that the State party has failed to disclose how and from what sources it had obtained the information that he was not wanted in Syria and that no restrictions had been imposed on him. He doubts that the Syrian authorities would share such secret and security-related information with a foreign, non-allied State, and claims that the State party has received inaccurate information, from which it has drawn its own conclusions.

5.7 On admissibility, the complainant argues that he has substantiated his risk of being subjected to torture on return to Syria by presenting a copy of the judgment of the Supreme State Council of Syria as well as medical evidence in support of his claim. Prior to his expulsion in 1997, he had substantiated his fear of being tortured in Syria based on his activities during the Lebanese civil war, even if he was unable to provide any medical evidence. The Swedish prison authority did not provide for free medical examinations of torture victims and his limited means as a prisoner did not allow him to arrange for a private examination. He concludes that his communication must be declared admissible under article 22, paragraph 2, of the Convention as being sufficiently substantiated.

5.8 On substance, the complainant argues that the State party has conceded that the human rights situation in Syria remained problematic. He submits several human rights reports to show that torture is frequently used by security agencies, especially in relation to security-related crimes and with regard to persons opposed to the Baath regime and to Syrian interests abroad. The State party was aware of his involvement in the Lebanese civil war; it was therefore foreseeable in 1997 that he would be arrested, detained, interrogated and tortured by the Syrian security service.

5.9 He claims that he continues to be personally at risk of being tortured in Syria. Even assuming that he had not violated any restrictions and that he would only be taken into preventive detention and referred to investigation for 10 to 14 days, as claimed by the State party, it would be more or less inevitable that he would be tortured again. The security service would have a special interest in him after his long absence from Syria and, notwithstanding the fact that he had served his Syrian prison sentence, would continue to consider him a security risk and a State enemy.

5.10 The complainant emphasizes that the State party has failed to refute that he had violated the restrictions imposed on him by the Syrian authorities. This was also supported by the fact that his father had been interrogated by the security service. His sister Georgette Chahin, his niece Carolin Chamoun, his nephew Josef Chamoun and his uncle Walid Chahin, all Swedish nationals and/or residents, were also interrogated by the security service about his whereabouts during visits to Syria between 2003 and 2007. His nephew was even subjected to ill-treatment during his interrogation.

5.11 For counsel, the complainant's credibility is not undermined by the fact that he had concealed his Syrian nationality and made contradictory statements about his arrival in Sweden: It is common for asylum seekers and migrants to provide authorities with incorrect information, whether on rational or irrational grounds. What matters is that he is a Syrian citizen and that he was deported to Syria in 1997 and interrogated, tortured and sentenced for a crime against Syrian national interests.

5.12 The complainant rejects the State party's argument that his scars might as well result from war injuries. The number of medical findings was 16 and that of torture symptoms 6. It was more likely that those sequels resulted from treatment by a state security agency with experience and knowledge in using torture as an interrogation method rather than by one of the Lebanese civil war factions. During the war, he had once been hit by a bullet causing him a minor flesh wound.

5.13 The complainant maintains that his deportation to Syria in 1997 violated article 3 of the Convention, and that another expulsion would violate the same article.

5.14 On 21 December 2007, the complainant submitted copies of the Swedish passports of his sister and nephew, showing that they had travelled to Syria in 2005 and 2006, respectively.

#### **State party's reply on the complainant's comments**

6.1 On 11 March 2008, the State party replied, reiterating that neither the deportation in 1997 nor the enforcement of the pending expulsion order were or would be in breach of article 3 of the Convention, respectively. There were substantial differences between the complainant's deportation in 1997 and the Agiza case, where the Committee had found that the Swedish authorities knew or ought to have known that Mr. Agiza, who had been sentenced in absentia and was wanted for alleged involvement in terrorist activities in his country of origin, would run a real and personal risk of being tortured if returned to that country. Unlike Mr. Agiza, the complainant had never applied for asylum in Sweden but was granted a residence permit based on his ties to Sweden. Had he been in need of protection, he would have applied for asylum directly on arrival in Sweden, irrespective of what the police had told him. The State party considers it unlikely that the police would have advised the complainant not to apply for asylum given that he had only been granted a temporary resident permit. Besides, the complainant was represented by a lawyer when he submitted his applications for revocation of the expulsion order in 1993 and 1996.

6.2 The State party emphasizes that, prior to his deportation, the complainant had not provided a wanted notice or any other evidence in support of his claim that he would be arrested and tortured in Syria because of his participation in the Lebanese civil war. In addition to providing the Swedish authorities with contradictory, incorrect and incomplete information about his identity, he had provided the Committee with different unconvincing explanations for those contradictions.

6.3 With regard to the pending expulsion order, the State party reiterates that the complainant has failed to provide any documents in support of his claim that he would still be considered a security risk and thus of special interest to the Syrian authorities. It reiterates that he has served his prison sentence and performed his military service, in

accordance with the judgment of the Supreme State Security Court, and that he has not claimed to have been involved in any political or other activities after 2003 that might be considered hostile to the Syrian regime. His claim that restrictions were imposed on him had been refuted by the Embassy report dated 7 August 2007, which states that even if he had left Syria illegally, he would probably only be sentenced to a fine. The Embassy report had been prepared “by a local lawyer with great knowledge of the Syrian system who carries out investigations on behalf of several European Embassies and United Nations bodies in Syria.” The complainant had failed to present any counter-evidence to refute the report or even to explain why he considers the information contained therein to be incorrect.

6.4 The State party recalls that according to the medical certificate dated 6 September 1991, the complainant had been in hospital twice during the Lebanese civil war after suffering splinter injuries to his legs. His latest submission to the Committee that he had only once been wounded by a bullet causing him a minor flesh wound was also inconsistent with his application in 1993 for revocation of the expulsion order, where he stated that he had been wounded by shell splinters and gunfire on several occasions. Moreover, during the domestic proceedings, the complainant also claimed that he had been tortured in Lebanon in 1989. The forensic medical report submitted by him only concludes that the scar formations on his body could have been caused between 1997 and 2000. For the State party, this does not permit any positive conclusions as to when and where the torture of the complainant took place.

6.5 The State party also challenges the complainant’s claim that the Syrian authorities forced him to disclose his prison term in Sweden on arrival at Damascus airport, recalling that according to the protocol of the Norrköping police, he had told the Syrian escort about his prison sentence during the flight to Damascus.

6.6 The State party dismisses as lodged out of time the information submitted by the complainant concerning the interrogation of his sister, niece, nephew and uncle by the Syrian security service during their visits to Syria. This information was not supported by any evidence and would have been available already at the time of the initial submission of the communication to the Committee.

6.7 Lastly, the State party informs that its decisions rejecting applications for revocation of expulsion orders are generally not motivated.

#### **Further comments by the complainant**

7.1 On 21 April 2008, the complainant sent further comments. In particular, he reiterates that there were sufficiently strong indications prior to his deportation in 1997 that he could be arrested and subjected to torture in Syria, even if those indications were not as strong as in the Agiza case.

7.2 The complainant argues that although he cannot prove that restrictions were imposed on him, this was highly probable given that he was a former convict. The State party had failed to show how its lawyer had obtained information to the contrary. In any event, he should be given the benefit of the doubt, in accordance with internationally recognized principles.

7.3 The complainant justifies the contradictions in his statements before the Swedish authorities with his mental condition. The psychiatrist at the Centre for Treatment of Crisis and Trauma Victims had confirmed that he could suffer from a personality disorder and that he was most likely suffering from a post-traumatic stress syndrome. Such contradictions could not change the fact that he was tortured in 1997 in Syria and that he would face a grave risk of being tortured if returned to that country again.

7.4 The information about the interrogation of the complainant's family members during visits to Syria was brought to counsel's knowledge by the family members. According to counsel, the complainant himself is extremely passive when requested to present information, a behaviour which was typical for persons suffering from post-traumatic stress disorder. It was not possible to obtain any evidence apart from the passport copies submitted by the complainant.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

8.1 Before considering an allegation in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. It notes that the State party has conceded that the complainant has exhausted all available domestic remedies. The Committee has also ascertained, as it is required to in accordance with 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 notes that the State party has raised an objection to admissibility to the effect that the communication is manifestly unfounded under article 22, paragraph 2, of the Convention. In this connection, the Committee considers that a distinction must be made between (a) the complainant's deportation to Syria in January 1997 and (b) the expulsion order currently pending against him.

8.3 With regard to the complainant's deportation in 1997, the Committee takes note of the State party's argument that even assuming that the complainant was tortured on return to Syria, such risk of torture must have been foreseeable at the time of the enforcement of the expulsion order against the complainant on 5 January 1997 for a violation of article 3 of the Convention to be found. The Committee recalls that the complainant did not apply for asylum in Sweden prior to his deportation. It also notes that his contradictory statements about his nationality, personal circumstances and his travel to Sweden before the State party's authorities undermined his credibility and made it more difficult for the Swedish authorities to assess his risk upon return to Syria. The Committee therefore finds that the complainant has failed to substantiate, for purposes of admissibility, that his risk of torture upon return to Syria was foreseeable for the State party at the time of his deportation. It concludes that this part of the communication is therefore inadmissible as manifestly unfounded under article 22 of the Convention and rule 113(b) of the Committee's rules of procedure.

8.4 With regard to the current expulsion order, the Committee considers that the complainant has adduced sufficient elements, including a copy of the judgement of the Syrian Supreme State Security Council and two medical reports, to substantiate his claim for purposes of admissibility. As the Committee finds no further obstacles to admissibility, it declares this part of the communication admissible and proceeds to the consideration of the merits.

#### *Consideration of the merits*

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

9.2 The issue before the Committee is whether the enforcement of the current deportation order against the complainant would violate the State party's obligation under article 3 of the Convention not to expel or return a person to a State where there are

substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.3 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture upon return, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in Syria. The aim of such an analysis is to determine whether a complainant runs a personal 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 notes that the State party itself acknowledged that the human rights situation in Syria remains problematic, and recalls its concluding observations on Syria adopted in 2010, where it expressed concern about “numerous ongoing and consistent allegations concerning the routine use of torture by law enforcement and investigative officials, at their instigation or with their consent, in particular in detention facilities.”<sup>1</sup> It also noted that “such acts commonly occur before formal charges are laid, as well as during the pre-trial period, when detainees are deprived of fundamental legal safeguards, in particular access to legal counsel.”<sup>2</sup> The Committee notes that in the meantime, the human rights situation in Syria has seriously deteriorated in connection with the government’s crackdown on the protests for political reforms.<sup>3</sup> In April 2011, during a special session of the Human Rights Council on the current human rights situation in Syria, all special procedures mandate holders of the United Nations Human Rights Council called upon the Syrian government to stop the use of violence and “to respect its human rights obligations, in particular with regard to the non-derogable rights to life and to freedom from torture and ill-treatment.”<sup>4</sup>

9.5 With regard to the complainant’s personal risk of being subjected to torture in case he is returned to Syria, the Committee notes that he has submitted documentary evidence in support of his claim, including a translation into Swedish of the judgement dated 7 October 1997 of the Syrian Supreme State Security Council convicting him of membership in a terrorist organization and sentencing him to three years’ imprisonment with hard labour. It also takes note of the forensic medical report dated 7 September 2004 and the psychiatric report dated 15 September 2004 from the Centre for Treatment of Crisis and Trauma Victims in Stockholm, which both confirm that it is likely that the complainant was subjected to torture in the past, without determining when such torture took place. It also notes the State party’s arguments relating to the complainant’s delay in submitting those documents and in raising his claims. However, the Committee considers that the complainant has provided satisfactory explanations for these delays, i.e. that his May 2003 application had been prepared by a non-lawyer and that it was only after receiving funds

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<sup>1</sup> Committee against Torture, 44<sup>th</sup> session (26 April-14 May 2010), Concluding observations: Syrian Arab Republic, UN doc. CAT/C/SYR/CO/1, at para. 7.

<sup>2</sup> *Ibid.*, at para. 7.

<sup>3</sup> Amnesty International, Follow-up to the concluding observations on Syria adopted at the 44<sup>th</sup> session of the Committee against Torture, 17 May 2011, at p. 4.

<sup>4</sup> Statement of all special procedures mandate holders of the United Nations Human Rights Council at the sixteenth Special Session of the Human Rights Council on the situation of human rights in the Syrian Arab Republic, 29 April 2011.

from Amnesty International that he was able to obtain the documents. It observes that even if the medical reports fail to specify when and where the complainant was tortured, they provide grounds which go beyond mere theory or suspicion for believing that he was tortured in the recent past.

9.6 In the light of the current human rights situation in Syria, the Committee does not consider it decisive whether or not any restrictions were imposed on the complainant following his military service in the beginning of 2003. It recalls that the State party itself has submitted that the complainant would be taken into preventive detention upon arrival in Syria for having left the country illegally and subsequently would be transferred for further investigation for 10 to 14 days. This combined with the fact that the complainant was convicted of anti-State crimes by the Supreme State Security Court in 1997 is sufficient in the present circumstances for assuming that there are substantial grounds for believing that he would be detained, interrogated about his reasons for leaving Syria and about his activities abroad and, during such detention and interrogation, exposed to a risk of being subjected to torture. The Committee observes that such risk is personal and present.

9.7 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 deportation of the complainant to Syria would amount to a breach of article 3 of the Convention.

10. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

[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.]