



**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. 627/2014\*, \*\***

<i>Communication submitted by:</i>	H. (represented by counsel, Mathias Blomberg)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	29 August 2014 (initial submission)
<i>Date of present decision:</i>	5 August 2016
<i>Subject matter:</i>	Deportation to Bangladesh
<i>Procedural issues:</i>	Examination by another procedure of international investigation or settlement; level of substantiation of claims
<i>Substantive issues:</i>	Risk of torture upon return to the country of origin
<i>Articles of the Convention:</i>	3 and 22

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

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

GE.16-20827(E)



\* 1 6 2 0 8 2 7 \*



1.1 The complainant is H., a national of Bangladesh born in 1984. He sought asylum in Sweden but his application was rejected. He claims that his deportation to Bangladesh would constitute a violation by Sweden of his rights guaranteed under article 3 of the Convention. The Convention came into force for Sweden on 26 June 1987 and Sweden has made the declaration under article 22 of the Convention. The author is represented by counsel.

1.2 On 5 September 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to expel the complainant while his complaint was being considered by the Committee.

### **Facts as presented by the complainant**

2.1 The complainant grew up in a village in the Feni District in Bangladesh. He lived there until 2005 with his parents, two sisters and two brothers.

2.2 Since a young age, the complainant has been an active member of the political party Jamaat-e-Islami and its student organization Islam Chatra Shibir. Jamaat-e-Islami is the largest Islamic party in Bangladesh, advocating for governance in line with the Koran. Since 1 August 2013, the party has been prohibited from taking part in national elections. As an active member, the author was distributing flyers and recruiting members. He became a well-known local representative for the party and secretary to the vice-president of the local Jamaat-e-Islami branch. Because of his popularity and influence, the complainant was predicted to become an important party leader.

2.3 The complainant became the target of several letters against his life. Each letter was addressed to “his business”, with no sender mentioned. The letters stated that if he did not distance himself from Jamaat-e-Islami and his religious and political work, he would be killed and his business ruined. Because Bangladesh is plagued by widespread political violence, the complainant suspected that the threats came either from the Bangladesh Nationalist Party or the Awami League (the governing party). The complainant sought the help of the authorities in vain. He stresses that the governing party in Bangladesh systematically uses the authorities to hinder and harass political opponents.

2.4 He also contacted other officials of Jamaat-e-Islami to discuss how to respond to the threats. At a meeting held with several high-ranking members it was decided that no violence would be used as a response. The complainant refused to be silenced and continued his religious and political work despite the threats.

2.5 In March 2012, about two months after he had received the most recent threats by letter, the complainant was kidnapped outside his business by five masked individuals and brought to an isolated room. He was subjected to severe beatings with iron tubes, some of them heated, to both his head and body. He was also burned with cigarettes, stabbed with sharp objects and had his Achilles tendon removed. As the kidnappers were torturing him, they asked him questions about his political and religious commitment and his work with Jamaat-e-Islami. They referred to the letters he had received and made clear that he had to stop his political and religious work. Having subjected him to severe torture, his kidnappers left him on the street. An unknown person found him and brought him to a nearby hospital.

2.6 After having spent a month in the hospital, the complainant had to leave, despite not having finished his medical treatment, as he feared that his kidnappers or their accomplices would find and hurt him again. After escaping from the hospital, he managed to hide in different locations. However, as he was living with a constant fear of detection, his situation was unbearable. He decided to leave Bangladesh. He left the country in August 2005, five months after the kidnapping. He travelled to Greece through Pakistan and Turkey.

2.7 Upon arrival in Greece, the complainant applied for asylum and a work and residence permit. His request for asylum was denied, but he was granted a temporary work and residence permit, renewable every six months. He stayed in Greece for several years and worked in restaurants in the Omonia and Varkiza districts. In 2012, the Greek authorities informed him that his work and residence permit could not be renewed owing to the economic situation in the country and he was advised to seek the protection of another country in order to avoid being sent back to Bangladesh. With the help of a friend, he travelled to Sweden by train and immediately applied for asylum upon arrival on 6 April 2012.

2.8 On 24 May 2013, the Swedish Migration Board rejected his asylum application. The complainant states that the Board found that he was not credible for the following reasons: his father had stated in a police report that he was an activist in the Bangladeshi Islamic Student Front, whereas the complainant stated he belonged to Jamaat-e-Islami. The complainant was unable to describe his activities in the party in a concrete way. He lacked knowledge of the names of the party's leaders and made sweeping statements regarding the reason for the incarceration of the party's leader. He stated at different points that he had and had not contacted the authorities for protection. In the light of evidence indicating that the authorities in Bangladesh do not regularly persecute or harass members of opposition parties, it does not make sense that the complainant did not contact the authorities and did not provide a reason for not doing so. The Migration Board also issued a two-year entry ban for the complainant on the grounds that he had submitted falsified documents to the authorities.

2.9 The complainant maintains that the asylum proceedings in Sweden were flawed. The Migration Board deemed some of the information he had supplied as vague, undetailed and conflictual, but this was either the fault of the interpreter or owing to the inadequacy of the Board administrator's note-taking. Although the complainant's former public defender stated to the Migration Board on 9 July 2012 that he had met with the complainant in order to go through the transcript from the interview, they never examined the entire transcript. Rather, the complainant was asked to clarify particular details. The complainant also maintains that he submitted extensive documentation of his need for protection to the Migration Board. After obtaining a report from a Bangladeshi lawyer, the Migration Board concluded that the documents were all falsified. The complainant contends that the documents in question were all sent to him by his family and he had no reason to doubt their authenticity.

2.10 On 19 June 2013, the complainant appealed the negative decision of the Migration Board to the Migration Court. He requested and was assigned a new public counsel, who ordered a proper medical examination, and a disability certificate was submitted with the appeal. The certificate, dated 17 October 2013 and provided by an orthopaedic specialist, stated that the complainant's skin changes were consistent with burns healed long ago and with bruises and cuts. The skin changes "are all healed and together with the information that they were caused in 2005, it can be assumed that the injuries at that time were very extensive and painful. No physical disabilities remain, but the patient suffers from emotional problems that are consistent with post-traumatic stress syndrome." Nevertheless, on 7 February 2014, the Migration Court found that there was no well-founded reason to believe that the complainant would face an individual and specific risk of persecution or ill-treatment in Bangladesh. However, the Migration Court overturned the two-year re-entry ban imposed by the Migration Board. The complainant sought leave to appeal to the Migration Court on 11 March 2014. On 12 June 2014, the Court rejected his request.

2.11 According to the complainant, since his departure from Bangladesh, his family has received several threats directed against him, the most recent on 1 June 2012. Unknown persons have also visited the family home inquiring about him several times.

2.12 On 22 August 2014, the complainant applied for interim measures to the European Court of Human Rights. On 27 August 2014, the Court rejected his request.<sup>1</sup> In this connection, the complainant states that his application to the Court was rejected as inadmissible without a reason, and that his case has therefore not been examined by any international court of settlement.

### **The complaint**

3. The complainant claims that by deporting him to Bangladesh, the State party would violate article 3 of the Convention. Owing to his involvement in Jamaat-e-Islami, which is prohibited from participating in elections in Bangladesh, he fears persecution by his political opponents there. He asserts that his opponents have already subjected him to torture once by beating, stabbing and burning him with cigarettes, resulting in his hospitalization. He argues that because of widespread corruption in Bangladesh, he cannot rely on the authorities for protection, because both the police and other authorities will be used as a tool against him. The complainant also maintains that nothing supports the statement of the Swedish authorities that the threat against his life would have diminished after eight years.

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

4.1 On 27 March 2015, the State party submitted its observations on admissibility and the merits. As to admissibility, the State party refers to article 22 (5) (a) of the Convention and observes that it follows from the complainant's submissions that he has previously lodged an application before the European Court of Human Rights, in which he also made claims about the alleged risk he would be subjected to if returned to Bangladesh. Thus, his application before the Court and his complaint before the Committee refer to the same parties, same facts and the same substantive rights, i.e. the same matter.<sup>2</sup>

4.2 Contrary to the complainant's view, the European Court of Human Rights has examined the complaint within the meaning of article 22 (5) (a) of the Convention. According to the decision of the Court, the application was inadmissible as his complaint, in the light of the material on file, did not disclose any appearance of a violation of the rights and freedoms set out in the European Convention on Human Rights or its protocols. Thus, the State party holds that the wording of the decision by the Court strongly indicates that the complainant's application was declared inadmissible for reasons related to the substance of his application, rather than on purely procedural grounds. Accordingly, the State party considers that the Court has examined the complainant's application within the meaning of article 22 (5) (a) of the Convention<sup>3</sup> and therefore the present complaint is inadmissible pursuant to article 22 (5) (a).<sup>4</sup>

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<sup>1</sup> The case file contains a copy of the decision of the Court of 27 August 2014. In the decision, the Court states, inter alia, the following: "In addition, in the light of all the material in its possession, and insofar as the matters complained of were within its competence, the Court ..., sitting in a single-judge formation, found that they did not disclose any appearance of violation of the rights and freedoms set out in the Convention or its Protocols and declared your application inadmissible".

<sup>2</sup> The State party refers to communications No. 305/2006, *A.R.A. v. Sweden*, decision adopted on 30 April 2007, paras. 6.1 and 6.2, and 140/1999, *A.G. v. Sweden*, decision adopted on 2 May 2000, paras. 6.2 and 7.

<sup>3</sup> The State party refers to Human Rights Committee communications No. 989/2001, *Kollar v. Austria*, decision on admissibility adopted on 30 July 2003, para. 8.4, and No. 584/1994, *Valentijn v. France*, decision on admissibility adopted on 22 July 1996, para. 5.2.

<sup>4</sup> The State party refers to *A.G. v. Sweden*, paras. 6.2 and 7, and *A.R.A. v. Sweden*, paras. 6.1 and 6.2.

4.3 The State party further notes that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of article 3 of the Convention if returned to Bangladesh fails to rise to the minimum level of substantiation required for purposes of admissibility. The complaint is therefore manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure.<sup>5</sup>

4.4 The State party notes that when determining whether the forced return of a person to another country would constitute a violation of article 3, the Committee must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in that country. However, the aim of such a determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country of return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not in itself constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture there. For a violation of article 3 to be established, additional grounds must exist showing a personal risk.<sup>6</sup>

4.5 The State party notes that when determining whether the forced return of the complainant to Bangladesh would constitute a breach of article 3 of the Convention, the following considerations are relevant: (a) the general human rights situation in Bangladesh and, in particular, (b) the personal risk to the complainant of being subjected to torture there.

4.6 The State party recalls the Committee's jurisprudence, according to which the burden of proof rests with complainants, who must present an arguable case establishing that they run a foreseeable, real and personal risk of being subjected to torture.<sup>7</sup> Such a risk must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable, it must be personal and present.<sup>8</sup>

4.7 The State party notes that, given that Bangladesh is a party to the Convention and to the International Covenant on Civil and Political Rights, it assumes that the Committee is well aware of the general human rights situation in that country. The State party therefore finds it sufficient to refer to the information regarding the human rights situation in Bangladesh, which can be found in a number of recent reports.<sup>9</sup>

4.8 The State party submits that while it does not underestimate the concerns that may legitimately be expressed with regard to the negative human rights developments in Bangladesh in 2013, the current situation, as described in the above-mentioned reports, is not in itself sufficient to establish that the deportation of the complainant would entail a

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<sup>5</sup> The State party refers to communication No. 216/2002, *H.I.A. v. Sweden*, decision adopted on 2 May 2003, para. 6.2.

<sup>6</sup> The State party refers to communications No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3, and No. 213/2002, *E.J.V.M. v. Sweden*, decision adopted on 14 November 2003, para. 8.3.

<sup>7</sup> See, for example, communications No. 178/2001, *H.O. v. Sweden*, Views adopted on 13 November 2001, para. 13, and No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, para. 7.3.

<sup>8</sup> See, for example, the Committee's general comment No. 1 (1997) on the implementation of article 3, paras. 5-7.

<sup>9</sup> The State party refers to Ministry for Foreign Affairs of Sweden, "Human rights in Bangladesh" (2013); International Federation for Human Rights, "Bangladesh human rights report 2013" (April 2014); United States of America Department of State, "Country reports on human rights practices for 2013 – Bangladesh"; and Human Rights Watch, "World Report 2014: Bangladesh".

violation of article 3 of the Convention.<sup>10</sup> Therefore, the State party contends that the removal of the complainant to Bangladesh would only entail a breach of the Convention if he could show that he would be personally at risk of being subjected to treatment contrary to article 3. However, the complainant has failed to do so.

4.9 The State party adds that several provisions in the Swedish Aliens Act reflect the same principles as those laid down in article 3 of the Convention. The Swedish migration authorities apply the same test when examining asylum applications as that applied by the Committee when examining individual complaints under article 3 of the Convention. The fact that such a test has been applied in the present case is shown by the reference of the Swedish authorities in their decisions relating to the present case to sections 1, 2 and 2 (a) of chapter 4 of the Aliens Act. Furthermore, according to sections 1-3 of chapter 12 of the Aliens Act, expulsion may never be enforced to a country where there are reasonable grounds to assume that the alien would be in danger of being subjected, inter alia, to torture or other inhuman or degrading treatment or punishment, or to a country where the alien is not protected from being sent to a country where he would be in such danger.

4.10 The State party adds that its national authorities are in a very good position to assess the information submitted by asylum seekers and to appraise its credibility. In the present case, the Migration Agency (formerly the Migration Board) thoroughly examined the complainant's case and conducted three interviews before rejecting the application. The interviews were conducted through an interpreter, whom the complainant confirmed that he understood well. During the asylum interview, lasting for two and a half hours, the complainant's legal counsel was also present. The purpose of the interviews was to give the complainant an opportunity to explain the reasons for his need for protection orally and all the facts he considered to be of relevance. After the asylum interview, the complainant stated that he believed he had presented all his reasons for seeking asylum. Furthermore, the complainant's legal counsel was invited to submit observations and comments on the minutes from the interview. Accordingly, the State party maintains that the complainant has had several opportunities to explain all relevant facts and circumstances in support of his claim and to argue his case, both orally and in writing. Thus, it must be considered that the Migration Agency and the Migration Court had sufficient information, together with the facts and documentation in the case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment of the complainant's need of protection.

4.11 In that connection, the State party recalls that the Committee repeatedly holds that it is not an appellate, quasi-judicial or administrative body and that considerable weight will be given to findings of facts that are made by organs of the State party concerned.<sup>11</sup> Moreover, in its case law, the Committee also reiterates that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice.<sup>12</sup> The State party contends, in the light of the above and given that the Migration Agency and the Migration Court are specialized bodies with particular expertise in the field of asylum law and practice, that there is no reason to conclude that the national rulings were inadequate or that the outcome of the proceedings was arbitrary or amounting to a denial of justice.

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<sup>10</sup> See Human Rights Committee communication No. 2149/2012, *M.I. v. Sweden*, Views adopted on 14 August 2013, para. 4.5.

<sup>11</sup> See the Committee's general comment No. 1, para. 9, and, for example, communication No. 277/2005, *N.Z.S. v. Sweden*, decision adopted on 22 November 2006, para. 8.6.

<sup>12</sup> See, for example, communication No. 219/2002, *G.K. v. Switzerland*, decision adopted on 7 May 2003, para. 6.12.

4.12 Further, the State party, as do its migration authorities, finds that the asylum account invoked by the complainant before the domestic authorities was vague, lacking in detail and, in some respects, even contradictory. He acknowledged shortcomings in various aspects of his asylum account before the Committee, even though he tried to be very clear in describing his activities during the asylum proceedings. He has, however, held that those shortcomings may be owing to interpretation problems, or that the asylum officer did not properly take notes of his account. He has furthermore stated that he and his counsel have not done a full review of the minutes from the asylum interview. In that regard, the State party reiterates that the complainant has had the opportunity to explain the relevant facts and circumstances in support of his claim and to argue his case during the domestic proceedings, orally as well as in writing, and that during the interviews he had access to a public counsel and a qualified interpreter. Following the asylum interview, the complainant confirmed that he had invoked all the reasons for seeking protection. In addition, the complainant and his counsel have also had the opportunity to review and submit observations and comments on the minutes from the interview.

4.13 The State party further points out that to substantiate his identity, the complainant submitted his national passport, a birth certificate, a population register certificate, a certificate of marital status and a certificate from the population register concerning his family situation. It notes that the national passport submitted was issued by the Embassy of Bangladesh in Rome after he had been in contact with the Bangladesh Consulate in Greece. According to the complainant, he presented a population register certificate in connection with his application at the Consulate in Greece that was procured with the help of his father. Therefore, the complainant did not have any contact himself with the authorities in his country of origin to get the documents issued. In that connection, the State party notes that the Migration Agency found that the population register certificate that formed the basis of the passport application was deemed to be of a "simple nature". In addition, the Migration Agency made reference to information from the Embassy of Sweden in Dhaka according to which forged legal documents, such as birth certificates and other documents, are common in Bangladesh. Further, the other documents that the complainant submitted to support his identity were also deemed to be of a "simple nature" and could not plausibly demonstrate the complainant's identity. In that context, the State party agrees with the finding of the Migration Agency that the complainant has failed to plausibly "demonstrate his identity".

4.14 During his asylum proceedings, the complainant submitted a new passport, issued on 11 September 2013 by the Embassy of Bangladesh in Stockholm. It is clear from the investigation in the case that the new passport was issued on the basis of the old passport. In that regard, the State party, as along with the Migration Court, notes that the new passport could not plausibly "demonstrate the complainant's identity" either, as the previous passport had not plausibly demonstrated his identity. This was owing to doubts about the documents on the basis of which the passport was issued and the appearance and authenticity of the passport. Nor had the complainant been able to plausibly "demonstrate his identity" on the basis of other documents submitted by him. In addition, the State party notes that that the complainant has on several occasions contacted the authorities in his country of origin and had matters dealt with, in particular, concerning the issuance of the passport. Those circumstances indicate that the complainant does not feel a well-founded fear of being subjected to treatment by the authorities, constituting grounds for protection, and also that he would not be of interest to the authorities.

4.15 According to the complainant's own account, he has, since he was young, been politically and religiously active in the Islamic party Jamaat-e-Islami and its student organization Islami Chatra Shibir. During the domestic asylum proceedings, he submitted a membership document of Jamaat-e-Islami in order to substantiate his need for protection. Furthermore, he held that he was kidnapped in March 2005 from outside his shop by unknown masked people who took him to an isolated area, where he was subjected to

serious violence. In support of his claim, he submitted to the Migration Agency a medical certificate from his country of origin and to the Migration Court an “invalidity” certificate issued in Sweden. The complainant also submitted copies of court documents from Bangladesh concerning his family’s police report of the assault to which he was subjected. In addition, he submitted a business certificate, business cards, eight photographs of his family’s home in Bangladesh and an appeal to the Greek authorities written by his parents.

4.16 In that connection, the State party notes that, like the Migration Agency, it considers that the photographs submitted of the complainant’s family are irrelevant. It also notes that in its decision, the Migration Agency considered that the document signed by the complainant’s parents could not be accorded any great importance as it consisted only of an appeal to the Greek authorities concerning the complainant. In addition, the Migration Agency noted that the membership document was of a “simple nature” and could easily be forged and that its probative value was thus low.

4.17 As regards the Bangladesh court documents submitted in support, the Migration Agency has had a local lawyer in Bangladesh verify their authenticity. The response from the Embassy of Sweden in Dhaka, which handled the contact with the local lawyer, showed that all of the court documents should be considered as forged. The documents were, for example, issued by a court that had not been established on the date on which they were issued and the stamps and signatures on the documents were also forged. Moreover, the judge who allegedly signed all of the documents in 2005 only started working in that court in 2008. The registration number on the police report showed that the case was not opened by the authorities until 2011 and not in 2005, when the alleged crime took place. The complainant, who was given the opportunity to respond to that information, rejected the information that the documents were forgeries. As the burden of proof is on the complainant, the State party maintains that he has not submitted anything to support the claim that a court existed in the location in question in 2005. In addition, the State party notes that the Migration Agency also considered that there was a lack of support for the complainant’s claim that “the individual official’s information was not reliable”.

4.18 As concerns the medical certificate from Bangladesh, the State party submits that the Migration Agency noted that the document consisted of a standard form that was signed and stamped and in which the medical information was handwritten. In the light of the “simple nature” of the document and as the Migration Agency had already questioned the written evidence concerning the alleged cause of the injuries the complainant sought to prove with this document, the Agency considered that the medical certificate had a particularly low probative value. The State party adds that the Migration Court also noted that the certificate was of a “simple nature” and had a low probative value. Moreover, the Migration Agency noted that the complainant had not submitted any noteworthy medical documentation from the Swedish health-care system concerning the physical injuries he claims to have suffered, even though he had had adequate time to do so. Although the certificate that the complainant submitted concerning a period of hospitalization dated 6 May 2013 states that he received treatment in Sweden, the Migration Agency observed that it contained no information concerning what led to the need for treatment or what exact treatment he received. The Migration Agency thus considered that the certificate of hospitalization in Sweden lacked a connection to his claimed need for protection with respect to his country of origin. In the light of that, the State party shares the view of the Migration Agency that the written evidence submitted by the complainant cannot prove in itself the threat and abuses to which he claims to have been subjected.

4.19 Furthermore, the State party notes that the complainant states to the Committee that the medical certificate from Bangladesh was of a “simple nature” and that he, regrettably enough, was never informed of the importance of documenting his injuries. The State party



emphasizes that the complainant was questioned about his medical status during the asylum proceedings and was encouraged to submit documents substantiating his claim.

4.20 Furthermore, the State party notes that within the appeals proceedings, the complainant submitted to the Migration Court an “invalidity” certificate issued on 17 October 2013. In that regard, the complainant refers to the judgment by the European Court of Human Rights in the case of *R.C. v. Sweden*<sup>13</sup> and maintains that the “invalidity” certificate, together with the medical certificate from Bangladesh gave a very clear indication that his injuries could be the result of torture. Even though the certificate he submitted supports the existence of injuries, in the State party’s view however, there are still uncertainties about how, when and why the injuries were inflicted on the complainant. In that connection, the State party refers to the judgment of the European Court of Human Rights in the case of *I. v. Sweden*,<sup>14</sup> in which the Court concluded that in order for a State to dispel doubts about evidence, it must at least be in a position to assess the asylum seeker’s individual situation. However, that may be impossible when there is no proof of the asylum seeker’s identity and when the statement provided to substantiate the asylum request gives reason to question his or her credibility. According to the established case-law of the Court, it is in principle up to the applicants to adduce evidence proving that there are substantial grounds for believing that in case of deportation he or she would be exposed to a real risk of being subjected to treatment contrary to article 3 of the Convention. Where such evidence is adduced, it is for the Government to dispel any doubts about it.

4.21 Accordingly, the European Court of Human Rights considered that where an asylum seeker invokes past ill-treatment that he or she has suffered, whether undisputed or supported by evidence, it may nevertheless be expected that he or she indicates that there are substantial and concrete grounds for believing that, upon return to the home country he or she would be exposed to a risk of such treatment again. In that context, the State party considers, as does the Migration Court, that the medical and invalidity certificates submitted by the complainant support his asylum account to a certain extent but that the written evidence is not such that he is considered to have plausibly demonstrated his need for protection on the basis of that evidence.

4.22 Before the Committee, the complainant claims that his long-lasting political and religious commitment led him to becoming a well-known local representative of the party. The State party, however, points out that during the interview with the Migration Agency on 2 May 2012, the complainant held that his political involvement primarily consisted of reading the Koran and campaigning for the introduction of Sharia law. In addition, the State party submits that the complainant has failed to demonstrate at the domestic level his alleged need for protection is plausible, as his asylum account regarding the structure of the party and his own function in the party were vague and lacking in detail. The Migration Agency noted in particular that the complainant was unable to expand in more detail on how the party works to achieve its goals in society; he had great difficulty outlining his duties within the party; and despite his stated position of secretary to the vice-president of the party, he was unable to present any concrete account of his duties. He also demonstrated a lack of knowledge of the names of the party’s leading members. Furthermore, the complainant spoke in general terms regarding the party leader’s imprisonment. The State party thus considers that the complainant has not plausibly demonstrated that he was such an active and prominent member of the party that it would warrant any great interest from anyone from the larger parties.

<sup>13</sup> Application No. 41827/07, judgment of 9 March 2010.

<sup>14</sup> Application No 61204/09, judgment of 5 September 2013.

4.23 In addition, the State party submits that the Migration Court also considered that the complainant did not have a senior position in the party. Further, the court noted that more than eight years had passed since the complainant left Bangladesh and no documentation had emerged to suggest that he continued to be politically and religiously active. Accordingly, the State party agrees with the Migration Court that the circumstances strongly suggest that the complainant would not be of special interest to the Bangladesh authorities.

4.24 The State party further notes the conclusions of the Migration Agency that the complainant had submitted contradictory information. In particular, during the interview the complainant stated that he had sought help from the authorities in Bangladesh but that they had not offered him any assistance. Later in the same interview, he stated that he had not contacted the authorities owing to his fear of their retribution. Furthermore, he then asserted that his parents had contacted the authorities, but not until he had left the country. However, according to a copy of his father's complaint, the complaint was filed on 17 July 2004, when the complainant was still in the country. In the light of the above and of the country of origin information, according to which the authorities do not routinely persecute or harass members of opposition parties, the State party shares the view of the Migration Agency that the complainant has not submitted a plausible explanation as to why he did not contact the authorities in his country of origin himself. The State party also emphasizes that the Migration Agency found it odd that the report filed is, according to the complainant, an open case with the authorities in his country, despite the fact that he has never been interviewed by the authorities about the alleged offences committed against him.

4.25 In the light of the foregoing, the State party maintains that the present complaint should be declared inadmissible under article 22 (5) (a) of the Convention, as the same matter has been examined under another procedure of international investigation; or under article 22 (2) for being manifestly unfounded. In the alternative, the State party submits that the present complaint reveals no violation of the Convention.

#### **Additional submissions by the parties**

5.1 On 10 August 2015, the complainant noted that even though his application to the European Court of Human Rights concerned the same matter as the present communication, nevertheless there was nothing in the letter from the Court clearly indicating that his application was declared inadmissible for reasons related to substance, rather than on procedural grounds, and that the application was decided on the merits. According to the complainant, the Court did not use its usual wording, namely that the complainant's claims were manifestly ill-founded.

5.2 The complainant further notes that the State party has referred to a number of reports on the general human rights situation in Bangladesh, but it did not refer to a Human Rights Watch report entitled "World report 2015: Bangladesh", which had already been released in January 2015, when the State party submitted its observations. He adds that another more recent report on the situation in Bangladesh was released by the United States Department of State on 25 June 2015 entitled "Country reports on human rights practices for 2014 – Bangladesh". According to the Human Rights Watch report of January 2015, hundreds of people were killed and injured in violent attacks in connection with the elections in Bangladesh in January 2014. The security forces carried out abductions, killings and arbitrary arrests, particularly targeting opposition leaders and their supporters, and unacceptable restrictions had been imposed on freedom of expression. Further, according to the Department of State report of June 2015, the most serious human rights violations during 2014 were extrajudicial killings and disappearances, and 10 individuals had been tortured to death by the security forces. That general information, according to the

complainant, is of great importance in assessing his personal risk of being subjected to treatment contrary to article 3 of the Convention upon return.

5.3 The complainant adds that his asylum proceedings in the State party were neither accurate nor comprehensive. He explains that his first interview was very short and related to his registration as an asylum seeker; the second was a proper asylum interview and, according to Swedish asylum case law, it is the only proper opportunity for asylum seekers to present their reasons for seeking asylum; and the third was a short meeting with the reception unit of the Migration Board. He confirms having a legal counsel representing him. However, the State party has failed to mention that the initially appointed counsel at times failed to answer the complainant's queries, letters and phone calls and even to take action, and as a result new counsel was appointed. Consequently, it is not correct for the State party to maintain that he had an opportunity to submit comments and observations through his assigned counsel. When the new counsel was appointed, within the appeals proceedings the complainant requested the Migration Court to allow an oral hearing in his case, in order to enable him to correct the mistakes committed during the asylum interview; however, his request was rejected by the court on 20 December 2013 and again on 7 February 2014. As to the alleged lack of medical documentation concerning his injuries and state of health, the complainant reiterates that his interests initially were not adequately represented. He further provides transcripts of the asylum interview records to show that he was never properly "encouraged" to submit medical documentation. He states that only after a new counsel was appointed, did he undergo a proper medical examination, as a result of which it was confirmed that his injuries were compatible with the story provided.

5.4 As to the issue of the authenticity of his passport, the complainant maintains that the State party has not presented objective arguments supporting the allegation that the Embassy of Bangladesh would actually issue a passport lacking authenticity without a plausible demonstration of his identity. He notes that since the Migration Board questioned the authenticity of his passport, he has approached the Embassy of Bangladesh in Stockholm in order to obtain new documents to prove his identity. The complainant adds that he does not fear the employees of the Embassy of Bangladesh, but rather the authorities in his home country and that for this reason he has never approached the authorities in Bangladesh. As to the allegedly forged court documents in Bangladesh, the complainant submits that he has contacted his lawyer there and has not received "an acceptable explanation (as) to why the court documents had shown the wrong court etc". In any event, his lawyer visited the "correct court in 2014 to retrieve proper documents". According to the retrieved copy of the complaint, a written complaint was submitted to police in Bangladesh by the complainant's father on 2 March 2005. The complainant contends that he took no part in submitting that complaint as he was at the hospital at the material time, was not aware of his father's actions and was told that the complaint was submitted after his departure. Accordingly, in the light of the foregoing arguments, the complainant submits that his claim is admissible.

6.1 On 1 February 2016, the State party submitted its further observations. It reiterates its previous arguments that the complaint is inadmissible given that the European Court of Human Rights has assessed the same subject matter of the complainant's claims that has been raised before the Committee. The complainant's application submitted to the Court concerned the same person, was based on the same facts and related to the same substantive rights as in the present complaint.<sup>15</sup>

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<sup>15</sup> The State party refers to communication No. 643/2014, *U. v. Sweden*, decision adopted on 23 November 2015, paras. 6.3 and 6.4.

6.2 As to the complainant's argument that he had been in contact with his lawyer in Bangladesh concerning the forged documents, but had not received an acceptable explanation as to why the documents had shown, for example, the wrong court, the State party recalls that after the Migration Agency had requested that a local lawyer in Bangladesh verify the authenticity of the documents, the complainant initially criticized the conclusion that the documents were forgeries. The State party finds it remarkable that the complainant has not at the present stage been able to provide an acceptable explanation regarding the false documents that were submitted. In addition, it is noteworthy that in his submission of 10 August 2015, the complainant presented similar documents, but from another court. In view of this, the State party maintains that the new evidence cannot be deemed reliable. It also raises questions about the credibility of the complainant.

6.3 As to the complainant's arguments in the context of the public counsel to him, the State party notes that according to the minutes of the interview at the Migration Agency on 11 April 2012, the complainant stated that he had no specific requirements and that he accepted the counsel appointed by the Migration Agency. The public counsel was appointed on 17 April 2012, he attended the interview on 2 May 2012 and posed questions regarding the complainant's reasons for asylum. A copy of the minutes from the interview was then communicated to the public counsel, who, on 9 July 2012, submitted further supplementary observations to the Migration Agency. Later in the proceedings, the public counsel was again given the opportunity to comment on the complainant's case when further questions were posed by the Migration Agency regarding his identity. On 29 April 2013, the public counsel requested an extension of the time limit as, despite two separate invitations and phone calls, he had not been able to contact the complainant. On 6 May 2013, the public counsel submitted his closing statements in the case. Furthermore, upon the complainant's request, by a decision of 12 September 2013, the Migration Court dismissed the counsel and appointed a new one, owing to the fact that the complainant had not been able to contact his counsel despite several attempts. However, according to the State party, in the light of the information on the complainant's asylum case file, it is evident that the first public counsel did perform his duties in a satisfactory manner. In addition, in the context of the complainant's request for oral hearing during the appeals proceedings, the State party notes that the Court found that an oral hearing was not necessary owing to the investigation carried out in the case and the nature of the case. The new public counsel was given an opportunity to submit his final observations and another request for an oral hearing. The State party notes that this demonstrates that the complainant had proper legal representation and was given the opportunity to present his case fully with the assistance of legal counsel throughout the asylum proceedings.

6.4 The State party adds that during the interview on 11 April 2012, the complainant, inter alia, accounted for his reasons for leaving his home country and what he risked if he were to return to Bangladesh. On 2 May 2012, the Migration Agency conducted an investigation regarding the complainant's reasons for seeking asylum. During the interview on 3 May 2012, he submitted information concerning his identity, passport, family situation, health, education and work. In that connection, the State party submits that according to the minutes of the interview held on 2 May 2012, the complainant was informed that it could be the only occasion to present his asylum claims orally. Further, he was informed that it was his responsibility to present all his claims and that it was important that all his reasons were presented during the investigation. The complainant confirmed that he understood the interpreter well. In that connection, the State party reiterates that the minutes of the asylum investigation were communicated to the public counsel, who later submitted five pages of supplementary information and arguments.

6.5 The State party finally reiterates its position concerning the significance of the invalidity and medical certificates from Bangladesh and notes several mistakes in the complainant's translations of the minutes of his asylum interview of 2 May 2012. In the

light of all the above, the State party reiterates that the present complaint is inadmissible and without merit.

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention.

7.2 The Committee takes note of the State party's observation that the complaint should be declared inadmissible under article 22 (5) (a) of the Convention, as the same matter has already been examined by the European Court of Human Rights. The Committee also takes note of the complainant's observation that his application to the Court was rejected as inadmissible without a reason and that its limited reasoning does not allow the Committee against Torture to conclude that the Court gave sufficient consideration to the merits of the case.

7.3 The Committee recalls that, in accordance with article 22 (5) (a) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the same matter has not been and is not being examined under another procedure of international investigation or settlement.<sup>16</sup> The Committee considers that a complaint has been or is being examined by another procedure of international investigation or settlement if the examination by the other procedure related or relates to the same matter within the meaning of article 22 (5) (a), which must be understood as relating to the same parties, the same facts and the same substantive rights.<sup>17</sup>

7.4 The Committee observes that the present complaint raises claims under article 3 of the Convention, relating to the alleged risk of torture to which the complainant would be subjected if removed to Bangladesh. Accordingly, in the light of the information contained on file, the Committee concludes that complainant's application submitted to the European Court of Human Rights on 22 August 2014 concerned the same person, was based on the same facts and related to the same substantive rights as those invoked in the present complaint, i.e. risk of torture upon return to Bangladesh. The Committee therefore proceeds to examine whether his application was examined by the European Court of Human Rights in the sense of article 22 (5) (a) of the Convention.

7.5 In the present case, the Committee observes that the European Court of Human Rights declared the complainant's application inadmissible as it considered that "the material in its possession ... did not disclose any appearance of violation of the rights and freedoms set out in the Convention or its Protocols". In those circumstances, the Committee considers that the decision of the Court was not solely based on procedural issues, but on reasons that indicate a sufficient consideration of the merits of the case.<sup>18</sup> Accordingly, the Committee considers that the claims raised by the complainant regarding the alleged risk he would face if deported to Bangladesh are inadmissible in accordance with article 22 (5) (a) of the Convention.

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<sup>16</sup> See, for example, *A.R.A. v. Sweden*, para. 6.1, and communication No. 642/2014, *M.T. v. Sweden*, decision adopted on 7 August 2015, para 8.3.

<sup>17</sup> See, for example, communication No. 479/2011, *E.E. v. Russian Federation*, decision adopted on 24 May 2013, para. 8.4, and *M.T. v. Sweden*, para 8.3.

<sup>18</sup> See, for example, communication No. 479/2011, *E.E. v. Russian Federation*, paras. 8.2-8.4 and *M.T. v. Sweden*, paras 8.4 and 8.5.

7.6 In view of the above, the Committee considers that the requirement of article 22 (5) (a) of the Convention has not been met in the present case.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (5) (a) of the Convention;

(b) That the present decision shall be communicated to the complainant and to the State party.

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