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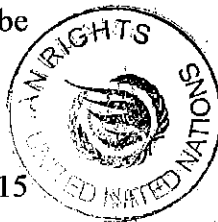
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CE/KH/ak 550/2013

The Secretary-General of the United Nations (High Commissioner for Human Rights) presents his compliments to the Permanent Representative of Sweden to the United Nations Office at Geneva and has the honour to transmit herewith the decision (Advance unedited version), adopted by the Committee against Torture on 8 May 2015, concerning complaint No. 550/2013, which was presented to the Committee for consideration under article 22 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on behalf of Mr. S.K.

In accordance with the Committee's established practice, this decision will be made public, without disclosing the complainant's identity.

8 June 2015





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

Advance unedited version

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Committee against Torture

Communication No. 550/2013

**Decision adopted by the Committee at its fifty-fourth session (20
April –15 May 2015)**

<i>Submitted by:</i>	Mr. S.K. et al (represented by counsel, Johan Lagerfelt)
<i>Alleged victims:</i>	The complainant and his wife and daughter
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	23 May 2013 (initial submission)
<i>Date of present decision:</i>	8 May 2015
<i>Subject matter:</i>	Deportation to the Russian Federation.
<i>Procedural issue:</i>	Non-substantiation of the claim
<i>Substantive issue:</i>	Risk of torture upon return to the country of origin
<i>Article of the Convention:</i>	3

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty fourth session)

concerning

Communication No. 550/2013*

Submitted by: Mr S.K. et al (represented by counsel, Johan Lagerfelt)

Alleged victims: the complainant and his wife and daughter

State party: Sweden

Date of complaint: 23 May 2013 (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 8 May 2015,

Having concluded its consideration of complaint No. 550/2013, submitted to the Committee against Torture on behalf of Mr S.K., his wife Ms Z.K. and their daughter M.K., 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 complainants are Mr S.K. (the first complainant), his wife Ms Z.K. (the second complainant) and their daughter Ms M.K. (the third complainant), all Russian nationals born in 1946, 1957 and 1993 respectively. Their request for asylum in Sweden was rejected and, at the time of submission of the complaint, they were awaiting deportation to the Russian Federation. They claim that by deporting them, Sweden would violate their rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by counsel, Johan Lagerfelt.

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupta Domah, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi, Kening Zhang.

1.2 On 24 May 2013, acting under rule 114, paragraph 1, of its rules of procedure, the Committee, acting through its Rapporteur on New Complaints and Interim Measures, requested the State party to refrain from expelling the complainants to the Russian Federation while their complaint is under consideration by the Committee.

The facts as presented by the complainants

2.1 The complainants used to live in Chechnya, in the Russian Federation. The first and the second complainant have three children, two sons and a daughter (the third complainant). Both sons have been involved in the resistance movement in Chechnya. As a result of their activities, they had to flee to Sweden, and were granted asylum there in 2006 and 2007 respectively.

2.2 In 2008, the first complainant visited the sons in Sweden for the first time. He then came back to Chechnya. In late autumn 2008, the complainants started to be harassed by armed and masked men they considered to be members of the Chechen authorities. These people stated that they wanted to "lay their hands" on their sons who had escaped to Sweden. The situation escalated over time, as intrusions were repeated and became more aggressive.

2.3 In November 2010, armed and masked men entered the family apartment, tore up their passports for travelling abroad so as to prevent them from leaving the Russian Federation, and threatened to abduct the third complainant. The men beat up the first complainant as he attempted to protect his daughter, and threatened to shoot him. They fired warning shots inside the apartment. Thereafter, the daughter was temporarily sent to Grozny with her uncle as a measure of protection, and the first and the second complainant managed to obtain new passports through bribes.

2.4 On 26 December 2010, the complainants entered Sweden and, on 29 December, they applied for asylum. On 13 October 2011, the Migration Board rejected their application on grounds that there was no 'general situation of strife' in the Russian Federation, and no evidence that the armed, masked men were linked to the Chechen authorities. The Board considered that the men who attacked the complainants were ordinary criminals, and that the family should turn to the Russian authorities for protection. The Board also suggested that the family should have taken refuge somewhere else in the Russian Federation, and raised the fact that the family did not immediately leave, but stayed for one additional month in Chechnya.

2.5 On an unspecified date, the negative decision of the Migration Board was appealed to the Migration Court. On 25 September 2012, the Migration Court rejected the complainants' appeal noting that the Russian Federation has the capacity and will offer protection to its citizens. The Court also observed that the names on the arrest warrants submitted as evidence by the complainants were not the same as the family's names in their passports as they were spelt differently on the provided copies of the warrants. On 29 November 2012, the Migration Court of Appeal denied the complainants leave to appeal. The decision of the Migration Board of 13 October 2011 to reject the complainants' asylum application therefore became final.

2.6 On 18 January 2013, the complainants applied again to the Migration Court, requesting to 'inhibit' the enforcement of the decision rejecting their asylum application. They submitted new written evidence supporting the fact that the parents had been summoned to be interrogated by the district prosecutor in Grozny for having assisted their sons to escape to Sweden, and that an arrest warrant had been issued by the prosecutor against them. On 4 March 2013, the Migration Board denied their request on the basis that nothing new had been presented by the

complainants. On 23 April 2013, the Migration Court once again stated that the family should apply for protection to the [Russian] authorities.

The complaint

3. The complainants claim that if they are to be deported to the Russian Federation, there are substantial grounds to believe that the harassments and persecution they previously experienced in Chechnya will escalate further. In particular, they stress that the father has been directly threatened with extrajudicial execution, and that the daughter has been threatened with abduction. The complainants also point out that the general human rights situation in Chechnya is such that the use of torture and other cruel and inhuman treatment is widespread. Their forcible deportation to the Russian Federation would constitute a violation, by the State party, of article 3 of the Convention.

State party's observations on admissibility and merits

4.1 By note verbale of 25 November 2013, the State party submitted its observations on the admissibility and merits. It recalls the facts of the case and notes that the complainants arrived in Sweden on 26 December 2010 and applied for asylum on 29 December 2010. On 13 October 2011, the Swedish Migration Board rejected their applications and decided to have them expelled to the Russian Federation. On 25 September 2012, the Migration Court rejected their appeal. On 29 November 2012, the Migration Court of Appeal refused to grant leave to appeal and the decision to expel the complainants became final on 17 December 2012. On 18 January 2013, the complainants claimed before the Migration Board that there were impediments to enforcement, and requested the re-examination of their case. The Swedish Migration Board rejected their request on 4 March 2013. The decision was appealed to the Migration Court, which, on 23 April 2013 rejected the appeal.

4.2 The complainants essentially claimed at the domestic level that they were subjected to threats by the Chechen authorities due to activities of first complainant and his wife's two sons, who allegedly were supporting rebels in Chechnya before they fled to Sweden where they were granted asylum in 2002 and 2006, respectively. The complainants claim that they were repeatedly visited in their home by masked men who threatened them and demanded that they convince the sons to return to Chechnya. The threats reportedly escalated over time and during a visit, in November 2010, the masked men tore the complainants' passports and threatened to abduct their daughter. The first complainant was reportedly assaulted on that occasion and gunshots were also fired in the apartment. After this incident, the third complainant moved to her uncle who lived in Grozny.

4.3 The State party further notes that according to article 22, paragraph 5 (a), of the Convention, the Committee 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 and notes that it is not aware whether the present case was or is subject to any other such investigation or settlement. Furthermore, the State party acknowledges that all available domestic remedies have been exhausted in the present case as required by article 22, paragraph 5 (b) of the Convention.

4.4 The State party further maintains that the complainants' assertion that they are at risk of being treated in a manner that would amount to a breach of article 3 of the Convention if returned to the Russian Federation fails to rise to the minimum level of substantiation required for purposes of admissibility. According to the State

party, the present communication is manifestly unfounded and thus inadmissible pursuant to article 22, paragraph 2, of the Convention and rule 113 (b) of the Committee's rules of procedure.¹ Should the Committee declare it admissible, the issue before the Committee would be whether the forced return of the complainants to the Russian Federation would violate the obligation of Sweden under article 3 of the Convention not to expel or return 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.

4.5 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, as the Committee has repeatedly emphasised, 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 to which he or she would be returned. Therefore, it follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country. For a violation of article 3 to be established, additional grounds must exist showing that the individual concerned would be personally at risk.²

4.6 In light of the mentioned, the State party notes that when determining whether the forced return of the complainants to the Russian Federation would constitute a breach of article 3 of the Convention, the following considerations are relevant: (i) the general human rights situation in the Russian Federation and, in particular, (ii) the personal risk of the complainant being subjected to torture, following his return there.

4.7 Furthermore, the State party recalls the Committee's jurisprudence, according to which the burden of proof in cases like the present one rests with the complainant, who must present an arguable case establishing that he runs a foreseeable, real and personal risk of being subjected to torture.³ In addition, the risk of torture 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.⁴

4.8 Regarding the general human rights situation in the Russian Federation, the State party notes that given that the Russian Federation is a party to the Convention; as well as party 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, including the situation in the northern Caucasus. In this regard, the State party therefore finds it sufficient to refer to the information regarding the

¹ The State party refers to *H.I.A. v. Sweden*, Communication No. 216/2002, Views adopted on 2 May 2003, para. 6.2.

² The State party refers to *S.L. v. Sweden*, Communication No. 150/1999, Views adopted on 11 May 2001, para. 6.3, and *E.J.V.M. v. Sweden*, Communication No. 213/2002, Views adopted on 14 November 2003, para. 8.3.

³ See e.g., *H.O. v. Sweden*, Communication No. 178/2001, Views adopted on 13 November 2001, para. 13, and *A.R. v. the Netherlands*, Communication No. 203/2002, Views adopted on 14 November 2003, para. 7.3.

⁴ See e.g., the Committee's General Comment No. 1, A/53/44, annex IX of 21 November 1997, paras. 5–7.

human rights situation in the Russian Federation, which can be found in recent reports such as U.S.A. Department of State, Human Rights Report on Russia 2012;⁵ Amnesty International's annual report 2012 – Russian Federation;⁶ Human Rights Watch's World Report 2012: Russia;⁷ the Swedish Migration Board, Country Profile Russia (Landprofil Ryssland den 25 Februari 2011);⁸ Ministry for Foreign Affairs, Sweden, Mänskliga rättigheter i Ryska Federationen 2011;⁹ Norwegian Country of Origin Information Centre, Temanotat: Tsjetsjenia Sikkerhetssituasjonen;¹⁰ Temanotat Nord-Kaukasus: Etterlysninger¹¹ and Temanotat Tsjetsjenia: Tsjetsjenske myndigheters reaksjoner mot opprørere og personer som bistår opprørere;¹² Danish Refugee Council, Flygttingenaevnets baggrundsmateriale, Landprofil: Tjetjenien 2012-22-30.¹³

4.9 The State party submits that while the existing reports show that the general level of violence and serious human rights violations in the Chechen Republic have decreased in recent years, there is still information about violations such as disappearances, abuse and killings. The State party does not underestimate the concerns that may legitimately be expressed with regard to the current human rights situation in the Russian Federation and especially in the region of North Caucasus. The current situation in Chechnya, however, does not in itself suffice to establish that the general situation in the region is such that the deportation of the complainants would entail a violation of article 3 of the Convention.¹⁴ Therefore, the State party contends that the removal of the complainants to the Russian Federation would only entail a breach of the Convention if they could show that they would be personally at risk of being subjected to treatment contrary to article 3. However, in the present case, the complainants have failed to substantiate their claims that they would run such a risk.

4.10 The State party observes that several provisions in the Swedish Aliens Act reflect the same principles as those laid down in article 3 of the Convention. Thus, the Swedish migration authorities apply the same kind of test when considering an application for asylum under the Aliens Act as the one applied by the Committee when examining subsequent complaints under the Convention. The fact that such a test has been applied in the present case is indicated by the reference of the Swedish authorities in their decisions relating to the present case to Chapter 4, Sections 1, 2 and 2 a of the Aliens Act. Furthermore, according to Chapter 12, Sections 1–3 of the Aliens Act, the expulsion of an alien 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 on to a country in which the alien would be at such risk.

⁵ <http://www.state.gov/j/dri/rls/hrrpt/humanrightsreport/#wrapper>.

⁶ <http://www.amnesty.org/en/region/russia/report-2012>

⁷ <http://www.hrw.org/world-report-2012/world-report-2012-russia>

⁸ <http://lifos.migrationsverket.se/dokument?documentSummaryId=24669>

⁹ <http://www.manskligarattigheter.se/sv/manskliga-rattigheter-i-varlden/ud-s-rapporter-om-manskliga-rattigheter/europa-och-centralasien?c=Ryssland>

¹⁰ http://www.landinfo.no/asset/2307/1/2307_1.pdf

¹¹ <http://lifos.migrationsverket.se/dokument?documentSummaryId=30526>

¹² http://www.landinfo.no/asset/2200/1/2200_1.pdf

¹³ http://flygtning.dk/viden-fakta/publikationer/landeprofiler/?eID=dam_frontend_push&docID=7077

¹⁴ See e.g. the recent judgment of the European Court of Human Rights, *I v. Sweden*, application No. 61204/09, 5 September 2013, para. 58.

4.11 The State party adds that its national authorities are in a very good position to assess the information submitted by an asylum seeker and to appraise the credibility of his or her claims. In the present case, the Migration Board and the Migration Court made thorough examination of the complainants' case. When they applied for asylum the Migration Board conducted individual interviews with all three complainants. The interviews lasted approximately two hours (the first complainant), one and a half hour (the second complainant) and two hours (the third complainant). The purpose of these interviews was to give the complainants an opportunity to explain the reasons for their need for protection and explain all the facts relevant to the Migration Board's assessment. The extensive interviews with the complainants were conducted in the presence of their legal counsel and also an interpreter, who the complainants confirmed that they understood well. Further, the complainants have argued their case in writing before the Migration Board and the migration courts. Throughout the procedure regarding the complainants' asylum request they were represented by a legal counsel. After the decision ordering the expulsion of the complainants gained legal force, the Migration Board has reviewed new circumstances invoked by the complainants. The decisions of the Migration Board were appealed against, but were not overturned by the migration court. Against this background, the State party holds that it must be considered that the Migration Board and the migration courts had sufficient information, together with the facts and documentations in the case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment of the complainants' needs for protection in Sweden.

4.12 In this connection, the State party recalls the Committee's General Comment No. 1 on article 3 of the Convention, as well as its jurisprudence, where it stated that the Committee is not an appellate, quasi-judicial or an administrative body, and that considerable weight will be given to findings of facts that are made by organs of the State party concerned.¹⁵ Moreover, the Committee has held 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.¹⁶

4.13 The State party contends in light of the above, and given that the Migration Board and the migration courts are specialised 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 domestic proceedings was arbitrary in any way or amounting to a denial of justice in the present case. The State party submits that great weight must be attached to the opinions of the Swedish migration authorities, as expressed in their rulings ordering the expulsion of the complainants to the Russian Federation.

4.14 In addition, the State party observes that the complainants have submitted before the Committee that expelling them to the Russian Federation would be in violation of article 3 of the Convention as upon return there they risk being subjected to torture as stipulated in article 1 in the Convention due to the activities of the complainants' sons/brothers before they left for Sweden. The complainants have

¹⁵ The Committee's General Comment No. 1 on article 3 of the Convention at para.9 and e.g., *N.Z.S. v. Sweden*, Communication No. 277/2005, Views adopted on 22 November 2006, para. 8.6.

¹⁶ See e.g., *G.K. v. Switzerland*, Communication No. 219/2002, Views adopted on 7 May 2003, para. 6.12

submitted that their sons/brothers have been suspected of having participated in rebel activities in the Chechnya region as they have assisted the rebels with food and medicine.

4.15 In this connection, the State party, like its migration authorities, finds a number of aspects that give reason to question the veracity of the complainants' claims. To begin with, the State party finds it pertinent to point to the fact that the complainants' sons/brothers were granted asylum in Sweden as there, at the time of their application, was an internal armed conflict in Chechnya and not on grounds of an individual need for protection. As the complainants have not even alleged that their sons/brothers were active in the rebel movement, other than occasionally providing food and medicine for rebels, before they left Chechnya, there are reasons to question the alleged interest by the Chechen authorities in the remaining family and its continued harassment of them so many years later.

4.16 The State party notes that according to available country of origin information, the nature of the conflict in Chechnya has changed in recent years, from being a conflict driven by separatism during 1999-2003/2005 towards a conflict rather based on radical Islamism. As a consequence of this change the Chechen authorities are not as interested in earlier rebels, especially not in those who have not been active during the last few years.¹⁷ According to the aforementioned country information, the Chechen authorities may exert pressure upon family members of suspected rebels; however the purpose of this pressure is to force the suspect to cease his or her rebel activity. In this regard, the State party therefore shares the migration authorities' view that it is not plausible that the Chechen authorities would exert pressure on the complainants years later in order to force them to convince their sons/brothers to return to the Russian Federation.

4.17 Furthermore, the State party finds it important to refer to available country of origin information according to which a substantial part of the population in Chechnya has supported rebels at some point and the fact that the authorities are currently not interested in people who have done so only sporadically. Moreover, the Chechen authorities focus on people who are suspected of having supported or collaborated with high-profile rebels and have given substantial support for a longer period of time.¹⁸ In this regard, the State party notes that the complainants' sons/brothers left the Russian Federation in 2002 and 2006, respectively. The complainants have not alleged that the sons/brothers, since their departure, have been in contact with the rebels or that they have supported them in any way. It has also not been shown that the sons/brothers gave the rebels any more substantial support other than sporadically bringing them food and medicine, or that they supported any high-profile rebels.

4.18 Furthermore, the State party shares the migration authorities' view that the complainants' descriptions of the masked men who visited their apartment and threatened them are vague and of a general nature. It is only an assumption on the complainants' part that the masked men had a connection to the authorities and no evidence had been brought forward to support this view. As the Swedish migration authorities noted in their decisions and judgments, the complainants remained in their home despite the alleged threats, which indicates that they did not find their need of protection as particularly urgent. The third complainant did move to her uncle's home after the last visit by the masked men, but the State party notes that the

¹⁷ See the Swedish Migration Board, *Country profile Russia*, dated 25 February 2011, pp. 23-24.

¹⁸ Ibid.

complainants did not consider the threat against her in the spring of 2010 to be that serious that she could not complete her studies at the municipal upper secondary school, which is supported by the submitted certificate of completed studies and by the complainants' own account. Moreover, the conduct of the third complainant and her family indicates that they considered the threat to be no more serious than it would cease by moving the third complainant to another town.

4.19 In addition, the State party notes that according to the available country of origin information it is common for individuals who are related to suspected rebels to be dismissed from their place of work. The first complainant has stated that he worked as a geophysicist for a company run by the Chechen authorities. According to his own account, he kept his employment until his departure from the country and has also stated that he did not encounter any problems at work. The State party shares the view of the Swedish migration authorities that these circumstances indicate that the complainants were not of any great interest to the Chechen authorities.

4.20 Moreover, the complainants have submitted their internal passports in order to support their identities. According to the stamps in the passports and the complainants' own account the passports were issued in 2009 and 2010 by the competent authorities in Grozny. The complainants were thus able to obtain these passports from the Chechen authorities in 2009 and 2010, despite the fact that the alleged threats towards them began in 2008. In this regard, the State party shares the Swedish migration authorities' view that this circumstance strongly speaks against the complainants' feeling an urgent threat from the Chechen authorities as well as the complainants being threatened by the Chechen authorities.

4.21 Further, the complainants have alleged that they have been summoned for questioning in the Russian Federation and have submitted documents in support of this claim. As the Swedish migration authorities have noted, the summonses are of a simple nature and the declared name of the second complainant's father is different from the name specified in her internal passport. The complainants have not explained who sent these documents to Sweden or how that person came into possession of them. The State party therefore shares the assessment of the Swedish migration authorities that these documents cannot be accorded any significant evidentiary value.

4.22 Furthermore, after the decision to expel the complainants became final and non-appealable the complainants claimed that there were impediments to enforcement of the decision to expel them given that as they had not complied with the summons, they were wanted by the authorities. In support of this claim they submitted arrest warrants from the prosecution office in Grozny. The complainants allege that the arrest warrants, which have been sent to the police and the security services, state that the complainants must be apprehended.¹⁹ The complainants have not explained how they managed to obtain these documents. In addition, the State party notes that arrest warrants are internal documents circulated only among authorities and to which an individual should have normally no access. Consequently, the State party is of the view that the complainants have not made their alleged need of protection probable by the submission of these documents.

¹⁹ Regarding arrest warrants etc see also the Norwegian Country of Origin Information Centre, *Temnotat Nord-Kaukasus: Etterlysninger*, dated 25 May 2013.

4.23 Moreover, the acts of violence and assaults that the complainants have alleged to have been subjected to are to be considered as criminal acts by private individuals. In this light, the State party also shares the migration authorities' conclusion that, it is primarily the duty of the Chechen authorities to protect their citizens from criminal acts committed by private individuals. According to available country of origin information the Russian Federation does provide protection against such criminal acts as the complainants claim to have been subjected to.²⁰ No evidence has been brought forward in this case to suggest that the Chechen authorities would lack the will or the capacity to protect the family from such criminal acts. Should the complainants be subjected to such acts upon return to Chechnya they should therefore contact the authorities for protection.

4.24 In light of the mentioned, the State party maintains that the circumstances invoked by the complainants are not sufficient to show that the alleged risk of torture or cruel, inhuman or degrading treatment or punishment, fulfils the requirements of being foreseeable, real and personal. Accordingly, the enforcement of the expulsion order would, under the present circumstances, not constitute a violation of article 3 of the Convention. Since the complainants' claim under article 3 fails to rise to the basic level of substantiation, the communication should be declared inadmissible as manifestly unfounded.

4.25 In view of the prevailing situation in the Chechen Republic as described in the aforementioned country reports, the State party notes that it is also possible and reasonable for the complainants to consider resettling in another part of the Russian Federation if they feel threatened by being exposed to criminal acts. It appears from relevant Russian law that a person is not obliged to return to his or her hometown to cancel his or her previous registration before settling in a new place, and the complainants would thus be able to settle in a new place of residence immediately upon return to the Russian Federation and register there.²¹

4.26 In sum, the State party maintains that the present communication should be declared inadmissible as manifestly unfounded under article 22, paragraph 2 and rule 113(b) of the Committee's rules of procedure or, in the alternative, that the present communication reveals no violation of the Convention.

The complainants' comments on the State party's observations on the admissibility and merits

5.1 In reply to the State party's observations, on 6 February 2014, the complainants firstly submit that the State party's arguments are not only contrary to the existing reports concerning the situation in the Russian Federation, but also to the report on human rights situation in the Russian Federation prepared by the State party's own Foreign Office. In that report, which is available only in Swedish, the situation is described in a more serious manner. According to this report, the Russian administration is characterized by widespread corruption and inefficiency, that human rights activists, journalists and whistle-blowers are harassed, subjected to violence, sometimes with fatal consequences and that, as a rule, the perpetrators are not prosecuted. Further, this report notes that the most serious violations against human rights still occur in the northern Caucasus. In the name of the fight against

²⁰ See e.g. the Swedish Migration Board, Country Profile Russia, dated 25 February 2011, page 70.

²¹ See e.g. the Swedish Migration Board, Country Profile Russia, dated 25 February 2011, page 70.

terrorism, abuses are inflicted on the civilian population in the form of torture, arbitrary arrests and kidnappings. There are also unconfirmed reports about political murders and disappearances sanctioned by the authorities, especially in the northern Caucasus. The report also notes that as in previous years, in 2011 a succession of attacks, threats and harassments of, inter alia, human rights activists, journalists, lawyers and so-called whistle-blowers have taken place. At the same time the security forces' assaults on the civilian population continued, primarily in the form of arbitrary arrests, kidnappings and torture – as a rule without judicial consequences. Few victims dare to complain due to fear of reprisals. It is therefore difficult to obtain reliable statistics on human rights violations in Chechnya. The NGO "Memorial" and the so-called 'mobile group' registered 14 disappearances in 2011 and describe them, on account of all the difficulties, as 'the tip of an iceberg'.

5.2 The complainants note that this report is only 24 pages long, yet it contains information describing the Russian Federation as a country that routinely abuses arrested persons and detainees, harasses those who complain about such abuses, for example, lawyers, activists, journalists, whistle-blowers and others who oppose the regime and those liable are not brought to justice and held accountable. Consequently, the complainants are surprised that the State party's authorities chose not to refer in their evaluation of their story to this report which was published by the State party's own Foreign Office.

5.3 The complainants further maintain that this report clearly demonstrates a consistent pattern of gross, flagrant or mass violations of human rights. In addition, as noted in the initial submission, the complainants have been subjected to increasing harassment and humiliation concluding in the final visit to their home by masked assailants with a gun being fired in their home.

5.4 Further, the complainants agree that, in principle, the State party is correct in stating that the Migration Board and the Migration Court are in a good position to assess the information submitted by an applicant. However, the reality is different. In this regard, the complainants note that the Migration Court has stated that it does not have a specific knowledge of countries and that it trusts the Migration Board's conclusions. Thus, it is clear that the Migration Court is, by its own admission, incapable of making a well-informed decision, that it relies completely on one party of the dispute and that applicants' chances of obtaining an impartial assessment are therefore non-existent. Therefore, it is not unreasonable to suspect that the evaluation of the facts and evidence by the migration courts has been substandard in the present case, to an extent that it amounted to a denial of justice. The fact that a court has particular expertise in the field of asylum law in itself is not sufficient to ensure that 'justice has been done in an equitable manner; impartiality and specific knowledge of the countries involved are prerequisites which are clearly missing in the present case'.

5.5 The complainants further take note of the State party's argument concerning the allegedly changing nature of the conflict in Chechnya. In this connection, they maintain that this argument is 'spurious' and, in any event, irrelevant. In this connection, the complainants refer to the former Council of Europe's Commissioner for Human Rights, who described the situation in Chechnya as "...an atmosphere of terror". In addition, the Parliamentary Assembly of the Council of Europe²² has also described the situation in Chechnya as "a climate of pervading fear", disappearances of government opponents and human rights defenders, reprisals against the families

²² <http://assembly.coe.int/>

of suspected fighters, and intimidation of the media and civil society, all in an atmosphere of "personalization of power".²³

5.6 Furthermore, as to the complainants' statement concerning the actions of the masked uniformed men, they submit that practically every Chechen seeking asylum can corroborate such stories. The fact that it is impossible to ascertain the identity of these assailants in no way diminishes the credibility of the complainants' story. The complainants did not pursue the issue of their harassment with the relevant authorities in the Russian Federation because they feared that such course of action would be meaningless since it is 'the authorities that are perceived to be the major threat to life and limb'. The general lack of accountability and the ability of the authorities to act with total impunity are two facets of life in the Russian Federation that have been commented on many times by many individuals and organizations.

5.7 As concerns the copies of the summonses provided by the complainants, they note that 'it has been established long ago that this is how the summonses look'. It is unclear why the State party continues to challenge the authenticity of these summonses as the spelling of the complainant's father's name is different in two different documents. They note that 'in Russian, all nouns, including names, are conjugated in six different cases. For example, a masculine noun/name ending in a consonant receives the suffix -a in the accusative, while a female noun/name with an ending in -a, changes the ending to the Russian -y, pronounced -oo'.

5.8 Finally, the complainants note that the attached to their initial submission letter from the UNHCR, Stockholm, states that it was not reasonable for a Chechen asylum seeker to seek refuge elsewhere in the Russian Federation. In this regard, they note that the State party has ignored this information in its observations in the present case.

5.9 In conclusion, the complainants maintain that the present communication and their claims are admissible, well-founded and reveal that their deportation to the Russian Federation would constitute a violation of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, 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.

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

²³ http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5701

Consideration of the merits

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

7.2 In the present case, the issue before the Committee is whether the return of the complainants 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.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture upon return to their country of origin. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 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.²⁴ 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.²⁵ 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.²⁶

7.4 The Committee recalls its General Comment No. 1 on the implementation of article 3, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable",²⁷ the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he faces a "foreseeable, real and personal" risk.²⁸ While under the terms of its General Comment the Committee is free to assess the facts on the basis of the full set of circumstances in every case, it recalls that it is not a judicial or appellate body, and that it must give considerable weight to the findings of fact that are made by organs of the State party concerned.²⁹

7.5 The complainants claim that, in the Russian Federation, they may be tortured as there are substantial grounds to believe that the harassments and aggression they previously experienced in Chechnya will escalate further.

²⁴ See *inter alia*, communication No. 519/2012, *T.M. v. Republic of Korea*, Decision adopted on 21 November 2014, para.9.3.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX, para. 6.

²⁸ *Ibid.* See also, communication No. 203/2002, *A.R. v. The Netherlands*, Views adopted on 21 November 2003, para. 7.3.

²⁹ See, *inter alia*, communication No. 356/2008, *N.S. v. Switzerland*, Decision adopted on 6 May 2010, para.7.3.

7.6 In this connection, the Committee notes that, even if it were to accept the claim that the complainants were subjected to ill-treatment and/or harassment in the past, the question is whether they remain, at present, at risk of torture if returned to the Russian Federation. The Committee notes that, at present, the human rights situation in the Russian Federation remains as a matter of concern in several aspects, in particular in the northern Caucasus. It recalls that it expressed its concerns in its concluding observations in the context of the examination of the fifth periodic report of the Russian Federation in 2012, quoting “numerous, ongoing and consistent reports of serious human rights abuses inflicted by or at the instigation or with the consent or acquiescence of public officials or other persons acting in official capacities in the northern Caucasus, including the Chechen Republic, including torture and ill-treatment, abductions, enforced disappearances and extrajudicial killings”³⁰. However, the Committee reiterates that the occurrence of human rights violations in his/her country of origin is not sufficient, in itself, to permit to conclude that a complainant, personally, runs a risk of torture.³¹

7.7 The Committee further notes that the State party has drawn attention to inconsistencies and contradictions in the complainants’ accounts and submissions which cast doubts regarding their general credibility and the veracity of their claims. In particular, the complainants have never sympathised with the resistance movement in Chechnya nor taken part in its activities. In this regard, the Committee takes note of the State party’s submission that the complainants’ sons/brothers were granted asylum in Sweden in 2002 and 2006 respectively as, at the time of their application, there was an internal armed conflict in Chechnya and not on grounds of an individual need for protection. The complainants have not alleged that their sons/brothers were active in the rebel movement, other than occasionally providing food and medicine for rebels, before they left Chechnya. Consequently, there are reasons to question the alleged interest by the Chechen authorities in the remaining family and its continued harassment of them so many years later. In addition, according to the available country of origin information a substantial part of the population in Chechnya has supported rebels at some point; however the authorities are currently not interested in people who have done so only sporadically. Moreover, the Chechen authorities focus on persons who are suspected of having supported or collaborated with high-profile rebels and have given substantial support for a longer period of time.³² In this regard, the Committee observes that the complainants’ sons/brothers left the Russian Federation in 2002 and 2006 and that the complainants do not allege that the sons/brothers, since their departure, have been in contact with the rebels or that they have supported them whatsoever.

7.8 Further, the Committee also takes note of the State party’s submission that the complainants’ descriptions of the masked men who visited their apartment and threatened them were vague and of a general nature and that it is only an assumption on the complainants’ part that the masked men had a connection to the authorities. In this connection, the Committee observes that no evidence had been brought forward to support the complainants’ allegation that they had been ill-treated and threatened by the Chechen authorities. Moreover, the Committee also notes that the complainants have not provided any medical documentation attesting that the first

³⁰ See Concluding observations on the fifth periodic report of the Russian Federation, adopted by the Committee at its forty-ninth session (29 October-23 November 2012), para. 13.

³¹ See, *inter alia*, communication No. 519/2012, *T.M. v. Republic of Korea*, Decision adopted on 21 November 2014, para.9.7.

³² See the Swedish Migration Board, *Country profile Russia*, dated 25 February 2011, pp. 23-24.

complainant had been subjected to ill-treatment in November 2010. Further, as the Swedish migration authorities have noted during the domestic proceedings, the complainants remained in their home despite the alleged threats. Moreover, the third complainant did move to her uncle's home after the last visit by the masked men, but the complainants did not consider the threat to be that serious that she could not complete her studies at the local secondary school. In addition, the conduct of the complainants indicated that they considered it to be sufficient that the third complainant moved to Grozny in order to cease the threats against her. Furthermore, at the domestic level the complainants submitted their internal passports in order to support their identities. According to the stamps in the passports and the complainants' own account the passports were issued in 2009 and 2010 by the competent authorities in Grozny. In this connection, the Committee observes that the complainants were able to obtain these passports from the Chechen authorities in 2009 and 2010, despite the fact that the alleged threats towards them began in 2008.

7.9 Finally, the Committee takes note of the State party's submission that the complainants have alleged that they have been summoned for questioning in the Russian Federation and that two arrest warrants have been issued in their names; however, the complainants had never explained who had sent these documents to Sweden or how that person came into possession of them. In this connection, the Committee notes that no explanation has been provided regarding the source of these documents also to the Committee.

7.10 The Committee further observes that the complainants merely stated before the Migration Board and the Migration Court that they feared being subjected to further ill-treatment, if returned to the Russian Federation, claiming that they were harassed in the past, and that they would be targeted again. The Committee, however, notes that the State party's authorities thoroughly evaluated the complainants' allegations and story, and found it to generally lack credibility.

7.11 The Committee recalls its jurisprudence whereby the risk of torture must be assessed on grounds that go beyond mere theory, and indicates that it is generally for the complainant to present an arguable case.³³ In light of the considerations above, and on the basis of all the information submitted by the complainants and the State party, including on the general situation of human rights in the Russian Federation, the Committee considers that the complainants have not provided sufficient evidence to enable it to conclude that their deportation to their country of origin would expose them to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

8. Accordingly, 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 complainants' return to the Russian Federation would not constitute a breach of article 3 of the Convention by the State party.

³³ See communication No. 298/2006, *C.A.R.M. et al. v. Canada*, para. 8.10, decision adopted on 18 May 2007; No. 256/2004, *M.Z. v. Sweden*, para. 9.3, decision adopted on 12 May 2006; No. 214/2002, *M.A.K. v. Germany*, para. 13.5, decision adopted on 12 May 2004; No. 150/1999, *S.L. v. Sweden*, para. 6.3, decision adopted on 11 May 2001; and No. 347/2008, *N.B.-M. v. Switzerland*, para. 9.9, decision adopted on 14 November 2011.

