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IP/TK/ak 530/2012

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 4 August 2015, concerning complaint No. 530/2012, 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 X., Y & Z.

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

I.P.
7 September 2015





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

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Committee against Torture

Communication No. 530/2012

**Decision adopted by the Committee at its fifty-fifth session (27
July – 14 August 2015)**

<i>Submitted by:</i>	X., Y. and their daughter Z. (represented by counsel Tatsiana Turgot)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	9 November 2012 (initial submission)
<i>Date of decision:</i>	4 August 2015
<i>Subject matter:</i>	Deportation to Belarus
<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]



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-fifth session)

concerning

Communication No. 530/2012*

Submitted by: X., Y. and their daughter Z. (represented by counsel, Tatsiana Turgot)

Alleged victims: the complainants

State party: Sweden

Date of complaint: 9 November 2012 (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 ... August 2015,

Having concluded its consideration of complaint No. 530/2012, submitted to the Committee against Torture by X., Y. and their daughter Z., 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 complainants, their counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention against Torture

1.1 The complainants are Mr X. (the first complainant) and his wife Ms Y. (the second complainant), both Belarussian nationals born in 1978 and in 1973 respectively. They submit the complaint on their behalf and on behalf of their daughter Z., also a Belarussian national born in 2011. They sought asylum in Sweden, their request was rejected and they are risk to be expelled to Belarus. They claim that their expulsion to Belarus by Sweden would constitute a breach of article 3 of the Convention against Torture. The complainants are represented by counsel.

1.2 On 26 November 2012, the Committee, acting through its Rapporteur on new complaints and interim measures, rejected the complaints' request for interim measures. On 8 February 2013, the complainants reiterated their request for interim

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

measures submitting new arguments and documents. On 14 February, after reviewing the case, the Committee, acting through its Rapporteur on new complaints and interim measures, maintained its decision not to issue a request for interim measures in the present case.

The facts as presented by the complainants

2.1 The complainants were politically active in Belarus. They used to produce and spread flyers, as well as to disseminate information and personal views regarding the political situation in Belarus, including through internet. On 17 March 2004, the first complainant sought asylum in Sweden, giving a false identity. His application was rejected and he was returned to Belarus.¹

2.2 In 2006, the complainants participated in a demonstration to protest against the regime in place. They were arrested and the second complainant was tortured by the police. The police used a clothes iron to force her confess to the effect that she was paid by presidential candidate Kouzulin to participate in a demonstration. As a consequence of the treatment suffered, she was transferred to a hospital. The first complainant was accused of disturbing the public order and was fined. During the period of 2006-2009, the first complainant received threatening calls from the police in Minsk. However, the second complainant participated in a number of demonstrations even afterwards, without being arrested by the police. In the period of November 2009 - February 2010, the complainants undertook organisational activities to arrange a demonstration in November 2010, shortly before the Presidential elections of 19 December 2010.

2.3 In March 2010, the complainants left Belarus with their daughter. They entered Sweden on tourist visas valid for a year. They sought asylum in 2011, i.e. almost a year later. In November 2010, while the first complainant's parents were visiting the family in Sweden, he handed out to them a written request for the organization of a demonstration in Belarus in December 2010. Upon their return to Belarus, his mother and stepfather, members of the OGP (United Civil Party), submitted his request to the Belarusian authorities. They then participated in the demonstration of 19 December 2010 and were arrested by the Belarusian authorities. During their interrogation, the investigator, aware of the first complainant's past activities, pressured them to disclose the complainants' whereabouts and the parents gave the first complainant's phone number in Sweden. The investigator stated that a criminal case is open against the complainants for organisation of mass disorders and they would be arrested upon return to Belarus. From that moment, the complainants started receiving threatening phone calls from the Minsk police.²

2.4 The complainants submitted their asylum request to the Swedish Migration Board on 16 June 2011. During the interview, the second complainant stated that she had been subjected to torture in 2006 and showed the marks on her body. It was noted in the record that the second complainant had been subjected to police abuse.

¹ In a subsequent submission dated 8 February 2013, the complainants clarify that previously the first complainant had business activities as entrepreneur in Belarus, yet his firm has been shut down by the Belarusian authorities and he has been prosecuted for unpaid taxes. However, he had no tax debts at the time he left Belarus. The complainants claim this is an indication for a certain risk the first complainant runs to be formally prosecuted because of his previous economic activities, but in effect because of his political engagement.

² In their additional submission dated 8 February 2013, the complainants argued the reason for prosecution was not given by the police during the phone calls but such invitations for a visit and conversation in the police station are routine in Belarus and often end with a custody

She also referred to a medical statement from a therapist in Sweden which declared *inter alia* that her injuries could have been inflicted in the way she had described. On 9 September 2011, the Migration Board rejected the asylum application and ordered the complainants' deportation. It stated that the false information about his identity submitted by the first complainant while applying for asylum back in 2004 had affected his credibility as well as the credibility of the second complainant. Furthermore, the first complainant's information regarding his political activities was vague and difficult to interpret. It appeared strange that he did not submit any information regarding his political activities during the first asylum procedure. The family could travel freely and the authorities did not show any interest in stopping them. The complainants were not politically active to such an extent that the authorities would be interested in them. The lack of written documents, the lack of credibility and the fact of having been in Sweden during the critical demonstrations of 2010 (in the context of the Presidential elections) all entailed that the complainants had not made their need of protection probable. With regard to the treatment allegedly suffered by the second complainant at the hands of Minsk police in 2006, the Migration Board referred to it as a police assault. The word torture was not referred to by the Migration Board.

2.5 On an unspecified date, the decision of the Migration Board was appealed to the Migration Court. On 20 April 2012, the Migration Court rejected the complainants' appeal noting *inter alia* that the complainants had received two police convocations for police interrogation in Minsk which mentioned that in case of failure to appear, they risk a fine or imprisonment. The lack of mention as to the reason for being convoked was interpreted by the Court as an evidence that the complainants were not in need of protection. The Migration Court also referred to the treatment suffered in 2006 by the second complainant as a police assault and not as torture. The complainants applied for a leave to appeal to the Migration Court of Appeal. On 8 June 2012, the Migration Court of Appeal however found that this case did not present such an interest and rejected the application for leave to appeal.

2.6 On an unspecified date, the complainants applied to the Migration Board for reconsideration of their case based on new circumstances. The second complainant stated that her asylum application had been considered on the basis of the alleged abuse suffered and not on the ground that she had been allegedly tortured. She did not have any possibility to read the interview record, because it was written in Swedish. She had relied upon the Swedish authorities and believed that the Swedish authorities had assessed her allegations of torture. The complainants also claimed to have received a number of new calls from the Minsk police in the meantime and referred to the general situation in Belarus as regards human rights abuses by the police. On 8 September 2012, the Migration Board rejected the application on the ground that only new circumstances could be taken into consideration by the court. The Board considered that the elements put forward had already been taken into consideration in the previous procedure. At the same time, the Migration Board noted that no information was given during the first procedure with regard to the first complainant's alleged torture. In the absence of new circumstances, the Board concluded that there was no reason to re-examine the asylum application.

2.7 On an unspecified date the complainants submitted a new application to the Migration Board for reconsideration of their case because of new circumstances, based on a forensic opinion issued on 8 October 2012. According to the opinion, issued by Professor E. E., a forensic specialist at the Crisis and Trauma Centre what was discovered during the physical examination of the second complainant gives evidence of torture in the way she described it. The second complainant maintained that in 2006 she was forced by a police officer to sign a paper discrediting the

former President candidate Kouzulin stating that she had received a payment to demonstrate against the regime in place. After her refusal to sign, she was beaten by a police officer who used a hot iron on her belly. When finally she signed the confession, she was transferred to a hospital as her injuries were of life-threatening character. The Migration Board rejected the appeal on 1 November 2012. It considered that no new circumstances had been invoked. With regard to the forensic report, the Board stated that it did not present new elements, since another medical report alleging the same facts had already been presented by the complainants in 2011. Furthermore, the Migration Court assessed the complainants' statements as lacking credibility. The Court considered that the complainants had not been politically active to the extent that it would justify the authorities' alleged interest in them. Neither had they made probable that they are sought by the authorities and therefore in danger of being prosecuted or punished.

The complaint

3. The complainants claim that by deporting them to Belarus, Sweden would violate their rights under article 3 of the Convention against Torture. They allege that they have disseminated information regarding the political situation in Belarus by means of flyers, orally or through internet. They have participated in several opposition demonstrations, and during one such demonstration they were arrested, and the second complainant was tortured. The complainants have called for an anti-government protest before the 2010 Presidential elections and sought permissions to participate in such protests. Furthermore, they contend that the Belarusian police continuously harass them by means of house search, threatening phone calls and convocations by the Minsk police. Taking into account the existence of consistent patterns of gross, flagrant or mass violations of human rights in Belarus, the complainants claim there is a foreseeable, real and personal risk of them suffering torture, if they are expelled to Belarus.³

State party's observations on admissibility and merits

4.1 On 24 May 2013, the State party submits its observations on the admissibility and merits. It recalls the facts of the case and notes that the first complainant came to Sweden for the first time in March 2004 and applied for asylum after being caught by the police. He did not have any identity documents and gave a false name, account of his background and reasons for his asylum application that have been confirmed to be false during the asylum proceedings.⁴ According to the State party, he stated, *inter alia*, that he was under eighteen years of age and he had never been politically active in Belarus. The Migration Board rejected his asylum application and ordered his expulsion to Belarus, which took place on 14

³ In support, they also refer to various international reports *inter alia* the Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Belarus of 10 April 2012 and the Report of the Council of Europe Parliamentary Assembly on the situation on Belarus of 9 January 2012, which state that the situation of human rights has significantly deteriorated in Belarus following the presidential elections.

⁴ During the 2011 – 2013 proceedings concerning the complainants' asylum applications with regard to the false information provided during the 2004 proceedings, the first complainant stated as a reason his planned return to Belarus to fight against the regime at the time. He claimed he supplied false information because he wanted to stay in Sweden for a limited time and then return.

May 2005. Subsequently, the first and second complainants visited Sweden in 2009 on a visa valid from 20 August 2009 to 20 February 2010. They left Sweden in November 2009 and came back in February 2010 on a visa valid from 25 February 2010 to 25 February 2011.

4.2 The State party further notes that according to article 22, paragraph 5 (a), of the Convention, the Committee shall not consider any communication 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.

4.3 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 Belarus fails to achieve 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 107 (b) of the Committee's rules of procedure.⁵ Should the Committee declare it admissible, the issue before the Committee would be whether the forced return of the complainants to Belarus 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.

4.4 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, 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 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 that the individual concerned would be personally at risk.⁶

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

4.6 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 complainants, who must present an arguable case establishing that they run a

⁵ The State party refers to *H.I.A. v. Sweden*, Communication No. 216/2002, Views adopted on 2 May 2003, para. 6.2.

⁶ 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.

foreseeable, real and personal risk of being subjected to torture.⁷ 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.⁸

4.7 Regarding the general human rights situation in Belarus, the State party notes that given that Belarus 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 for political opponents after the presidential election in December 2010. In this regard, the State party therefore finds it sufficient to refer to the information regarding the human rights situation in Belarus, which can be found in recent reports such as Ministry for Foreign Affairs, Sweden, *Mänskliga rättigheter i Vitryssland 2011*⁹ and the U.S.A. Department of State 'Country Reports on Human Rights Practices for 2012'.¹⁰

4.8 The State party submits that while it does not underestimate the concerns that may legitimately be expressed with regard to the current human rights situation in Belarus, in particular regarding political opponents, these are not, in themselves, sufficient to establish that the expulsion of the complainants would entail a violation of article 3 of the Convention. Therefore, the State party contends that the removal of the complainants to Belarus 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.

4.9 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. 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, regarding the complainants' requests for re-examination of their applications for residence permits, according to Chapter 12, Sections 1–3 of the Aliens Act, which have been considered, the 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 on to a country in which the alien would be at such risk.

4.10 The State party adds that its national authorities are in a very good position to assess the information submitted by an asylum seekers and to appraise the credibility of their claims. In the present case, the Migration Board and the Migration Court

⁷ 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.

⁸ See e.g., the Committee's General Comment No. 1, A/53/44, annex IX of 21 November 1997, paras. 5 - 7.

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

¹⁰ See : <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dld=2042%2063#wrapper>

undertook thorough examination of the complainants' case. When they applied for asylum, the Migration Board conducted individual interviews with both of them. The interviews lasted almost five hours for the first complainant and almost two hours for the second 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. Both interviews were conducted in the presence of 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' initial asylum request they were represented by a public counsel. Since the decision ordering the expulsion of the complainants gained legal force, the Migration Board has on four occasions reviewed new circumstances invoked by the complainants. On one of these occasions, the decision of the Migration Board was appealed against, but was 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 documentation in the case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment of the complainants' need for protection in Sweden.

4.11 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 is 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.¹¹ 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.¹²

4.12 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 Belarus.

4.13 In addition, the State party observes that the complainants have submitted before the Committee that expelling them to Belarus would be in violation of article 3 of the Convention as upon return there they risk being subjected to torture due to their political activities in Belarus.

4.14 In this connection, the State party, like its migration authorities, finds a number of aspects that give reason to question the complainants' general credibility. To begin with, the State party finds it pertinent notes that the first complainant gave a false name and false information about the grounds for his asylum application in

¹¹ 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.

¹² See e.g., *G.K. v. Switzerland*, Communication No. 219/2002, Views adopted on 7 May 2003, para. 6.12

2004, which he has not been able to give a credible explanation for. The claim that he was planning to stay in Sweden temporarily and that he submitted false information so that he would later be expelled lacks credibility, especially in view of his refusal to return after having been denied asylum. Secondly, the complainants waited over a year after their arrival in Sweden before applying for asylum. Furthermore, between 2006 and 2009 the complainants travelled in and out of Belarus on their own passports and were also able to acquire new passports and foreign visas without attracting the attention of the Belarusian authorities. Thirdly, the accounts of the complainants' political activities between 1996 and 2009 are vague and incoherent, and there is a lack of concrete details in their stories. The State party contends that there are strong reasons to question the credibility of the claims concerning the complainants' political activities in Belarus, and thus also that the authorities have any interest in them.

4.15 The State party clarifies, that like the migration authorities, it does not question the complainants' submission that they were arrested by the Belarusian authorities during the demonstration in 2006 and subjected to abuse in connection with this. While acknowledging the concerns that the complaints may legitimately express with respect to the treatment they were subjected to in the past, the State party notes that they have not presented any claims suggesting that they have been subjected to treatment defined in article 1 of the Convention since then. This is relevant to the assessment of whether the expulsion of the complainants would be inconsistent with article 3 of the Convention, since the Committee's General Comment No. 1, paragraph 8 b), states that information that is considered pertinent to the risk of torture includes whether the complainant has been tortured in the past, and if so, whether this was in the recent past.¹³ As regards the present case, the complainants were subjected to the relevant treatment 7 years ago, and thus not in the recent past.

4.16 Furthermore, with regard to the complainants' allegation that the second complainant did not have any opportunity to read and verify the minutes from the Migration Board's interview with her, which allegedly resulted in the authorities not being aware of the fact that she was subjected to torture in 2006, the State party maintains the Migration Board's view that the second complainant had the opportunity to give an account of relevant facts and that her claim therefore lacks credibility. The minutes from the interview show that the complainant confirmed that she understood the interpreter, and she also confirmed that she had had the chance to say everything she wanted to say. A public counsel was present during the entire interview. The State party notes the migration authorities have not questioned that the complainant was subjected to abuse in connection with the demonstration in 2006 and have made their assessments accordingly.

4.17 The complainants also allege having continued their political activities after the incidents in 2006 and claim receiving frequently threatening phone calls from the Belarus police intended to prevent them from contacting the authorities regarding the incidents. The State party finds that the accounts of the complainants' political activities are vague and general, and do not show that there are grounds to conclude that the Belarusian authorities had any interest in them between 2006 and 2009, when the first and second complainant first arrived in Sweden together. The complainants have been unable to submit any evidence supporting the claim. The

¹³ See e.g., *A.R. v. the Netherlands*, Communication No. 203/2002, Views adopted on 14 November 2003, para. 7.3

State party further notes that in their submission to the Committee, the complainants' claim that the second complainant participated in a number of demonstrations after 2006 without being arrested or otherwise harassed by the police. In addition, they were able to travel in and out of Belarus on several occasions during the relevant period.

4.18 Moreover, the complainants claim that their political activities in Sweden from 2009 have provoked the Belarusian authorities' interest in them and therefore they risk being subjected to torture in case of return. They have claimed that, during their stay in Sweden, they *inter alia* submitted an application, in Belarus, for permission to arrange a demonstration on the day of the Belarusian presidential election on 19 December 2010. They have also alleged that they have submitted complaints to various Belarusian authorities and disseminated anti-regime propaganda on the internet. The application regarding the demonstration was allegedly signed by the first complainant and subsequently delivered to the Belarusian authorities by his mother and stepfather. The parents allegedly participated in the demonstration and were arrested and detained for two months at the beginning the 2011. Criminal charges were brought against the parents for having organised and participated in the event. After having been released, the parents allegedly informed the complainants that they also were accused of the same offences. The complainants have also alleged that the Belarusian authorities searched their home and made threatening phone calls to them because of their involvement in the demonstration of 19 December 2010.

4.19 The State party notes that the migration authorities have assessed these claims and concluded that they lack credibility. The authorities found it remarkable that one would apply for permission for a demonstration in Belarus from Sweden without any intention of participating in person. There are no documents or other evidence that the complainants in fact submitted any applications or complaints, or disseminated information that is critical of the regime in place on the internet. Moreover, the migration authorities found it odd that the Belarusian authorities would have accused them of participating in the demonstration on 19 December 2010, since the complainants left Belarus legally and the authorities must have been aware that they were out of the country at the time. The State party maintains the position of the migration authorities, and points out that, in accordance with the principle of the burden of proof in asylum cases, it is appropriate to require that the applicant provides relevant information, tells the truth and helps the investigator so as to clarify all the facts in the case.¹⁴ The State party contends that it is only when this has been done that the applicants seeking asylum should be granted the benefit of doubt.

4.20 In this connection, the State party refers to information contained in the reports regarding the demonstrations of 19 December 2010 (see para 4.7 above) and notably to information about the response from the Belarusian authorities to the demonstration during the election found in a Human Rights Watch report 'Belarus Survey Shows Massive Abuse of Protesters'¹⁵. In light of this information, the complainants' allegation that they would be of interest to the authorities because they applied for permission for the demonstration lacks credibility. The State party notes that it appears that the demonstration in question started peacefully and the

¹⁴ See Article 195 and 205 (a) of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

¹⁵ <http://www.hrw.org/print/news/2011/02/09/belarus-survey-shows-massive-abuses-protesters>

authorities only intervened when the election results had been announced and riots had broken out.

4.21 As regards the complainants' submission concerning the political activity of the first applicant's parents, the State party notes that the complainants have failed to submit any evidence regarding the allegations that the parents were politically active, participated in the demonstration on 19 December 2010 or were detained by the authorities. The State party does not question the assertion that the first complainant's parents were members of the OGP, but maintains that this does not prove that they are subjected to persecution or ill-treatment by the authorities, especially since the OGP is a legal party. Moreover, neither the parents nor the complainants themselves are on the list of people arrested, suspected or accused of crimes in relation to the events on 19 December 2010.¹⁶

4.22 Furthermore, the State party shares the migration authorities' view that the documents submitted by the complainants have low evidentiary value. The parents' party membership cards are of a simple nature and party membership does not in any case prove that the parents were of interest to the authorities or prove treatment contrary to the Convention. Moreover, the documents stating that the complainants are summoned by the police in Minsk for questioning do not prove that they are accused of any crimes in relation to the demonstration or due to their political activities.

4.23 The State party contends that the complainants have failed to provide any documents or other evidence showing that they are wanted by the Belarusian authorities or the subject of any legal or administrative proceedings due to their political activities. They are not members of any political party and have not showed that the authorities have any interest in their alleged political activities. The State party thus holds that the complainants have failed to substantiate the claim that they are at risk of being subjected to treatment contrary to article 3 of the Convention based on their political activities.

4.24 The State party notes that in a further submission to the Committee, the complainants state, *inter alia*, that the first complainant previously conducted business activities as an entrepreneur in Belarus, that his company was shut down by the local authorities and that he has been prosecuted because of tax debts, although he had no outstanding debts when he left Belarus. The complainants claim that this is an indication that there is still some risk that the first complainant might be prosecuted – officially because of his previous economic activities, but in fact because of his political activities. In connection with this, the complainants have submitted a certificate stating that the first complainant registered a private company on 11 December 2008, and a summons to appear in court on 18 July 2011 inviting him to present a receipt or a similar document as proof of payment (no further details are provided). As far as the State party is aware, the complainants have not submitted the second document in the proceedings before the Swedish migration authorities.

4.25 In this regard, the State party notes that the complainants have not submitted any written documentation in support of their claim that the first complainant has been prosecuted. The State party contends that the complainants have failed to substantiate the claim that the first complainant is at risk of being subjected to treatment contrary to article 3 of the Convention due to his business activities. It also

¹⁶ See compilation by the Human Rights Centre Viasna: <http://spring96.org/en/news/41575>.

reiterates that they have failed to substantiate the claim that they are at risk of being subjected to treatment contrary to article 3 of the Convention due to their political activities and their latest submission to the Committee does not alter this assessment.

4.26 In sum, the State party maintains that the present communication should be declared inadmissible as manifestly unfounded under article 22, paragraph 2, of the Convention 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 on the merits.

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

5.1 In reply to the State party's observations, on 25 July 2013, the complainants firstly submit that the second complainant is in a position to present new information on her criminal case in Belarus, notably that she is now able to present material showing that she is under investigation for a serious weapon offence. The complainants provide a copy of a statement of the second complainant's lawyer in Belarus. They further note it has not been possible to obtain this document earlier as in the absence of the second complainant from Belarus the only possibility to make a contract with a lawyer - an absolute requirement according to the Belarusian procedural law for the lawyer to be able to represent officially the client - would be through a third person. No one was willing to undertake this assignment and make a contract with a lawyer. Furthermore, the second complainant feared that her son who lives in Minsk may be persecuted would a lawyer have engaged to inquire regarding her case. On the basis of these circumstances and evidence, the complainants have made a new submission to the Migration Board. The second complainant maintains that the communication is admissible as the complainants' assertions do achieve the minimum level of substantiation required for purposes of admissibility. Furthermore, the new material submitted confirms that she is still of interest for the Belarusian authorities and personally at risk of being subjected to torture if returned to Belarus. The letter from her lawyer in Belarus shows that she is facing long-term imprisonment in Belarus. There are substantial grounds to believe that she is also in danger of being subjected to torture, notably because she is charged for a crime she has never committed; her criminal case is politically motivated and she has been subjected to torture in the past.

5.2 As concerns the merits of the communication, the second complainant maintains her claim she was subjected to torture by Belarusian police officers in 2006, which is confirmed by a medical report submitted to the Committee. The second complainant alleges that during her interview with the Migration Board she made a clear statement to this effect yet it was omitted in the minutes taken by the Migration Board officer. Instead of torture, in the minutes it was recorded that she was subjected to abuse. Therefore, the second complainant argues that the fact that she was tortured was not taken into account by the Migration Board. She notes that the Committee should evaluate the fact that she was not only abused but tortured and that her claim of torture does not lack credibility, contrary to the State party assessment. She contends that by submitting a medical statement that she was subjected to torture which the Migration Board disregarded, she has fulfilled the burden of proof requirement.

5.3 Furthermore, the complainants challenge the State party argument to the absence of a present or personal risk for them to be subjected to torture as the second complainant was subjected to torture in 2006 and the risk of this happening again is

still present due to the couple's recent activities. They claim being suspected by the police in Minsk for the organisation of mass disorders since a manifestation in 2010. They allege they have submitted letters from the police to the Migration Board in order to support the fact that they are of interest to the Belarusian authorities. The Migration Board has disregarded these letters since they lacked information on the kind of crime the second complainant is suspected for. The complainants contend that the current practice in many countries, especially totalitarian ones, is such that calls from the police would not contain any information on the charges to be anticipated. They further maintain that the Migration Board has completely disregarded all the written evidence submitted by the second complainant.

5.4 Finally, the complainants note the documents showing the second complainant is under investigation for a weapon offence in Belarus clarify that she risks a maximum of seven years of imprisonment. Moreover, such charges could be easily classified as a terrorist crime in Belarus.

5.5 In conclusion, the complainants maintain that the present communication and their claims are admissible, well-founded and reveal that their expulsion to Belarus would constitute a violation of the Convention.

State party's further information

6.1 On 15 April 2014, the State party submitted further information. It notes that its brief clarifications regarding the complainants' comments should not be taken as meaning that the State party accepts the reminder of the complainants' comments not addressed hereafter.

6.2 With regard to the second complainant's allegation that she is under investigation for a serious weapon offence in Belarus and that the accusations against her are politically motivated, on 17 May 2013 the complainants have made a submission to the Migration Board, alleging that there were impediments to enforcement of the expulsion order and providing two documents in Belarusian language. Following the translation of these documents, on 26 September 2013 the Migration Board has decided not to grant the complainants residence permits under Chapter 12, Section 18 of the Aliens Act, or to re-examine their case under Chapter 12, Section 19 of the Aliens Act.

6.3 The decision was appealed to the Migration Court as concerns Chapter 12, Section 19 of the Aliens Act. On 5 November 2013, the Migration Court decided to remand the case to the Migration Board for an assessment of the authenticity of the submitted documents. After having examined the two documents, the Migration Board found that it could not be assessed whether they have been issued in an appropriate manner. The question of whether the documents are authentic was therefore left open. Regardless of this, the Migration Board found that the content in the submitted documents did not plausibly demonstrate that the complainants would risk torture upon return to Belarus.

6.4 The decision was appealed to the Migration Court, which on 7 January 2014 rejected the appeal. On 3 February 2014 the Migration Court of Appeal refused leave to appeal. The State party, like its migration authorities, maintains that the complainants have failed to plausibly demonstrate that they are of any interest to the Belarusian authorities on the grounds of political activity. Furthermore, the State party contends that the complainants have not provided an explanation as to why the Belarusian authorities would have falsely accused the second complainant of a crime at this point in time or how the complainants received the submitted documents. The State party thus shares the view of the Migration Board and the Migration Court that

if the second complainant is indeed suspected of weapon offences, the complainants have not substantiated that the alleged accusations against her are anything else but a regular criminal investigation.

6.5 Finally, the State party maintains its position regarding the admissibility and merits of the complaint as expressed in the observations submitted on 24 May 2013.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 The Committee notes the State party's submission that the present communication is manifestly unfounded and thus inadmissible pursuant to article 22, paragraph 2, of the Convention and rule 107 (b) of the Committee's rules of procedure. The Committee, however, considers that the communication has been substantiated for the purposes of admissibility, as the complainant has sufficiently elaborated the facts and the basis of the claim for a decision by the Committee.

7.3 The Committee further 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.

Consideration of the merits

8.1 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.

8.2 In the present case, the issue before the Committee is whether the forcible return of the complainants to Belarus 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.

8.3 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.¹⁷ It follows that the existence of a pattern of

¹⁷ See, *inter alia*, communication No. 519/2012, *T.M. v. Republic of Korea*, Decision adopted on 21 November 2014, para.9.3.

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.¹⁸ 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.¹⁹

8.4 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”,²⁰ 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.²¹ In this respect, the Committee notes that under the terms of general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

8.5 The complainants claim that, in Belarus, they may be tortured as there are substantial grounds to believe that the harassments and alleged torture the second complainant was subjected to in the past due the their political activities and the business activity of the first complainant will continue. In this connection, the Committee takes note that the complainants have provided medical documentation attesting that the second complainant had been subjected to abuse and ill-treatment following her participation in a demonstration in 2006.

8.6 The Committee notes also that, even if it were to accept the claim that the complainants were subjected to ill-treatment and/or torture in the past, the question is whether they remain, at present, at risk of torture if returned to Belarus. The Committee notes that, at present, the general human rights situation in Belarus remains as a matter of concern in several aspects, in particular concerning the situation of political opponents after the presidential election in December 2010. With regard to incidents of torture and evidence obtained through torture it recalls that it expressed its concerns in its concluding observations in the context of the consideration of reports submitted by State parties under article 19 of the Convention,²² notably about the ‘numerous and consistent allegations of widespread torture and ill-treatment of detainees in the State party’ and the fact that ‘many persons deprived of their liberty are tortured, ill-treated and threatened by law enforcement officials, especially at the moment of apprehension and during pretrial detention confirming ‘the concerns expressed by a number of international bodies, inter alia, the special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Human Rights Council (resolution 17/24), the United Nations High Commissioner for Human Rights and the Organisation for Security

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1)*, annex IX, para. 6.

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

²² See concluding observations of the Committee against Torture Belarus CAT/C/BLR/CO/4, para. 10 and 18

and Cooperation in Europe.’ Furthermore, the Committee recalls being ‘concerned at reports of several cases of confessions obtained under torture and ill-treatment and the lack of information on any officials who may have been prosecuted and punished for extracting such confessions.’ 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.²³

8.7 The Committee further notes that the State party’s competent authorities have drawn attention to false information, 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 first complainant has given false information in the 2004 asylum proceedings, in the period between 2006 and 2009 the complainants travelled legally in and out of Belarus, were issued new passports and visas and waited over a year after their arrival in Sweden before applying for asylum. Furthermore, the accounts of their political activities between 1996 and 2009 remain vague and incoherent; their stories are lacking concrete details.

8.8 The Committee also takes note that the State party is not questioning the complainants’ submission that they were arrested by the Belarusian authorities during the demonstration in 2006 and subjected to abuse in connection to this. However, the complainants have stated that they participated in a number of demonstrations after 2006 (in the period 2006 – 2009) without being arrested or otherwise harassed by the police. Therefore, the complainants have not alleged that they have been subsequently harassed or arrested by the Belarusian police in the recent past. Consequently, there are reasons to question the alleged interest by the Belarus authorities in the complainants and its continued harassment of them so many years later, given that the complainants have not participated in the demonstrations in December 2010, and are neither high profile opposition figures, nor close supporters of such opponents of the regime. In addition, the complainants have not claimed to be members of any party.

8.9 Further, the Committee also takes note of the State party’s submission that during her Migration Board interview the second complainant had the opportunity to give an account of all relevant facts, to read and verify the minutes, in the presence of a public counsel. In this regard, the Committee observes that the migration authorities have neither disregarded, nor questioned that she was subjected to abuse in connection with the demonstration in 2006 and have made their assessments accordingly.

8.10 Furthermore, the Committee observes that no evidence had been brought forward to support the complainants’ allegation that their political activities in Belarus between 2006 – 2009 and in Sweden from 2009 onwards (e.g. submitting complaints to various authorities in Belarus and disseminating anti-regime propaganda on the internet) have provoked the authorities’ interest in them and that they had been threatened by the Belarusian authorities directly or indirectly through phone calls from the police in Minsk to Sweden and through alleged inquiries about the complainants’ whereabouts and contact information made by the police while interrogating the first applicant’s parents during their alleged arrest in December 2010. Moreover, the Committee notes the State party submission that neither the parents nor the complainants themselves are on the list of persons that were arrested,

²³ See, *inter alia*, communication No. 519/2012, *T.M. v. Republic of Korea*, Decision adopted on 21 November 2014, para.9.7.

suspected or accused of crimes in relation to the events on 19 December 2010.²⁴ In this regard, as the Swedish migration authorities have noted during the domestic proceedings, the complainants are not members of any political party, and have not showed that the Belarusian authorities have any interest in their alleged political activities.

8.11 The Committee also takes note of the complainants' allegations that they are summoned for questioning by the police in Minsk, that the first complainant has been accused for tax evasion in connection to his previous entrepreneurial activities, the second complainant is currently accused for a serious weapon offence in Belarus and these accusations against them are actually politically motivated. However, the Committee observes that the summons do not prove that the complainants are accused of crimes in relation to the demonstration of December 2010. The Committee finds that they have not been able to establish that their summoning is politically motivated.

8.12 The Committee finally notes the State party's submission that the content of all submitted documents did not plausibly demonstrate that the complainants would risk torture upon return to Belarus.

8.13 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.²⁵ 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 Belarus, 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.

9. 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 Belarus would not constitute a breach of article 3 of the Convention by the State party.

²⁴ According to information collected by the Human Rights Centre Viasna.

²⁵ 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.

