



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

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Committee against Torture

Communication No. 556/2013

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

<i>Submitted by:</i>	Mr. Z. ¹ (represented counsel, Johan Lagerfeld)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	11 July 2013 (initial submission)
<i>Date of present decision:</i>	11 May 2015
<i>Subject matter:</i>	Deportation to the Russian Federation
<i>Procedural issues:</i>	None.
<i>Substantive issue:</i>	Risk of torture upon return to the country of origin
<i>Article of the Convention:</i>	3

[Annex]

¹ The complainant has requested anonymity in the Committee's final decision.



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. 556/2013

Submitted by: Mr. Z. (represented by counsel, Johan Lagerfeld)
Alleged victim: the complainant
State party: Sweden
Date of complaint: 11 July 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. 556/2013, submitted to the Committee against Torture by Mr 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 complainant, her 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 Z., a Russian national born in 1979. 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, Johan Lagerfeld.

1.2 On 30 July 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 facts as presented by the complainant

2.1 The complainant submits that he and his brother are ethnic Chechens who resided in the Chechen Republic, in the Russian Federation. On 15 June 2010, the complainant's brother was apprehended near the village of Sernovodsk in the Chechen Republic by armed men wearing masks. During the detention, his brother was beaten up and tortured. For instance, he was subjected to electric shocks to his genitals, and was held incommunicado, and after a trial, was sentenced to six months of imprisonment and a further year on

probation. On 16 December 2010, he was released and shortly thereafter he "went up into the mountains".²

2.2 On 5 August 2011, the complainant was apprehended by law enforcement agents and taken to a nearby forest and beaten until he lost consciousness. Then, he was brought to a building and was subjected to electric shocks there.³ The authorities wanted to know his brother's whereabouts. The complainant was subsequently released, and went to his uncle's home for one week for safety reasons. He received medical help at a nearby hospital, but he was told by the medical staff that his injuries could not be registered as being caused by the authorities since that would be dangerous for them. On returning to his house, he noticed that he was followed.⁴ On 17 October 2011, his house was raided by policemen, who wore masks. He was not arrested because he was not there when the raid happened. However, these persons took his parents' identity documents and gave them 15 minutes to pack. After this time, his house was set on fire and destroyed.

2.3 On 19 October 2011, he was taken by his uncle to Minsk, Belarus, and from there to Lithuania. On 24 October 2011, he arrived in Sweden and on the same date, applied for asylum there.

2.4 On 31 May 2012, the Migration Board denied his asylum request. According to the summary provided by the complainant in English language, the Board held that it was unclear how the complainant knew that his brother was a rebel. Likewise, the Board stated that the complainant's statements contained some unclear points, for instance, as to whether he had an address registration in the Chechen Republic or Ingushetia; that he provided conflicting accounts concerning who took his passport, and whether he was arrested six or eight months after his brother's disappearance; and that it was curious that the officials burned down the family house, since the complainant's parents were not suspected of any crime. Further, the Board found that as the complainant had not personally assisted the rebels, it was implausible that the authorities would be interested in him. The complainant appealed this decision before the Migration Court.

2.5 On 12 December 2012, the Migration Court denied the complainant's request for oral proceedings at the Court and his request for translation of invoked documents.⁵ On 12 March 2013, the Migration Court denied the translation of the invoked documents and rejected the complainant's appeal against the Migration Board decision of 31 May 2012. The Court stated that the fact that the complainant was released by the police the same day he was arrested suggested that he was not of particular interest for the authorities in the Chechen Republic. Further, his parents' house was raided despite him not being there. Thus, the Court found that he did not provide sufficient evidence in support of his claim that he was in need of international protection.⁶ The complainant filed an application for leave to appeal before the Migration Court of Appeals.⁷

² The complaint does not provide further information nor does it enclose documentation in this regard.

³ On 12 July 2013, the complainant provided a further submission in which he states that he was arrested and mistreated on a previous occasion. Nevertheless, it does not provide any further detail or information.

⁴ The complaint does not provide further information nor does it enclose documentation as to these claims/events.

⁵ The complaint does not provide further details or information in this regard. It does not explain in which circumstances and why the complainant requested for translation of documents.

⁶ The complaint does not provide further information or details as to the reasoning of the Migration Court's decision.

⁷ The complaint does not provide further information or details as to the reasoning of the Migration Court of Appeals' decision.

2.6 On 23 April 2013, the Migration Court of Appeals rejected the complainant's application for leave to appeal. The Migration Court decision of 12 March 2013 became final. The complainant was summoned to a meeting at the Migration Board on 2 July 2013 to discuss his return to the Russian Federation. However, no date has yet been set. The complainant argues that he has exhausted all domestic remedies.

The complaint

3.1 The complainant claims that the Swedish authorities did not assess adequately the risk he would be subject to if returned to the Russian Federation, which would violate article 3 of the Convention. They failed to assess his personal situation due to the previous persecution he was subjected to and his brother's participation in a rebel group.

3.2 He argues that since he has already been subjected to torture in the past, there are substantial grounds to assume that there is a real, personal risk of this treatment being repeated.⁸ The Migration Board focused on some inconsistencies of his account although they were minor discrepancies. Moreover, these discrepancies could be explained because he is native and fully fluent in Chechen; however, on a couple of occasions he was forced to use Russian as the language of the interview, a language he is familiar with, but not to the extent of his native language.

State party's observations on admissibility and merits

4.1 By Note Verbale of 28 January 2014, the State party submitted its observations on the admissibility and the merits. It recalls the facts of the case and also provides excerpts from relevant domestic legislation. The State party submits that the complainant's case was assessed under the 2005 Aliens Act, which entered into force on 31 March 2006. The State party's authorities, upon examination of the facts of the case, concluded that the complainant "has not shown that he is in need of protection".

4.2 The State party submits that on 31 May 2012, the Migration Board rejected his asylum application and decided to expel him to the Russian Federation. That decision was appealed to the Migration Court, which, on 12 March 2013, rejected the appeal. On 23 April 2013, the Migration Court of Appeal refused to grant a leave to appeal and the decision to expel the complainant became final. On 13 May 2013, the complainant claimed before the Swedish Migration Board that there were some impediments to enforcement of this decision, and requested the Board to re-examine his case. The Migration Board rejected the request on 24 October 2013.

4.3 The State party submits that the claim is based on alleged threats, assault and torture during an arrest by the Chechen authorities, but that such claims are "manifestly unfounded", and therefore, inadmissible, under article 22, paragraph 2, of the Convention, and rule 113 (b) of the Committee's rules of procedure.

⁸ The complainant provides the UNHCR's Interim guidance for assessing the international protection needs of asylum-seekers from the Chechen Republic of the Russian Federation dated 4 February 2011. This document reminds that in February 2003, UNHCR assessed that all Chechen asylum-seekers from the Chechen Republic were in need of international protection. Since then, this situation has positively evolved, after the decrease in the level and scope of military activity, an overall improvement in the security situation, and a gradual withdrawal of federal troops from the Chechen Republic. Nevertheless, there are still continuing reports of human rights concerns which may place personal safety or rights at risk, in particular, for members of illegal armed formations and their relatives, political opponents of the federal or Chechen authorities, human rights activists, and persons that have held official positions in the previous administration of former President Aslan Maskhadov.

4.4 Regarding the merits of the communication, the State party submits that the Committee must decide whether the complainant is “personally at risk” of being subjected to torture in the country to which he or she is being returned. 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 return to his or her country. The State party, referring to the Committee jurisprudence⁹, submits that additional grounds must exist to show personal risk.

4.5 In considering the present case, the State party therefore examined general human rights situation in the Russian Federation, and, in particular, the personal risk of the complainant to be subjected to torture, if returned there. The State party further notes that it’s up to the complainant, who must present an arguable case, to establish that he runs a “foreseeable, real and personal risk” of being subjected to torture¹⁰. In addition, the risk of torture must be assessed on the grounds that go beyond mere theory, but doesn’t have to meet the test of being “highly probable”.

4.6 Regarding the current situation with human rights in the Russian Federation, and specifically, in the northern Caucasus, recent reports¹¹ show that the general levels of violence have gone down in recent years. The State party doesn’t underestimate the concerns regarding the human rights situation, since recent reports still contain information of human rights violations against civilian population in the form of arbitrary detentions, abductions, torture and extrajudicial killings.

4.7 The State party submits that several provisions of the Swedish Aliens Act reflect the same principle as those indicated in article 3 of the Convention, and therefore, the State party authorities apply the same kind of test when considering asylum applications. According to the Chapter 12, Sections 1-3 of the Aliens Act, an asylum seeker cannot be returned to a country where there are reasonable grounds to assume that that person would be in danger of being subjected to death penalty, corporal punishment, torture, or other degrading treatment or punishment.

4.8 The State party further submits that the national authorities are in a “very good position to assess the information submitted by an asylum seeker” and to assess the credibility of claims. In the present case, the Migration Board and the Migration Court have made a thorough examination of the material before them. Upon the initial asylum claim, the Migration Board conducted an interview that lasted approximately two hours and fifteen minutes. This was conducted in the presence of a counsel and an interpreter¹². On one occasion, the Migration Board was able to re-examine “new circumstances” invoked by an applicant (see para. 4.2).

⁹ The State party refers to Communication No. 150/1999, *S.L. v. Sweden*, decision adopted on 11 May 2001, para 6.3, and Communication No. 213/2002, *E.J.V.M. v Sweden*, decision adopted on 14 November 2003, para 8.3.

¹⁰ The State party refers to, *inter alia*, Communication No. 178/2001, *H.O. v Sweden*, decision adopted on 12 November 2001, para 13

¹¹ References are made to the following reports: US Department of State, Human Rights report on Russia 2012; Amnesty International – Annual Report 2012 – Russian Federation; Human Rights Watch, World Report: Russia; the Swedish Migration Board, Country Profile Russia of 25 February 2011; Ministry for Foreign Affairs, Sweden, 2011; Norwegian Country of Origin Information Centre, 2013; and Danish Refugee Council.

¹² The State party further submits that the complainant was represented by counsel throughout asylum proceedings

4.9 The State party refers to the Committee's General Comment No. 1, as well as its jurisprudence, stating that the considerable weight will be given to findings of facts made by organs of the State party concerned.¹³ The Swedish Migration Board and the Migration Court are specialized bodies "with particular expertise in the field of asylum law and practice. There is no reason therefore to conclude that the examination by the national authorities was inadequate, or the outcome was "arbitrary or amounted to denial of justice".

4.10 The State party submits that it was able to identify several inconsistencies in the facts presented by the complainant. During the initial interview on 23 November 2011, the complainant claimed that he was born in Grozny, and that "his most recent address" was in the village of Sernovodsk, approximately 55-60 km. from Grozny. However, the driver's licence submitted by the complainant, issued on 13 July 2010, shows that his place of residence is Nazran, which is in Ingushetia. The complainant claimed that he was temporarily registered as a resident in Nazran, because it was cheaper there to obtain a driver's licence. According to the country information as mentioned above (in paragraph 4.6), every citizen can reside in any location up to 90 days without temporary registration. It is implausible that it would take the complainant more than 90 days to obtain a driver's licence, and therefore, there "is no acceptable explanation as to why the complainant would have temporarily registered his residence in Nazran".

4.11 The State party further submits, regarding the complainant's copy of his domestic passport, issued on 16 December 2008, which indicates his place of residence as Sernovodsk, Chechen Republic. The complainant testified that his actual passport was in possession of the district office of the Ministry of the Interior of the Russian Federation. Gleaning from the country information, the domestic passports contain information about "deregistration" from previous permanent place of residence. Since the driver's licence shows Nazran as place of residence, the State party concludes that the complainant was not able to substantiate that his permanent residence was in the Chechen Republic.

4.12 The State party further claims that it is improbable that the complainant during a search in his house on 17 October 2011 kept his driver's licence, but that the law enforcement confiscated his domestic passport. This is based on the fact that the domestic passport is the main piece of identity for the Russian citizens that shows their place of residence. Furthermore, the complainant has not given a plausible explanation as to why his brother was arrested. The State party submits that "it is unlikely that the Russian authorities would have arrested and convicted an innocent citizen for being a member of rebel group".

4.13 The State party further claims that the information about the complainant's brother's arrest and conviction is also implausible. According to the complainant, his brother was arrested and subsequently convicted for assisting rebels, in accordance with article 208 of the Russian Criminal Code. According to the information from the Norwegian Country of Origin Information Centre, aiding and abetting rebel groups is punishable in accordance with the Russian Criminal Code, article 208, paragraph 1 (organizing an illegal group), article 208, paragraph 2 (participation in an illegal group), and 222 (illegal possession and sale of firearms).

4.14 The State party further submits that during his interview with the Migration Board, the complainant claimed that his brother was released from prison on 16 December 2010, and thereafter, joined rebel forces. The complainant himself was arrested on 5 August 2011, eight months after his brother disappearance. However, on 27 October 2011, the complainant informed the Migration Board that he was arrested six months after the

¹³ The State party refers to Communication No. 277/2005, *N.Z.S. v Sweden*, decision adopted 22 November 2006, para. 8.6.

disappearance of his brother. When questioned about his brother's whereabouts, the complainant could not clearly establish that he did indeed join rebel forces. In addition, the fact that the search at the complainant's home was conducted while he was not there shows that the Russian authorities "had no interest in the complainant personally".

4.15 Regarding the arrest warrant presented to the Migration Board on 13 May 2013, the State party submits that such documents are not normally communicated to the wanted individual, in this case, the complainant. The Migration Board considered the document to be "very simple and therefore of low probative value". The State party further contends that the complainant has not provided any medical documentation showing that he was subjected to torture or ill-treatment. Apart from a scar on his eyebrow, the complainant stated that there were no visible scars or other injuries on his body from the torture he allegedly suffered.

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 14 April 2014, the complainant submits that the situation with human rights is much different from the State party's description. The complainant refers to the same report published by the Swedish Foreign Office, available only in Swedish language. According to this report "...the Russian administration is characterized by wide-spread corruption, human rights activists, journalist and whistle-blowers are harassed, subjected to at times fatal violence". According to the same report, "the most serious violations still occur in the northern Caucasus, where, in the name of fighting terrorism, the civilian population is subjected to torture, arbitrary arrests and kidnappings".

5.2 The complainant also refers to "unconfirmed reports about political murders and disappearances" sanctioned by the authorities. This clearly demonstrates a "consistent pattern of gross, flagrant or mass violations of human rights". Various organizations described the situation in the Chechen Republic as "an atmosphere of terror", a "climate of pervading fear". The UN High Commissioner for Human Rights, Navi Pillay, has called for accountability for murders, intimidation and harassment.

5.3 The complainant submits that while the Migration Board and the Migration Court are in good position to the information submitted by asylum applicants, they do not have first-hand knowledge of the situation in the country of origin, which is especially evident in the present case. The complainant further submits that his follow-up interview on 23 November 2011 was conducted in Russian, a "foreign language" to him. Minor inconsistencies in testimonies should not be considered as damaging to the veracity or credibility of the whole story.

5.4 The complainant further submits that the State party should have referred him to an expert in forensic medicine to verify injuries which were inflicted when the complainant was tortured. Furthermore, the criminal law and criminal procedure law in Russia, and specifically in the Chechen Republic, cannot be described as adhering to principles of justice and the rule of law. The complainant submits that he cannot seek protection in the Chechen Republic, or any other part of the Russian Federation, bearing in mind that the complainant and his brother were arrested and tortured, and that their parents' house was burned down, a clear sign of "foreseeable, real and personal risk".

State party's further observations

6. By Note Verbale of 9 June 2014, the State party submitted its further observations. It reiterates its previous observations on the situation with human rights in the Chechen Republic, and claims that the expulsion of the complainant would not lead to violation of article 3 of the Convention due to this situation. Regarding the contention that there should

have been a medical examination by the Migration Board or the Migration Court, the State party submits that it is up to the complainant to establish a *prima facie* case. The complainant himself expressly stated that, apart from a scar on his eyebrow, there were no visible scars or other injuries on his body from the torture that he allegedly suffered.

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 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 admissibility, it declares the communication admissible and proceeds with its examination on the merits, as far as the author's claim under article 3 of the Convention is concerned.

Consideration of the merits

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

8.2 The Committee must determine whether the deportation of the complainant to the Russian Federation would violate the State party's obligations under article 3, paragraph 1, of the Convention not to expel or return (*refouler*) a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture there. The Committee recalls that the existence in a country of gross, flagrant or mass violations of human rights is not in itself a sufficient ground for believing that an individual would be subjected to torture.¹⁴ Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that an individual might not be subjected to torture.

8.3 Recalling its general comment No. 1, the Committee reaffirms that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being "highly probable", but it must be personal, present, foreseeable and real¹⁵.

8.4 The Committee takes note of the claim that the complainant and his brother were arbitrarily arrested and tortured, and his brother was sentenced to prison term following an unfair trial. The Committee also notes that, according to the complainant, the Migration Board, and subsequently, the Migration Court, both failed to take into consideration this information.

¹⁴ See communication No. 428/2010, *Kalinichenko v. Morocco*, decision adopted on 25 November 2011, para. 15.3.

¹⁵ See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003; and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

8.5 The Committee further 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 concerning 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”¹⁶.

8.6 The Committee notes that the State party has drawn attention to inconsistencies and contradictions in the complainant’s accounts and submissions both before the domestic asylum authorities and before the Committee, which cast doubts regarding his general credibility and the veracity of his claims. In particular, the complainant provided a copy of his passport with address registration in the village of Sernovodsk, in the Chechen Republic, but his driver’s licence was issued to his address in Nazran, Ingushetia. As a result, the doubts about his real place of residence still persist. The Committee further notes the sparseness of the information on the complainant’s brother, including his name, description or any identifying information, who, it is alleged, actively participated in rebel groups, and was arrested and tortured because of this. The complainant provides little factual information about the specific charges against his brother, no details regarding the alleged mistreatment his brother suffered in the hands of law enforcement agencies, nor on his current whereabouts. Nor does the complainant provide comprehensive information regarding the fact that his brother was released only after six months of imprisonment, considering that the Russian criminal law foresees much longer penalties for such activity. Similarly, the Committee notes that the complainant provided very cursory information regarding the allegation that his parents’ house was burned down.

8.7 The Committee 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 complainant, however, failed to provide any details about the torture or mistreatment allegedly suffered on a number of occasions¹⁷ in the hands of the law enforcement agencies, such as details regarding the identity or the number of the perpetrators, or the exact methods of ill-treatment or torture suffered. The Committee further notes the absence of any medical records, documents, or affidavits from witnesses that could support the complainant’s claims. The Committee also notes that no medical-forensic examination has been sought, by either side, regarding the complainant’s undetailed torture allegations. The Committee notes, however, that it transpires from the material on file that irrespective of the non-specific nature of the author’s claims in the present case, the State party’s asylum authorities have seriously and thoroughly given due note and evaluated the entirety of the evidence presented by the complainant in support of his application, but found it to generally lack credibility.

8.8 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

¹⁶ 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.

¹⁷ See paragraph 2.2 and footnote 2 above.

complainant to present an arguable case.¹⁸ 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 expulsion 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.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the complainant's expulsion to the Russian Federation would not constitute a breach of article 3 of the Convention.

¹⁸ 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.