



# 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. 729/2016\*, \*\*

<i>Communication submitted by:</i>	I.A. (represented by counsel, Johan Lagerfelt)
<i>Alleged victims:</i>	The complainant and his two children
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	26 January 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 10 February 2016 (not issued in document form)
<i>Date of adoption of decision:</i>	23 April 2019
<i>Subject matter:</i>	Deportation to the Russian Federation; risk to life; risk of torture
<i>Procedural issue:</i>	Failure to sufficiently substantiate claims
<i>Substantive issue:</i>	Risk to life or risk of torture or inhuman or degrading treatment if deported to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is I.A., a national of the Russian Federation born in 1980, who brings claims on his own behalf and on behalf of his two minor children, M.A. and A.A. He claims that the State party would violate his rights and his children's rights under article 3 of the Convention if he was deported to the Russian Federation. The complainant is represented by counsel.

1.2 On 10 February 2016, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the complainant while the complaint was being considered.

1.3 By its note verbale dated 1 November 2018, the State party requested the Committee to lift its request for interim measures. On 18 March 2019, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to maintain its request for interim measures.

\* Adopted by the Committee at its sixty-sixth session (23 April–17 May 2019).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Honghong Zhang.

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**The facts as submitted by the complainant**

2.1 The complainant was living in the village of Asinovskaya in Chechnya from 1996. In 2007, his cousin, T.C., joined the Chechen rebel forces and the complainant helped him from time to time with food and clothing. At some unspecified date in 2007, the complainant's house was stormed by people wearing camouflage clothing who tried to abduct him, but his wife's entreaties stopped them. In 2009, T.C. killed a local policeman in the city of Grozny before being killed himself. Sometime later, in the middle of the night, two men came to the complainant's house and wounded him with a knife. When his family woke up, they fled. Soon thereafter the complainant discovered that the family of the policeman who had been killed by his cousin had declared a "blood feud". He, together with his father, attempted mediation, without success. The complainant did not approach the authorities, since he knew they would not take action.

2.2 The complainant does not specify his date of arrival in Sweden. He requested asylum on 2 September 2013. In his asylum application, he claimed that he could not relocate in the Russian Federation, since the family of the policeman killed by his cousin had contacts in the police and could find him anywhere, and because he had no relatives elsewhere in the Russian Federation. The complainant also explained in his asylum request that, in the past, he had assisted his cousin with food and clothing for the rebels.

2.3 The Swedish Migration Agency rejected the complainant's application on 12 September 2014. The Agency believed that the complainant was under the threat of a blood feud and could not turn to the Chechen authorities. It found, however, that, as a victim of a blood feud, the complainant did not come within the definition of refugee under the Aliens Act, which corresponds to the definition in article 1A of the Convention relating to the Status of Refugees and extends to non-State actors. It also concluded that, since the complainant was of no interest to the authorities, he could relocate to smaller coastal cities of the Russian Federation, like Murmansk, Saratov, Volgograd or Samara. On 16 March 2015, the Migration Court rejected the complainant's appeal and maintained the decision of the Migration Agency. On 11 May 2015, the Migration Court of Appeal denied the complainant leave to appeal the Migration Court's decision.

**The complaint**

3. The complainant claims that his deportation to the Russian Federation would violate his rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment because he would be at personal risk of being persecuted, tortured and ill-treated upon return. The author claims that the risk exists due to the blood feud declared against him, and his connections to the Chechen rebels.

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

4.1 By a note verbale dated 1 July 2016, the State party submitted its observations on admissibility and the merits, also recalling the facts of the case and providing excerpts from relevant domestic legislation. The State party submits that the complainant's case was assessed under the Aliens Act of 2005. The migration authorities, upon examination of the facts of the case, concluded that the complainant had not shown that he was in need of protection.

4.2 The State party provides its own translations of the proceedings of the Swedish migration authorities to show the reasoning behind the State party's decision to expel the complainant. The findings confirm that the complainant is not in need of protection and can be expelled to the Russian Federation. The complainant applied for asylum on 2 September 2013, and his request was rejected on 12 September 2014. The decision was appealed to the Migration Court, which on 16 March 2015 rejected the appeal. On 11 May 2015, the Migration Court of Appeal refused leave to appeal and the decision to expel the complainant became final.

4.3 On 5 June 2015, the complainant claimed before the Swedish Migration Board that there were "impediments" to the enforcement of the decision to expel him and requested a re-examination of his case. That request was rejected on 21 July 2015. The Migration Agency subsequently held discussions with the complainant to discuss his and his

children's voluntary return. According to the provisions of chapter 12, section 22 (1), of the Aliens Act, the expulsion order will be time-barred on 11 May 2019. It is therefore of the utmost importance to the State party that the Committee take a decision on the current case before May 2019.

4.4 The State party does not contest that the complainant exhausted all domestic remedies. However, the complainant failed to sufficiently substantiate his claims, and therefore his complaint must be considered inadmissible under article 22 (2) of the Convention.

4.5 Regarding the merits of the communication, the State party explains that, in considering the present case, it examined the general human rights situation in the Russian Federation and, in particular, the personal risk to the complainant of being subjected to torture if returned there. The State party notes that it is incumbent on the complainant, who must present an arguable case, to establish that he runs a foreseeable, real and personal risk of being subjected to torture.<sup>1</sup> In addition, while the risk of torture must be assessed on grounds that go beyond mere theory, it does not have to meet the test of being highly probable.

4.6 Regarding the current human rights situation in the Russian Federation, specifically in the northern Caucasus, the State party is aware of the situation, and refers to the recent reports, for example, by the International Crisis Group,<sup>2</sup> Amnesty International,<sup>3</sup> Human Rights Watch<sup>4</sup> and others. To briefly summarize the reports, the violence in the northern Caucasus has substantially decreased during the past two years. Many radical groups have left the Russian Federation for Iraq and the Syrian Arab Republic. While the violence has been reduced, violations of human rights still occur. Law enforcement agencies are responsible for enforced disappearances, unlawful detentions and torture and ill-treatment of detainees.

4.7 The State party concludes that the current situation in the Russian Federation in general is not such that there is a general need to protect asylum seekers from that country, although it "does not wish to underestimate" the legitimate concern about the human rights situation in the northern Caucasus. However, the current lack of respect for human rights in and of itself is not sufficient, and the complainant must show a personal and real risk of being subjected to treatment contrary to article 3 of the Convention.

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

4.9 The Migration Agency held multiple oral interviews with the complainant and his children. An introductory interview was held on 3 September 2013. On 4 October 2013, the Agency held another interview and a "child-focused parental interview" of the complainant and his two children. On 10 October 2013, another interview lasted almost four hours. In accordance with chapter 1, section 10, of the Aliens Act, special attention was given to the "health and development" and the best interests of the children. The complainant was represented by public counsel, and communicated through an interpreter. The complainant was further given an opportunity to scrutinize and comment on written records of all the interviews.

4.10 The State party therefore claims that both the Migration Agency and the Migration Court had sufficient information to make a well-informed, transparent and reasonable risk

<sup>1</sup> The State party refers, inter alia, to *H.O. v. Sweden*, communication No. 178/2001 (A/57/44), para. 6.12.

<sup>2</sup> "The North Caucasus Insurgency and Syria: An Exported Jihad?", 16 March 2016.

<sup>3</sup> "Russian Federation" in *Amnesty International Report 2015/16: The State of the World's Human Rights* (London, 2016).

<sup>4</sup> "Russia" in *World Report 2016: Events of 2015* (New York, 2016).

assessment. The State party wishes to recall that, according to the Committee's general comment No. 1 on the implementation of article 3 in the context of article 22, due weight must be given to findings of facts made by organs of the State party concerned.

4.11 The State party notes substantial inconsistencies in the submissions made by the complainant. For example, he stated that the last contact he had with the Chechen authorities was in 2007. Before the Migration Court, however, he claimed that after he left the Russian Federation the authorities had summoned him for interrogation and had threatened his wife and taken her travel documents. In his application to the Migration Agency dated 5 June 2015, the complainant stated that he had spoken to his father over the phone and that his father had subsequently been assaulted by the police and the police had set his father's house on fire. However, the complainant did not submit any documentation to support those claims. A copy of a certificate, dated 10 December 2014, was appended to the asylum application, stating that the complainant was wanted in Chechnya due to his connections with illegal armed rebels whom he assisted from 2012 to 2014. However, the complainant himself stated that he had helped only his cousin in 2008 and that his cousin was killed in 2009.

4.12 In his submission to the Committee, the complainant states that it was his wife's entreaties that stopped the law enforcement officers from taking him away. In his earlier testimony to the Migration Agency, it was his mother who stopped the potential abduction of the complainant by the law enforcement agents. In an overall assessment, the inconsistencies in the complainant's story and the late submission of additional documents cast doubt on the general credibility of his story.

4.13 As for the complainant's claims regarding risks related to relatives of the deceased police officer, the State party confirms that it is not disputed that the national authorities could not afford the complainant protection in Chechnya against the blood feud. Therefore, it must be assessed whether it is "reasonable and relevant" for the complainant to seek internal refuge in another part of his country of origin. The complainant claims that he would be registered by local authorities anywhere in the Russian Federation, and that he does not have any relatives outside of Chechnya. The complainant submitted a letter from the Office of the United Nations High Commissioner for Refugees (UNHCR) dated 4 February 2011, in which it states that the question of an internal flight alternative should be assessed on a case-by-case basis, in the light of the individual circumstances of the case. According to their assessment, the internal flight alternative should not be considered available to Chechen asylum seekers fleeing persecution.

4.14 The State party notes that the alleged threat against the complainant emanates from non-State actors. Article 1 of the Convention defines torture as severe pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity. Therefore, the risk from non-State actors falls outside of the scope of article 3 of the Convention.<sup>5</sup> The complainant submits that he suspects that the authorities are complicit in the threats against him and his family, given that the deceased was a police officer. The risk of torture, however, must be assessed on grounds that go beyond mere theory or suspicion.<sup>6</sup> The complainant's suspicion is not sufficient to conclude that his expulsion to the Russian Federation would constitute a violation of the Convention.

4.15 The State party recalls the Committee's jurisprudence in which it found that a complainant failed to substantiate that he would be unable to live a life free of risk of torture in a case where he also failed to establish a personal, present and foreseeable risk of being tortured.<sup>7</sup> While the resettlement within the country of origin may constitute a hardship for the complainant and his family, that does not amount to torture by itself. It is necessary to identify areas of the country to which it could be considered safe for the complainant to return.

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<sup>5</sup> The State party refers to *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.5.

<sup>6</sup> The State party refers to *A.B. v. Sweden* (CAT/C/54/D/539/2013), para. 7.9.

<sup>7</sup> The State party refers to *B.S.S. v. Canada* (CAT/C/32/D/183/2001), para.11.5.

4.16 The internal flight alternative is a recognized international and national principle. According to Swedish migration law, the internal flight alternative must be “relevant”, meaning that the asylum seeker must have access to effective protection in the part of the country other than his or her own home to which he or she returns. It must also be “reasonable” that the individual be expected to relocate. In the light of the relevant information, the Swedish migration authorities concluded that the complainant could register in another part of the Russian Federation where there were possibilities for him to find work and to attend school, and that there was nothing to indicate that he would encounter undue hardship if returned to those parts of the Russian Federation.

4.17 Furthermore, the State party notes that the UNCHR letter that the complainant obtained is from 2011, and submits that the situation has significantly changed in recent years and that it has become increasingly common for people from northern Caucasus to move to other parts of the Russian Federation. Regarding the complainant’s claim that the authorities would still find him when he registered at the new location in the Russian Federation, the State party submits that the complainant has not plausibly demonstrated that there is a “personal and real threat” against him emanating from the Chechen authorities.

4.18 The complainant has failed to demonstrate that there are substantial grounds for believing that he would face a personal, foreseeable and real risk of torture if returned to the Russian Federation. Since he failed to attain a basic level of substantiation, the communication should be declared inadmissible as manifestly ill-founded.

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

5.1 Responding to the State party’s comments on admissibility and the merits, the complainant submits that instead of considering the merits of the communication, the State party puts forward arguments based on the fact that the expulsion of the complainant would be time-barred after 11 May 2019. Had the State party carried out a proper investigation in accordance with its own law, the issue would have been decided in favour of the complainant and would not have been brought to the attention of the Committee.

5.2 The State party itself admits that law enforcement agencies in the Russian Federation resort to enforced disappearance, unlawful detention, torture and other ill-treatment. The State party then proceeds to ignore its own findings. The State party places importance on inconsistencies in the testimony by the complainant. Those inconsistencies are minor and easily explained by the trauma suffered during the contacts the complainant had with the authorities. According to the International Statistical Classification of Diseases and Related Health Problems, the prevalence of post-traumatic stress disorder can be as high as 80 per cent in the refugee population.

5.3 Regarding the certificate presented by the complainant to establish that he is wanted by the authorities, the State party notes that the document is of a “simple nature”, without noticing that that is how the certificates look in the Russian Federation. Regarding the absence of documentation on the assault of the complainant’s father, it is accepted as common knowledge that such assaults are hardly ever recorded in an official complaint to the authorities.

5.4 The position of UNHCR is that internal flight or relocation are not options for Chechens, because they are regularly discriminated against in other parts of the Russian Federation. Despite that information, the State party argues that an internal flight alternative is available to the complainant, which could constitute a “denial of justice” on the part of the State party. Moreover, although the State party submits that it only needs to identify areas for internal relocation that would be safe for the complainant, the State party fails to do so. It argues that the UNCHR letter is old, but provides no information as to whether UNHCR has changed its assessment.

5.5 The State party further argues that the pain and suffering that the complainant risks, would be inflicted by non-State actors. The State party, however, fails to consider that because the risk stems from the killing of a police officer, a public official, such an argument does not apply. In addition, such behaviour in the Russian Federation is always carried out with the passive acquiescence, if not the active consent, of the authorities.

5.6 The complainant considers that he has shown the risk of his being subjected to persecution, torture or cruel or degrading treatment and that the risk is personal, foreseeable and real, and therefore his expulsion to the Russian Federation would be in violation of article 3 of the Convention.

#### **State party's additional observations**

6. By note verbale dated 1 November 2018, the State party reiterated its previous position and requested early consideration of the present communication, arguing that the complainant's expulsion will be time-barred on 11 May 2019. If the new application is submitted before the Migration Agency, it will be examined anew, and will be subject to appeals before the Migration Court and Migration Court of Appeal. Therefore, once the expulsion order expires, the complainant's claim would be inadmissible due to non-exhaustion of domestic remedies.

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

7. The complainant rejects the argument by the State party that the communication should be considered as soon as possible. The main concern in this case should be justice for the complainant, and the State party should have carried out a proper investigation of his claims. If a new asylum request is submitted, the complainant hopes it will be considered in a more rigorous manner; but until then, the interim measures should remain in place.

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

##### *Consideration of admissibility*

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

8.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

8.3 The Committee notes the State party's submission that the communication is manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention. The Committee observes, however, that the complaint raises substantive issues under article 3 of the Convention and that those issues should be examined on the merits. As the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

##### *Consideration of the merits*

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

9.2 In the present case, the issue before the Committee is whether the removal of the complainant and his children to the Russian Federation would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to the Russian Federation. In assessing that risk, the Committee must take into

account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.<sup>8</sup>

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

9.5 The Committee notes the complainant’s claim that the family of the deceased police officer have declared a blood feud with him, that he attempted mediation, which was unsuccessful, and that he is afraid of being persecuted and tortured. The Committee also notes the State party’s argument that it accepts the fact of the blood feud as true, and that it also admits that the authorities in the Russian Federation cannot afford protection of the complainant in such cases. The Committee further notes the State party’s arguments that the threats emanate from non-State actors, further suggesting that the complainant should make use of a well-accepted practice of the internal flight alternative to settle in other regions of the Russian Federation than Chechnya, without specifying the region.

9.6 The Committee notes that, based on the assumption that an internal flight alternative was available to the complainant, the State party did not fully examine his claims regarding potential threats posed by his past activities, including the declaration of the blood feud. The Committee recalls, in this context, that the internal flight or relocation alternative does not represent a reliable and durable alternative where the lack of protection is generalized and the individual concerned would be exposed to a further risk of persecution or serious harm.<sup>9</sup> Also acting on the assumption of the possible flight alternative, the State party failed to give due determination to the certificate presented by the complainant that he is wanted by the Russian authorities, calling it “simple in nature”.

9.7 Furthermore, the Committee recalls that, according to paragraph 30 of its general comment No. 4, States parties should refrain from deporting individuals to another State where there are substantial grounds for believing that they would be in danger of being tortured or subjected to other ill-treatment at the hands of non-State entities, including groups that are unlawfully exercising actions that inflict severe pain or suffering for purposes prohibited by the Convention and over which the receiving State has no or only partial de facto control, or whose acts it is unable to prevent or whose impunity it is unable to counter. The Committee considers that the so-called “internal flight alternative”, that is, the deportation of a person or a victim of torture to an area of a State where the person would not be exposed to torture, unlike in other areas of the same State, is not reliable or effective.<sup>10</sup> The Committee therefore considers that, by rejecting the complainant’s asylum applications on the basis of the assumption of availability of an internal flight alternative and without giving sufficient weight to whether the complainant and his children could be at risk of persecution from non-State entities over which the State has no or only partial de facto control, the State party failed in its obligations under article 3 of the Convention.

<sup>8</sup> *M.S. v. Denmark* (CAT/C/55/D/571/2013), para. 7.3

<sup>9</sup> *Mondal v. Sweden* (CAT/C/46/D/338/2008), para. 7.4; *M.K.M. v. Australia* (CAT/C/60/D/681/2015), para. 8.9; and general comment No. 4, para. 47.

<sup>10</sup> General comment No. 4, para. 47.

10. In the light of the foregoing, the Committee, acting under article 22 (7) of the Convention, concludes that the deportation of the complainant and his two minor children to the Russian Federation would constitute a breach of article 3 of the Convention.

11. The Committee is of the view that, pursuant to article 3 of the Convention, the State party has an obligation to refrain from forcibly returning the complainant and his two minor children to the Russian Federation or to any other country where there is a real risk of them being expelled or returned to the Russian Federation. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.

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