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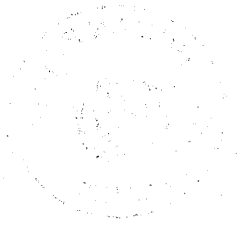
REFERENCE: G/SO 229/31 SWE (123)  
APP/DA/ak 616/2014

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 12 August 2016, concerning complaint No. 616/2014, 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 J.I.

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



  
5 September 2016





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

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**Advance unedited version**

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**Committee against Torture**

**Communication No. 616/2014**

**Decision adopted by the Committee at its fifty-eight session  
(25 July – 12 August 2016)**

<i>Communication submitted by:</i>	J. I. (represented by counsel, Johan Lagerfeld)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	10 July 2014 (initial submission)
<i>Date of adoption of decision:</i>	12 August 2016
<i>Subject matter:</i>	Expulsion to the Russian Federation
<i>Substantive issues:</i>	Torture, non-refoulement
<i>Procedural issues:</i>	None
<i>Articles of the Convention:</i>	3



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

1.1 The complainant is J. I., a citizen of the Russian Federation born in 1984. 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 11 July 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the author to the Russian Federation while his complaint was being considered.

### **The facts as presented by the complainant**

2.1 The complainant was born in the village Gettyn Kele in the Shatoy district, approximately 60 km from the city of Grozny (Chechen Republic). In 2007, one person from his village joined the “rebels”, and later, in the same year, two of his cousins were forcibly conscripted.

2.2 In the summer of 2008, the authorities arrested the complainant and he was interrogated by the Russian security forces. The officials demanded information concerning the villager who had voluntarily joined the rebels, stating that they were aware that he was in contact with him. After several hours of questioning, he was released.

2.3 After his marriage,<sup>1</sup> the complainant moved with his wife to the city of Grozny. On an unspecified date in 2010, his wife called him at his work and told that armed men had come to their house and were looking for him. The same happened the next day. Out of fear, the complainant did not return home, but stayed at work. At some point after that,<sup>2</sup> at the market in Grozny, he was arrested by policeman in civilian clothes. He was pushed into a car with several military officers. A bag was placed over his head so he could not see where he was being taken. Thereafter, he found out that he was taken to the Shatoy district.<sup>3</sup>

2.4 Upon arrival to the Shatoy district, the complainant was subjected to electric shocks for approximately 2-3 hours. During this, the officers interrogated him about the villager who had joined the rebels. He was also kicked and beaten<sup>4</sup> to the point to lose consciousness but he was poured cold water over his head. After that, the complainant was dragged out into the yard and left semi-conscious next to a car. He managed to leave the compound and was taken by an acquaintance to his parents. After these events, the complainant moved to Grozny and lived with his uncle for approximately a year.

2.5 While he was living in Grozny, the Russian military visited his parents on several occasions. His parents told the officers that the complainant had joined the “rebels”.

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\*The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Jens Modvig, Ana Racu, Claude Heller Rouassant, Abdelwahab Hani and Sébastien Touze.

<sup>1</sup> No specific date is provided for this event.

<sup>2</sup> No specific dates provided.

<sup>3</sup> Again, no details or dates are provided.

<sup>4</sup> The complainant doesn't provide any further details regarding the alleged beatings.

2.6 The complainant moved back to his home village<sup>5</sup> and lived with various relatives in order to avoid being arrested again. During this time, his parents were interrogated several times. For this reason, the complainant did not maintain contact with his parents as they were under surveillance. Currently, he does not talk to his parents, and he does not have any contact with his former wife either, as she left him, unable to bear the pressure and fear. The complainant further submits that one of his brothers was also arrested in 2009 and sentenced to one year of imprisonment for allegedly assisting the complainant.

2.7 On an unspecified date, the complainant arrived in Sweden and applied for asylum. On 1 July 2013, the Migration Board dismissed his application. On an unspecified date, the complainant appealed this decision. On 5 November 2013, the Migration Court rejected his appeal. On 14 January 2014, the Migration Court of Appeals denied the complainant's request for a leave to appeal. The complainant claims to have exhausted all available domestic remedies.

### **The complaint**

3. The complainant claims that his deportation to the Russian Federation would violate his rights under article 3 of the Convention against Torture because he would be at personal risk of being persecuted, tortured and ill-treated upon return.

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

4.1 By Note Verbale of 12 December 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. 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 further submits unofficial translations of the proceedings of the Swedish migration authorities to show the reasoning behind the State party's decision to expel the complainant. The findings confirm that the complainant is not in need of protection, and can be expelled to the Russian Federation.

4.3 The complainant arrived in Sweden on 25 October 2012, and applied for asylum the following day. The State party's migration authorities rejected the application, and decided on 1 July 2013 to expel the complainant. The decision was appealed, but the Migration Court on 5 November 2013 rejected this appeal. On 14 January 2014, the Migration Court of Appeal refused the complainant request for leave to appeal, and the decision to expel him became final.

4.4 On 4 February 2014, the complainant claimed before the Migration Board that there "were impediments to enforcement of the decision to expel him", and requested the re-examination of his case. This request was rejected on 18 February 2014 and the refusal was not appealed against.

4.5 The State party does not contest that all available domestic remedies have been exhausted in the present case. It submits, however, that the claims presented by the complainant are "manifestly unfounded", and therefore, should be considered inadmissible, under article 22, paragraph 2, of the Covenant, and rule 113 (b) of the Committee's rules of procedure.

<sup>5</sup> No dates are specified.

4.6 Regarding the merits of the communication, the State party explains that in considering the present case, it examined the general human rights situation in the Russian Federation, and, in particular, the personal risk of the complainant to be subjected to torture, if returned there. The State party further notes that it falls to the complainants, who must present an arguable case, to establish that they run a foreseeable, real and personal risk of being subjected to torture.<sup>6</sup> In addition, the risk of torture must be assessed on the grounds that go beyond mere theory, but does not have to meet the test of being highly probable.

4.7 Regarding the current human rights situation in the Russian Federation, and specifically, in the northern Caucasus, the State party notes that recent reports<sup>7</sup> show that the general levels of violence have decreased in last several years. At the same time, the State party does not underestimate the concerns regarding the human rights situation, since recent reports still contain information of human rights violations against the civilian population, such as arbitrary detentions, abductions, torture and extrajudicial killings. The current situation in Chechnya, however, does not in itself establish the risk of torture for the complainant, if he is expelled to his home country.

4.8 The State party submits that several provisions of the Swedish Aliens Act reflect the same principles 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 sections 1-3 of chapter 12 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.

4.9 When the complainant applied for asylum, the Migration Board conducted multiple individual interviews with him to enable him to submit the reasons for his need for protection and to explain all relevant facts. During these interviews, the complainant was represented by counsel. During the initial interview on 28 October 2012, the complainant stated that he was satisfied with his counsel. Moreover, the complainant, in addition to oral interviews, was able to submit written briefs. The State party therefore suggests that its authorities have had enough information for "a well-informed, transparent and reasonable risk assessment" of the complainant's need for protection.

4.10 The State party refers to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention, 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.<sup>8</sup> 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. In addition, absent such arbitrariness or denial of justice, "great weight must be attached" to the findings of the State party's authorities.

4.11 The State party also submits that the complainant provided contradictory statements to the migration authorities. For example, to prove his identity, the complainant provided

<sup>6</sup> The State party refers to, inter alia, communication No. 178/2001, *H.O. v. Sweden*, decision adopted

<sup>7</sup> References are made to the following reports: United States of America, Department of State, *Human Rights Report on Russia* (2013); Amnesty International, *Annual Report: Russian Federation* (2013); Human Rights Watch, *World Report 2014: Russia*; Sweden, Swedish Migration Board, "Country Profile: Russia", 25 February 2011, among others.

<sup>8</sup> The State party refers to communication No. 277/2005, *N.Z.S. v. Sweden*, decision adopted on 22 November 2006, para. 8.6.

only his driver's licence, but not his passport. The complainant stated that his passport was in Russia, and that he could not contact his family to deliver it to him. The Migration Board, however, considered that the complainant has not demonstrated that his "most recent habitual residence" was in the Chechen Republic.

4.12 Furthermore, during the interviews and hearings, the complainant had difficulty remembering exact facts, dates and details. He explained this by great anguish as a result of his injuries. The explanation does not seem to be plausible, however, since the complainant seemed to lack knowledge about major events in his life related to his asylum claim. The migration authorities also found it incredible that the complainant was able to escape from prison because the gate was left unlocked.

4.13 Additionally, the complainant claimed during his first interview that his two cousins were forced to join rebels, but during the second interview he stated that they joined the rebels voluntarily.<sup>9</sup> The complainant never claimed that he was questioned by the Russian authorities specifically regarding these cousins. In light of these facts, it is not clear why the complainant would be of such interest to the law enforcement authorities in Russia.

4.14 The complainant further stated to the migration authorities that that after his marriage, he and his wife moved to Grozny. He was then arrested in 2010, at a marketplace in Grozny, and taken to the Shatoy district, where he claims he was tortured. To the Migration Court, however, the complainant stated that he moved to Grozny in 2008, and was arrested and tortured several months after that, but that he managed to escape. Furthermore, he claimed that one of his brothers was arrested in 2009 and that that brother was sentenced to one year of imprisonment for having helped the complainant. The State party finds it remarkable that the complainant was not prosecuted and sentenced on the same basis as his brother. The State party further notes that the complainant did not provide any documentation to prove that his brother was indeed prosecuted and sentenced.

4.15 In conclusion, the State party reiterates that the complainant failed to produce proper identification and proof of residence, and provided contradictory statements and facts. The State party therefore considers that the complainant failed to fulfil the requirements that the threat of torture must be foreseeable, real and personal, and consequently, his expulsion to his home country would not constitute a violation of article 3 of the Convention.

#### **Additional information by the complainant**

5.1 In reply to the State party's observations, on 16 January 2016, the complainant submits that the situation with human rights in Chechnya is very different from the State party's description. He refers to the same report published by the Swedish Foreign Office, that the State party had cited.<sup>10</sup> According to that report, the Russian administration is characterized by widespread corruption, human rights activists, journalists and whistle-blowers are harassed, subjected to, at times, fatal violence. According to the 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 have described the situation in Chechnya as "an atmosphere of terror", a "climate of pervading

<sup>9</sup> In his submission to the Committee, the complainant again states that his cousins were forced to join the rebels.

<sup>10</sup> Available only in Swedish language.

fear". The United Nations High Commissioner for Human Rights,<sup>11</sup> has called for accountability for murders, intimidation and harassment. Similarly, the Human Rights Watch 2014 report on Russia lists a similar litany of abuses, including sentencing to compulsory psychiatric treatment.

5.3 The complainant submits that the internal guidelines of the Migration Board called for an expert/specialist in forensic medicine to be appointed to examine applicants who have claimed torture in the past, with the costs of such examination covered by the State party. The Migration Board and the Migration Court chose to ignore their own guidelines, which indeed should be construed as denial of justice.

#### **Additional information by the State party**

6.1 On 29 April 2016, the State party, responding to counsel's comments, reiterates its position that while it does not wish to underestimate the concerns regarding the current human rights situation in the Russian Federation and especially in the region of north Caucasus, the situation in and of itself does not establish a violation of article 3 of the Convention. The complainant's return to the Russian Federation would entail a breach if he could show that he is personally at risk of being subjected to the treatment contrary to article 3.

6.2 The State party adds that it considers the discrepancies and contradictions in the complainant's statements to the Migration Board, the Migration Court and the Committee to be serious enough to cast doubts on the veracity of all his statements. The complainant submitted conflicting details about very important part of his account of the facts.

6.3 Regarding the complainant's contention that the migration authorities of the State party were obliged to further examine whether he had been tortured, the State party submits that the responsibility lies with the complainant to invoke evidence in order to substantiate the risk of being exposed to treatment contrary to article 3 of the Convention. Where such evidence is cited, it is for the State party to dispel any doubts about such evidence. The State party reiterates that there is a reason to question the veracity of the complainant's claims. The State party therefore submits that the migration authorities were not obliged to further examine whether the complainant had been tortured in the past.

#### **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 (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 (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 obstacles to the admissibility; it declares the communication admissible as far as the complainant's claim under article 3 of the Convention is concerned and proceeds with its examination on the merits.

<sup>11</sup> Navi Pillay.



*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 (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 (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.<sup>12</sup> 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 real.<sup>13</sup>

8.4 The Committee takes note of the claim that the complainant was twice arrested and tortured. 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.

8.5 The Committee further notes that, even if it were to accept the claim that the complainant was subjected to torture and/or ill-treatment in the past, the question is whether he remains, at present, at risk of torture in the Russian Federation. The Committee notes that the current human rights situation in the Russian Federation remains 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".<sup>14</sup>

8.6 The Committee 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. The Committee notes, in particular, that the complainant could not definitively verify that his habitual and permanent place of residence was in the Chechen Republic, nor was he able to show any evidence that his brother and other family members were persecuted for their connections to the complainant. The complainant further failed to provide exact dates, location, and names of persons involved in the events central to his claim for protection, such as lack of details and description regarding his places of residence, his alleged arrests and instances of torture suffered in the hands of the Russian authorities.

<sup>12</sup> See communication No. 428/2010, *Kalinichenko v. Morocco*, decision adopted on 25 November 2011, para. 15.3.

<sup>13</sup> 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.

<sup>14</sup> See concluding observations on the fifth periodic report of the Russian Federation, adopted by the Committee at its forty-ninth session (CAT/C/RUS/CO/5), para. 13.

8.7 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 has been tortured in the past, and that that he would be targeted again. The Committee, however, notes that the complainant do not put forward any evidence that the Russian authorities would target him if he is returned. The Committee recalls that, in its general comment No. 1, it stated that it should give considerable weight to findings of fact made by the State party concerned. The Committee considers that, in the specific circumstances of this case, it is not necessary to challenge the State party's evaluation of the evidence presented by the complainant.

8.8 The Committee recalls that the risk of torture must be assessed on grounds that go beyond mere theory, and that it is generally for the complainant to present an arguable case.<sup>15</sup> In that regard, the Committee, in addition to the lack of information about the alleged instances of torture, also notes the discrepancies as described by the State party.<sup>16</sup> In the light of these considerations, 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 forcible removal 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, acting under article 22 (7) of the Convention, therefore concludes that the complainant's expulsion to the Russian Federation would not constitute a breach of article 3 of the Convention.

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<sup>15</sup> See, inter alia, communications No. 298/2006, *C.A.R.M. and others v. Canada*, decision adopted on 18 May 2007, para. 8.10; No. 256/2004, *M.Z. v. Sweden*, decision adopted on 12 May 2006, para. 9.3; No. 214/2002, *M.A.K. v. Germany*, decision adopted on 12 May 2004, para. 13.5; No. 150/1999, *S.L. v. Sweden*, para. 6.3; and No. 347/2008, *N.B.-M. v. Switzerland*, decision adopted on 14 November 2011, para. 9.9.

<sup>16</sup> See, in particular, paragraphs 4.12 to 4.14.