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REFERENCE: G/SO 229/31 SWE (113)
CE/KH/ak 539/2013

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 11 May 2015, concerning complaint No. 539/2013, 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. A.B.

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

9 June 2015





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

Advance unedited version

Distr.: General
9 June 2015

Original: English

Committee against Torture

Communication No. 539/2013

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

<i>Submitted by:</i>	Mr. A.B. (represented counsel, Katarina Nilsson)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	8 March 2013 (initial submission)
<i>Date of present decision:</i>	11 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. 539/2013*

Submitted by: Mr. A.B. (represented by counsel, Katarina Nilsson)

Alleged victim: the complainant

State party: Sweden

Date of complaint: 8 March 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 11 May 2015,

Having concluded its consideration of complaint No. 539/2013, submitted to the Committee against Torture on behalf of Mr A.B., under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

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

1.1 The complainant is Mr A.B., a Russian national born in 1986. His request for asylum in Sweden was rejected and, at the time of submission of the complaint, he was awaiting a forcible removal to the Russian Federation. He claims that his deportation would violate his rights under article 3 of the Convention against Torture. The complainant is represented by counsel, Katarina Nilsson.

1.2 On 15 March 2013, acting under rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party to refrain from expelling the complainant to the Russian Federation while his complaint is under consideration by the Committee.

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

The facts as presented by the complainant

2.1 The complainant is a Russian citizen of Chechen origin, born in the Dubovskiy Region of the Rostovskaya Oblast (Southern Russia). He professes Muslim faith. In 2007, together with his parents and brothers he moved to the Chechen Republic and settled in the village of Day, located in the Shatoy region approximately 60 kilometres from Grozny. The North-Caucasian armed resistance still had a stronghold in this region. The complainant's father opened a small shop where groceries and clothes were sold. The customers of the shop were personnel from the authorities, as well as members of the armed resistance.

2.2 In October 2010, about ten persons in military uniforms came to the complainant's home and took him away. The complainant believed that they were members of the Ministry of Internal Affairs of the Regional Department of Shatoy. He was told that they needed to question him and he was taken to the militia station of the Shatoy District. He was told that he used to sell groceries to fighters and that he helped them; that he even delivered the groceries to their bases in the mountains; and that he was regarded as an accomplice of the resistance. The complainant explained that he had sold the groceries to the armed resistance, as he had no choice because they were always armed; however, he was not involved in or related to their activities. Thereafter, he was taken to another room where he was handcuffed, and beaten with a truncheon and a rifle butt. He was hit all over the body, except for his face. He was seated on a chair, his arms were fixed by a bar, and electrodes were attached to his little finger; one of the interrogators turned the device delivering the electricity. He was told that they knew that he had been cooperating with the fighters and that he should confess it. However, the complainant said that he had nothing to confess. After two hours of torture, he was left alone for one hour. Thereafter, he was freed from the bar and handcuffed. In the evening, a person called "the boss", came in with some documents and told the complainant that if he would not sign them, he would not get out alive. The complainant signed the documents, unaware of their content. He was then released.

2.3 The next day about ten other men arrived in the complainant's home and took him to the Russian "commandant's office" in Khankala in Grozny. The documents from the previous day were brought in with new accusations. He was told that he was a former fighter who had got amnesty but continued to cooperate with the fighters by selling them groceries and that he had confessed it by signing the documents. He tried to explain to the federal authorities that he had been threatened and tortured in Shatoy, and forced to sign the papers. However, he was taken to a small room without windows, located in the basement of the building. He was again threatened, beaten, and exposed to electrical shocks while in a sitting position, while hanging from a wall with his arms tied in front of him, and with electrodes attached to his feet and legs. He was doused with cold water, which made the electrical shocks even more painful. Due to this treatment, he lost consciousness. After each session ended, he was placed in a 2x2m incarceration cell, with a wooden bunk, and without any blanket. His clothes were never removed and he was left in his wet sport pants and a t-shirt. He was given some kind of porridge or boiled potatoes on a plate one to two times a day. He was detained there for two weeks and subjected to interrogations and torture several times a day. In both Shatoy and Khankala, the interrogators were Chechens.

2.4 The complainant was released on the condition that he cooperates with the authorities by establishing contact or infiltrating the fighters in order to provide intelligence. He was told that if he failed to cooperate, he or his relatives would be killed. He went back to Day, but his father thought that it would not be safe for him

to stay in the village, and instead took him to the village of Nadterechnoe to stay with an old friend.

2.5 Two or three days after his release, the authorities came to his home to look for the complainant. As he had already left, the complainant's whole family was subjected to beatings. His wife and children moved to the wife's parents' home. In Nadterechnoe, the complainant stayed most of the time inside the house. His father visited him about twice a month.

2.6 After three to four months, the complainant's parents came to see him and told him that they had arranged his escape. They took him to the outskirts of Grozny and he left Chechnya in a van together with his uncle and two cousins. They switched the van twice before arriving in Sweden on 17 May 2011. The complainant had no passport; however, he was not asked to produce an identity document on his way to Sweden. On 19 May 2011, the complainant applied for asylum. He stayed with one of his cousins in Sweden, who had limited contact with the complainant's family. Through the cousin, he found out that the Chechen authorities had been looking for him again.

2.7 On 3 October 2011, the Swedish Migration Board rejected the complainant's request for asylum, finding that his story lacked credibility. The complainant notes in particular that the Board pointed out that it was not credible that he was released after one day of arrest and thereafter arrested and released again, when he was accused for having committed a serious crime. The complainant adds that the Board noted that such activity did not comport with the known practices of the Chechen authorities, as reported by human rights entities. The complainant finally points out that the Board noted that (1) the complainant could not explain how his father managed to visit him in Nadterechnoe without disclosing the complainant's location; (2) the complainant had stated that he did not have any scars or bruises as a result of the alleged torture and severe ill-treatment suffered; (3) that there was no information that his relatives were persecuted by the authorities, and (4) the complainant did not submit any documentation in support of his claims.

2.8 On an unspecified date, the complainant appealed the Board's negative decision before the Migration Court in Malmö. He alleged that the Chechen authorities' course of action was 'normal' in Chechnya, that he was released because the Chechen authorities knew that he and his family would be in fear, and that the persecution was a measure of control rather than a preliminary investigation. He further pointed out that in Chechnya; there were many suspected people, which made it impossible for the authorities to conduct surveillance on them and on their relatives. He asserted that it is most likely for this reason that his father was not followed by the authorities when he visited him. The complainant also noted that the human rights record information used by the Board dated from 2009 and that there were new updated reports, including from the State party, indicating that the human rights situation in Chechnya has worsened in 2010. On 18 September 2012, the Migration Court rejected the complainant's appeal. The Court found parts of the story to be supported by the country information, but still did not find the complainant's allegations fully convincing.

2.9 On an unspecified date, the complainant lodged an application for leave to appeal before the Migration Court of Appeal which was rejected on 17 October 2012, and the decision to expel the complainant became final on 7 November 2012.

2.10 On 19 November 2012, the complainant had a meeting with the Migration Board about his return. The authorities tried to encourage him to return and offered him 30,000 Swedish crowns. On 28 November 2012, he informed the authorities that

he was not interested in the money. On 8 March 2013, the complainant was informed that he had four weeks to leave the country voluntarily.

The complaint

3.1 Given his personal situation due to the previous persecution, he was subjected to, the complainant claims that the Swedish authorities did not adequately assess the risk he would be subjected to if returned to the Russian Federation, which would violate article 3 of the Convention.

3.2 He argues that that torture is widely used in Chechnya to keep the population under control. In his case, there was no ground for an arrest or for a criminal investigation. All charges were fabricated and the officials probably knew this. The fact that torture is used to extract information and forced confessions in fabricated criminal cases cannot be unknown to the Swedish migration authorities.

State party's observations on admissibility and merits

4.1 By note verbale of 16 September 2013, the State party submitted its observations on the admissibility and the merits. It recalls from the facts of the case and notes that the complainant arrived in Sweden on 17 May 2011 and applied for asylum two days later. The Swedish Migration Board rejected his application and ordered his deportation to the Russian Federation on 3 October 2011. The decision was appealed to the Migration Court, which rejected the appeal on 18 September 2012. On 17 October 2012, the Migration Court of Appeal refused to grant leave to appeal and the decision to expel the complainant became final and non-appealable on 7 November 2012.

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 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.

4.3 The State party further maintains that the complainant's assertion that he is at risk of being treated in a manner that would violate article 3 of the Convention if he returned to the Russian Federation fails to rise to the minimum level of substantiation required for purposes of admissibility. Accordingly, the State party submits that 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 conclude that the communication is admissible, the issue before the Committee would be whether the forced return of the complainant 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.

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

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 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

4.5 In light of the aforementioned, the State party notes that when determining whether the forced return of the complainant 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.

4.6 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 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

4.7 In light of the above, as concerns 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 northern Caucasus. In this regard, the State party therefore finds it sufficient to refer to the information regarding the human rights situation in the Russian Federation, which can be found in recent reports such as U.S. Department of State, Human Rights Report on Russia 2012;⁵ Amnesty International, Annual Report 2012 – Russian Federation;⁶ Human Rights Watch, World Report 2012: Russia;⁷ Danish Refugee Council (Chechens in the Russian Federation - residence registration, racially motivated violence and fabricated criminal cases);⁸ the Swedish Migration Board, Country Profile Russia

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.

⁵ <http://www.state.gov/j/drl/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://www.nyidanmark.dk/NR/rdonlyres/01750EB0-C5B1-425C-90A7->

(Landprofil Ryssland den 25 Februari 2011);⁹ and Ministry for Foreign Affairs, Sweden, *Mänskliga rättigheter i Ryska Federationen* 2011.¹⁰

4.8 In this regard, 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 an expulsion of the complainant would entail a violation of article 3 of the Convention.¹¹ Therefore, the State party contends that the expulsion of the complainant to the Russian Federation would only entail a breach of the Convention if he could show that he would be personally at risk of being subjected to treatment contrary to article 3. However, in the present case, the complainant has failed to substantiate his claims that he would run such a risk.

4.9 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.

4.10 Furthermore, the State party notes that the 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 this regard, the State party underlines that in the present case, the Migration Board and the Migration Court conducted a thorough examination of the complainant's case. When the complainant applied for asylum in Sweden, the Migration Board conducted an interview with him. The purpose of this interview was to give him an opportunity to submit the reasons for his need of protection and explain all the facts relevant to the Migration Board's assessment. The interview lasted 3 hours and 20 minutes and was conducted in the presence of an interpreter, whom the complainant confirmed that he understood well. Further, the complainant has argued his case in writing before the Migration Board and the migration courts. The Migration Court has also held an oral hearing and heard the complainant and his arguments. Throughout the procedure regarding the complainant's asylum request, he was represented by legal counsel. Against this background, the State party holds that it must be considered that the Migration

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⁹ <http://lifos.migrationsverket.se/dokument?documentSummaryId=24669>

¹⁰ <http://www.manskligarattigheter.se/sv/manskliga-rattigheter-i-varlden/ud-s-rapporter-om-manskliga-rattigheter/europa-och-centralasien?c=Ryssland>

¹¹ 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.

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 complainant's 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 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 concerned¹². 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 the evaluation was made, was clearly arbitrary or amounted to a denial of justice.¹³

4.12 In light of the aforementioned, and with regard to the fact that the Migration Board and the migration courts are specialised bodies with particular expertise in the field of asylum law and practice, the State party contends 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 amounted 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 complainant to the Russian Federation.

4.13 In addition, the State party observes that the complainant alleges that expelling him to the Russian Federation would be in violation of article 3 of the Convention as there he would risk to be subjected to torture as he is suspected of having supported the rebels in the Chechnya region by selling groceries to them from his father's store. However, the complainant has also emphasised that he has never sympathised with the rebels nor taken part in their activities. Despite this, he has alleged that he was arrested, detained, and subjected to torture on two occasions. In this regard, the State party, like the migration authorities, finds a number of aspects that give reason to question the complainant's general credibility as his story is contradictory and vague. In particular, the complainant has not provided any medical documentation showing that he has been subjected to ill-treatment. During the domestic proceedings, the complainant stated that there were no visible scars or other injuries on his body from the torture he allegedly suffered. In this regard, like the migration authorities, the State party finds it implausible that a person who has allegedly been subjected to severe torture has no scars or signs on his body from this treatment. The State party stresses that it is for the complainant to establish *prima facie* his asylum case. In addition, the State party maintains that where there is no evidence of the alleged abuse, there was no obligation on the migration authorities to initiate a medical investigation.¹⁴

4.14 Furthermore, the State party shares the migration authorities' conclusions that a number of aspects give reason to question the complainant's account of what had

¹² 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.

¹³ See e.g., *G.K. v. Switzerland*, Communication No. 219/2002, Views adopted on 7 May 2003, para. 6.12.

¹⁴ See e.g., *K.H. v. Denmark*, Communication No. 464/2011, decision adopted on 23 November 2012, para. 8.8.

happened to him as available country information only partly supports his story as presented at the domestic level. Even if the statements concerning his first arrest and the claim that he was forced to sign a confession may be supported by certain publicly available reports, the country information does not support a practice such as the one alleged by the complainant, i.e. that he would have been rearrested after only one night of freedom and that he would have been sought at his home almost immediately after being released for the second time and in spite of the assignment he claims he had been given. In relation to the first arrest the State party further notes that 'it is in the nature of things that there is an imminent risk that a person against whom the authorities have levelled serious accusations, who has been deprived of his liberty, and has been subjected to extensive assaults by the authorities, would go into hiding upon release in order to avoid the authorities'. The State party therefore does not find it plausible that the Chechen authorities would release such a person without any commitments as suggested by the complainant.

4.15 Moreover, in relation to the second arrest, the State party submits that the manner in which the complainant was supposed to accomplish the task assigned to him after the second arrest seems unlikely. It also appears improbable that the father would have regularly visited his son, despite the authorities' interest in him. In this respect, according to the State party, it is important to consider the associated risk that the complainant's hiding place would be revealed and that he and his friend would be exposed to danger. Had the authorities had such an interest in the complainant as he alleges, they would have been able to find him either by following the father or by investigating friends of the family.

4.16 The State party also finds it pertinent to point to available country information, according to which a substantial part of the population in the Chechen Republic have supported rebels at some point and the fact that the authorities are currently not interested in people who have done so only sporadically. It is also clear that the authorities focus on persons who are suspected of having supported or collaborated with high-profile rebels and have provided substantial support for a longer period of time.¹⁵ The State party also notes that the complainant has not provided any documentation or evidence indicating that he is wanted by the authorities, nor has he submitted any documents showing that there are investigations or proceedings pending against him before the Chechen authorities.

4.17 Moreover, the complainant has alleged that the authorities threatened to kill his family when they were searching for the complainant at his house. However, after having left the Russian Federation, the complainant's cousin has been in touch with his father who has informed him that the family is alive. The State party finds that considering the alleged interest in the complainant on the part of the Chechen authorities, the allegations regarding the threats and the fact that evidently nothing has happened to the family further undermines the credibility of the complainant's story.

4.18 In addition, the State party submits that the complainant's account of what has happened to his family is vague and partly contradictory. The complainant first stated to the Migration Board that his father had told him that his wife and children had been sent to his wife's parents when he was hiding from the authorities in Chechnya. However, during the oral hearing before the Migration Court, the complainant changed his account and claimed that the information regarding his

¹⁵ See the Swedish Migration Board, Country Profile Russia, dated 25 February 2011, pp. 23–24.

family had come from his cousin, after he had arrived in Sweden. The State party notes that the complainant has not given a credible explanation for this discrepancy in his account.

4.19 In light of the above, the State party notes that, in accordance with the principle of the burden of proof in asylum cases, it is appropriate to require that an applicant provides all relevant information, tells the truth and helps the examiner to clarify all the facts in the case. An applicant should also make an effort to support his statements by any available evidence and give a satisfactory explanation for any lack of evidence.¹⁶ It is only when this has been done that the applicant seeking asylum should be granted the benefit of the doubt.

4.20 In sum and with reference to what has been stated above, the State party submits that the circumstances invoked by the complainant are not sufficient to show that the alleged risk of torture 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 complainant's claim under article 3 fails to rise to the basic level of substantiation, the communication should be declared inadmissible as manifestly unfounded.

4.21 Finally, the State party notes that the complainant was born and raised in the Rostov region, in the District of Dubovsky, where he lived until 2007, i.e. when he was 20 years old. It is clear from his domestic passport, which he has submitted to the Swedish authorities, that he was registered in Chechnya in January 2007. Hence, the complainant has lived most of his life outside Chechnya. Furthermore, his marriage was registered in Rostov on 19 November 2009, according to his domestic passport. During the oral hearing before the Migration Court, he also stated that his wife lived with her family in Rostov, and that her family, like his own, had commuted between Rostov and Chechnya. He has finished upper secondary school and has stated that he is physically and mentally healthy. In the State party's view, no information has emerged about his personal situation to indicate that he would be unable to provide for himself in Rostov or anywhere else in the Russian Federation, even if there would be lack of social network. Against this background, the State party maintains that it is possible and reasonable for the complainant and his family to consider resettling in Rostov or in another part of the Russian Federation if they, for other reasons than those alleged in the present case, feel threatened, e.g., due to the unstable situation in the Chechen Republic.

4.22 In this regard, the State party notes that it also appears from relevant Russian legislation that citizens are not obliged to return to their hometown and cancel their previous registration before changing residence, and the complainant would thus be able to settle in a new place of residence immediately upon return to the Russian Federation and register there.¹⁷

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

5.1 In reply to the State party's observations, on 3 January 2014, the complainant

¹⁶ See Articles 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.

¹⁷ See e.g. the decision by the European Court of Human Rights in *A.M. and Others v. Sweden* (dec.), no. 38813/08, 16 June 2009.

submits that the State party has failed to explain why ‘the application of the State party’s comprehensive legislation concerning asylum proceedings has failed’ in the present case and that it merely reiterates the arguments and consideration made by the Swedish Migration Board. The complainant observes that the State party neither acknowledges nor denies that he was subjected to torture in the past, but only refers to a number of circumstances and facts allegedly demonstrating that his story is not credible. The actual act of torture was neglected and not properly investigated.

5.2 The complainant adds that in December 2013, the Swedish Amnesty Fund granted him the necessary funding to undergo a psychological as well as a medical examination in order to investigate the impact of the ill-treatment he was subjected to in Chechnya.¹⁸

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 complainant has 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 complainant’s claim under article 3 of the Convention is concerned.

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 complainant 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 complainant would be personally in danger of being subjected to torture upon return to his 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

¹⁸ No further information in this connection is provided, in particular on the results of the examination.

to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

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”,¹⁹ 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.²⁰ 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, considerable weight is given to the findings of fact that are made by organs of the State party concerned.²¹

7.5 The complainant alleges that, in the Russian Federation, he may be tortured as he had been previously subjected to ill-treatment including beating and electric shocks in 2010 by Chechen officials and that torture is widely used in Chechnya with the “purpose” to keep people under control.

7.6 In this connection, the Committee notes that, even if it were to accept the claim that the complainant was subjected to torture in the past, the question is whether he remains, at present, at risk of torture in 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. The Committee 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.”²² The occurrence of human rights violations in a country is not sufficient, in itself, however, to establish that a complainant, personally, runs a risk of torture²³.

7.7 The Committee further notes that the State party has drawn attention to inconsistencies and contradictions in the complainant’s accounts and submissions which cast doubts regarding his general credibility and the veracity of his claims. In particular, the State party noted that the complainant had stated before the asylum authorities that he had never sympathised with the rebels nor taken part in their

¹⁹ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX, para. 6.*

²⁰ *Ibid.* See also, communication No. 203/2002, *A.R. v. The Netherlands*, Views adopted on 21 November 2003, para. 7.3.

²¹ See, *inter alia*, communication No. 356/2008, *N.S. v. Switzerland*, Decision adopted on 6 May 2010, para.7.3.

²² 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.

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

activities, but had only sold them groceries when they came to his father's shop. However, according to the State party, despite the fact that he had never been involved in the rebels' activities he also claimed that he had been arrested, detained and allegedly tortured. Furthermore, the State party noted that the available country information does not support the existence of a practice such as the one alleged by the complainant, i.e. that he would have been sought at his home almost immediately after being released from the first arrest and rearrested again in spite of the "assignment" he claims he was given. In addition, according to the State party, it appeared highly unlikely that the complainant would have been given the assignment to infiltrate with the rebels despite the lack of cooperation from his part during his second detention. Furthermore, the State party has noted that the complainant has affirmed that his father regularly visited him while he was staying in the village of Nadterechnoe; the State party objected that had the authorities had such an interest in the complainant as he alleges and they were indeed looking for him after his second release, they would have been able to find him either by following his father or by interrogating friends of the family. Moreover, the State party notes that the complainant has not provided any medical documentation attesting that he had been subjected to ill-treatment or any documentation or evidence indicating that he was wanted by the authorities, nor has he submitted any documents showing that there are investigations or proceedings pending against him before the Chechen authorities. In this connection, the Committee also notes that the complainant has neither submitted to the Committee any evidence whatsoever to substantiate his claim that he would risk being subjected to torture by the authorities if returned to the Russian Federation.

7.8 The Committee further observes that the complainant merely stated before the Migration Board and the Migration Court that he feared being subjected to torture, if returned to the Russian Federation, claiming that he was tortured in the past, and that he would be targeted again. The Committee, however, notes that the State party's authorities thoroughly evaluated the complainant's allegations at the domestic level, and found that it lacked credibility.

7.9 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.²⁴ In light of the considerations above, and on the basis of all the information submitted by the complainant, including on the general situation of human rights in the Russian Federation, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his extradition to his country of origin would expose him 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 complainant's return to the Russian Federation would not constitute a breach of article 3 of the Convention by the State party.

²⁴ 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.

