



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

Advance unedited version

Distr.: Restricted

29 May 2019

Original: English

Committee against Torture

**Decision adopted by the Committee under article 22 of the
Convention, concerning Communication No. 729/2016** ****

<i>Communication submitted by:</i>	I.A. (represented by counsel, Johan Lagerfelt)
<i>Alleged victims:</i>	The complainant and his two children
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	26 January 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 10 February 2016 (not issued in document form)
<i>Date of present decision:</i>	23 April 2019
<i>Subject matters:</i>	Deportation to the Russian Federation; risk to life, torture
<i>Procedural issues:</i>	Failure to sufficiently substantiate claims
<i>Substantive issues:</i>	Risk to life or risk of torture or of cruel, inhuman or degrading treatment or punishment (non-refoulement)
<i>Article of the Convention:</i>	3

* Adopted by the Committee at its sixty-sixth session (23 April – 17 May 2019).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touze and Honghong Zhang.



1.1 The complainant is Mr. I.A., a Russian citizen, born in 1980, who brings his claims on his own behalf, and on behalf of his two minor children, M.A. and A.A. The complainant claims that the State party would violate his rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter 'the Convention') if he is deported to the Russian Federation. The complainant is represented by counsel.

1.2 On 10 February 2016, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the complainant to the Russian Federation while his complaint was being considered.

1.3 By its note verbale dated 1 November 2018, the State party requested the Committee to lift its interim measures request. The Committee, acting through its Rapporteur on new complaints and interim measures, decided to maintain its request for interim measures, on 18 March 2019.

The facts as presented by the complainant

2.1 The complainant has been living in the village of Asinovskaya in the Chechen Republic since 1996. In 2007, his cousin T.C. joined the Chechen rebel forces and the complainant was helping him from time to time with food and clothing. At some unspecified date in 2007, the complainant's house was stormed by people in camouflage who tried to abduct him, but his wife's entreaties stopped them. In 2009, the complainant's cousin T.C. killed a local policeman in the city of Grozny before being killed himself. Some time later, in the middle of the night, two men came to the complainant's house and wounded him with a knife. When his family woke up, they ran away. Soon the complainant found out that there was a blood feud declared by the family of the killed policeman. He, together with his father, attempted mediation, without success. The complainant did not approach the authorities, since he knew they would not react.

2.2 The complainant does not specify his date of arrival in Sweden. He requested asylum on 2 September 2013. In his asylum application he claimed that he cannot relocate in the Russian Federation, since the family of the killed policemen has contacts in the police and could find him anywhere; and that he has no relatives elsewhere in Russia. The complainant also explained in his asylum request that in the past, he assisted his cousin with food and clothing for rebels.

2.3 The Migration Agency rejected his application on 12 September 2014. The Agency believed that he was under the threat of a blood feud and could not turn to the Chechen authorities. They found, however, that being a victim of a blood feud he did not fall under the definition of refugee under the Swedish Aliens Act (which corresponds to the definition in article 1A of Geneva Convention and extends to non-state actors). They also concluded, that since the complainant was of no interest to the authorities, he could relocate to smaller coastal cities of the Russian Federation, like Murmansk, Saratov, Volgograd or Samara. On 16 March 2015, the Migration Court rejected the complainant's appeal and maintained the decision of the Migration Agency. On 11 May 2015, the Migration Court of Appeal denied to the complainant a right to leave to appeal.

The complaint

3. The complainant claims that his deportation to the Russian Federation would violate his rights under article 3 of the Convention because he would be at personal risk of being persecuted, tortured and ill-treated upon return. The author claims that this risk exists due to the blood feud declared against him, and his connections to the Chechen rebels.

State party's observations on admissibility and merits

4.1 By a note verbale dated 1 July 2016, the State party submitted its observations on admissibility and 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 migration 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 its own 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. The complainant applied for asylum on 2 September 2013, and his request was rejected on 12 September 2014. This decision was appealed to the Migration Court, which on 16 March 2015 rejected the appeal. On 11 May 2015, the Migration Court of Appeal refused leave to appeal and the decision to expel the complainant became final.

4.3 On 5 June 2015, the complainant claimed before the Migration Board that there "were impediments to enforcement of the decision to expel him" and requested a re-examination of his case. That request was rejected on 21 July 2015. The Migration Agency subsequently held discussions with the complainant to discuss his and his children's voluntary return. According to the provisions of chapter 12, section 22(1) of the Aliens Act, the expulsion order will be time-barred on 11 May 2019. It is therefore of utmost importance to the State party that the Committee takes decision on the current case before May 2019.

4.4 The State party does not contest that the complainant exhausted all domestic remedies. However, the complainant failed to sufficiently substantiate his claims and therefore, his complaint must be considered inadmissible under article 22(2) of the Convention.

4.5 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 to the complainant of being subjected to torture if returned there. The State party notes that it is incumbent on the complainants, who must present an arguable case, to establish that they run a foreseeable, real and personal risk of being subjected to torture.¹ In addition, while the risk of torture must be assessed on grounds that go beyond mere theory, it does not have to meet the test of being highly probable.

4.6 Regarding the current human rights situation in the Russian Federation, specifically in the northern Caucasus, the State party is aware of the situation, and refers to the recent reports, for example, by the International Crisis Group ("The North Caucasus. Insurgency and Syria: An Exported Jihad?" dated 16 March 2016), by the Amnesty International (Annual Report Russian Federation 2015/2016), Human Rights Watch (World Report 2016 – Russia, dated 27 January 2016), and others. To briefly summarize these reports, the violence in the Northern Caucasus has substantially decreased during the last two years. Many radical groups left Russia for Syria and Iraq. While the violence has been reduced, violations of human rights still occur. Law enforcement agencies resort to enforced disappearances, unlawful detentions as well as torture and ill-treatment of detainees.

4.7 The State party concludes that "it cannot be said that the current situation in the Russian Federation is such that there is a general need to protect asylum seekers from that country". The State party "does not wish to underestimate" the legitimate concern about the human rights situation in the Northern Caucasus. The current lack of respect for human rights in and of itself is not sufficient, and the complainants must show personal and real risk of being subjected to treatment contrary to article 3 of the Convention.

4.8 The State party submits that several provisions of the Aliens Act reflect the principles contained in article 3 of the Convention and, therefore, that 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, a person seeking asylum cannot be returned to a country where there are reasonable grounds to assume that he or she would be in danger of being subjected to the death penalty, to corporal punishment, to torture or to other degrading treatment or punishment.

4.9 The Migration Agency held multiple oral interviews with the complainant and his children. An introductory interview was held on 3 September 2013. On 4 October 2013, the agency held another interview and a "child-focused parental interview" of the complainant and his two children. On 10 October 2013, another interview lasted almost four hours. In accordance with chapter 1, section 10 of the Aliens Act, special attention was given to "health

¹ The State party refers, inter alia, to communication No. 178/2001, *H.O. v. Sweden*.

and development” and the best interests of the children. The complainant was represented by public counsel, and communicated through an interpreter. The complainant was further given an opportunity to scrutinize and comment on written records of all interviews.

4.10 The State party therefore claims that the Migration Agency along with the Migration Court have had sufficient information to make a well-informed transparent and reasonable risk assessment. The State party wishes to recall that according to the Committee’s general comment No. 1 on article 3 of the Convention, due weight must be given to findings of facts made by organs of the State party concerned.

4.11 The State party notes substantial inconsistencies in the submissions made by the complainant. For example, he stated that the last contact he had with the Chechen authorities was in 2007. Before the Migration Court, however, he claimed that after he left Russia, the authorities summoned him for interrogation, threatened his wife, and have taken her travel documents. In his application to the Migration Agency dated 5 June 2015, the complainant stated that he has spoken to his father over the phone, and that his father was subsequently assaulted by the police, and that the police set his house on fire. A copy of a certificate dated 10 December 2014 was appended to the application, that the complainant is wanted in the Chechen Republic due to his connections with illegal armed rebels. The certificate claims that the complainant assisted rebels from 2012 to 2014, while he himself only stated that he helped his cousin in 2008 and that his cousin was killed in 2009.

4.12 Regarding the assault of the complainant’s father, the State party notes that there is no documentation to support these claims. In his submission to the Committee, the complainant submits that it was his wife’s entreaties that stopped the law enforcement from taking him away. In his earlier testimony to the Migration Agency, it was his mother who stopped the potential abduction of the complainant by the law enforcement agents. In an overall assessment, the inconsistencies in the complainant’s story and late submission of additional documents cast doubt on the general credibility.

4.13 As for the complainant’s claims regarding risks related to relatives of the deceased police officer, the State party confirms that it is not disputed that the national authorities could not afford the complainant protection in the Chechen Republic against the blood feud. Therefore, it must be assessed whether it is “reasonable and relevant” for the complainant to seek internal refuge in another part of his country of origin. The complainant claims that he would be registered by local authorities anywhere in Russia, and that he does not have any relatives outside of the Chechen Republic. The complainant submitted a letter from the UNHCR dated 4 February 2011, in which the organization states that the question of internal flight alternative should be assessed on a case-by-case basis, in light of the individual circumstances of the case. According to their assessment, the internal flight alternative should not be considered available to the Chechen asylum seekers fleeing persecution.

4.14 The State party notes that the threat emanates from non-state actors. Article 1 of the Convention defines torture as severe pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity. Therefore, the risk from non-state actors falls outside of the scope of article 3 of the Convention.² The complainant submits that he suspects that the authorities are complicit in the threats against him and his family, given that the deceased was a police officer. The risk of torture, however, must be assessed on the ground that go beyond mere theory or suspicion.³ The complainant’s suspicion is not sufficient to conclude that his expulsion to the Russian Federation would constitute a violation of the Convention.

4.15 The State party recalls the Committee’s jurisprudence where it found that a complainant failed to substantiate that he would be unable to live a life free of risk of torture in a case where he also failed to establish a personal, present, and foreseeable risk of being tortured.⁴ While the resettlement within the country of origin may constitute hardship for the

² The State party refers to *G.R.B. v Sweden*, communication No. 83/1997, paragraph 6.5.

³ The State party refers to *A.B. v Sweden*, communication No. 539/2013, paragraph 7.9.

⁴ The State party refers to *B.S.S. v Canada*, communication No. 183/2001, paragraph 11.5.

complainant and his family, this does not amount to torture by itself. It is necessary to identify areas of the country which could be considered safe for a complainant to return.

4.16 The internal flight alternative is a recognized international and national principle. According to the Swedish migration law, the internal flight alternative must be “relevant”, meaning that the asylum seeker must have access to efficient protection in the part of the country other than his or her own home. It must also be “reasonable” that the individual be expected to relocate. In light of the relevant information, the Swedish migration authorities have concluded that the complainant could register in another part of Russia and that there were possibilities for him to find a work and attend school, and there nothing to indicate that he would encounter undue hardship if returned to those parts of the Russian Federation.

4.17 The State party also notes that the UNCHR letter that the complainant obtained is from 2011, and that the situation “has significantly changed in recent years”, and it has become “increasingly common” for people from Northern Caucasus to move to other parts of Russia. Regarding the complainant’s claim that the authorities would still find him when he registered at the new location in the Russian Federation, the State party submits that the complainant “has not plausibly demonstrated that there is a personal and real threat” against him emanating from the Chechen authorities.

4.18 The complainant has failed to demonstrate that there are substantial grounds for believing that he would face a personal, foreseeable and real risk of torture if returned to the Russian Federation. Since he failed to adduce basic level of substantiation, the communication should be declared inadmissible as manifestly ill-founded.

Complainant’s comments

5.1 Responding to the State party’s comments on admissibility and merits, the complainant submits that instead of considering the merits of the communication, the State party argues about the fact that the expulsion of the complainant would be time-barred after 11 May 2019. Had the State party carried out a proper investigation in accordance with its own law, the issue would have been decided in favour of the complainant and would not have been brought to the attention of the Committee.

5.2 The State party itself admits that the law enforcement agencies resort to enforced disappearances, unlawful detention, as well as torture and other ill-treatment. The State party then proceeds to ignore its own findings. The State party places importance on inconsistencies in the testimony by the complainant. These inconsistencies are minor and easily explained by trauma suffered during the contacts the complainant had with the authorities. According to the International Classification of Diseases, the prevalence of the PTSD can be as high as 80% in the refugee population.

5.3 Regarding the certificate presented by the complainant that he is wanted by the authorities, the State party notes that the document was of a “simple nature”, without noticing that that is how the certificates look in the Russian Federation. Regarding absence of documentation on the assault of the complainant’s father, it is accepted as common knowledge that such assaults hardly ever recorded in an official complaint to the authorities.

5.4 The position of the UNHCR is that internal flight or relocation are not options for Chechens, because they are regularly discriminated against in other parts of the Russian Federation. Despite this information, the State party argues that an internal flight alternative is available to the complainant, which can constitute a “denial of justice” on part of the State party. Agreeing that the State party need to identify areas for internal relocation that would be safe for the complainant, the State party fails to do so. It argues that the UNCHR letter is old, but provides no information whether the UNHCR changed its assessment.

5.5 The State party further argues that the pain and suffering that the complainant risks, would be inflicted by non-state actors. The State party, however, fails to consider that because of the involvement of the deceased police officer, i.e. a public official, such argument do not apply. In addition, such behavior in the Russian Federation is always carried out with “passive acquiescence, if not active consent”.

5.6 The complainant considers that he has shown the risk of being subjected to persecution, torture or cruel or degrading treatment, and has shown that the risk is personal, foreseeable and real, that the refoulement would be in violation of article 3 of the Convention.

State party's additional observations

6. By note verbale dated 1 November 2018, the State party reiterated its previous position, and requested early consideration of the present communication, arguing that the complainant's expulsion will be time-barred on 11 May 2019. If the new application is submitted before the Migration Agency, it will be examined anew, and will be subject to appeals before the Migration Court and Migration Court of Appeal. Therefore, once the expulsion order expires, the complainant's claim would be inadmissible due to non-exhaustion of domestic remedies.

Additional information by the complainant

7. The complainant rejects the argument by the State party that the communication should be considered as soon as possible. The main concern in this case should be justice for the complainant, and the State party should have carried out a proper investigation of his claims. If the new asylum is put forward, the complainant hopes it will be considered with "more stringency", but until then, the interim measures should remain in place.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee against Torture 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.

8.2 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. The Committee notes that the State party does not contest that all available domestic remedies have been exhausted in the present case and concludes that it is not precluded from examining the communication by the requirements of article 22 (5) (b) of the Convention.

8.3 The Committee notes the State party's submission that the communication is manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention. The Committee observes, however, that the complaint raises substantive issues under article 3 of the Convention and that those issues should be examined on the merits. As the Committee finds no further obstacles to the admissibility, it declares the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

9.1 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.

9.2 In the present case, the issue before the Committee is whether the removal of the complainant and his children 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 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 (refoulement).

9.3 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 the Russian Federation. In assessing that risk, 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 the Russian Federation. However, the Committee recalls

that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned.⁵ 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.⁶ 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

9.4 The Committee recalls its general comment No. 4 (2017), in which it stated, in paragraph 45, that it would assess “substantial grounds” and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of the Committee’s decision, would affect the rights of the complainant under the Convention in the case of his or her deportation.

9.5 The Committee notes the complainant’s claim that the family of the deceased police officer have declared blood feud on him, that he attempted mediation, which was unsuccessful, and that he is afraid of being persecuted and tortured. The Committee also notes the State party’s argument that it accepts the fact of the blood feud as true, and that it also admits that the authorities in the Russian Federation cannot afford protection of the complainant in such cases. The Committee further notes the State party’s arguments that these threats emanate from non-state actors, further suggesting that the complainant should make use of a well-accepted practice of the internal flight alternative in other regions (other than the Chechen Republic) of the Russian Federation, without specifying the region.

9.6 The Committee notes that based on the assumption that an internal flight alternative was available to the complainant, the State party did not fully examine his claims regarding potential threats posed by his past activities, including the declaration of the blood feud. The Committee recalls, in this context, that the internal flight or relocation alternative does not represent a reliable and durable alternative where the lack of protection is generalized and the individual concerned would be exposed to a further risk of persecution or serious harm.⁸ Also acting on the assumption of the possible flight alternative, the State party failed to give due determination to the certificate presented by the complainant that he is wanted by the Russian authorities, calling it “simple in nature”.

9.7 The Committee further recalls its general comment No. 4 (2017) in that the State parties should refrain from deporting individuals to another State where there are substantial grounds for believing that they would be in danger of being tortured or subjected to other ill-treatment at the hands of non-State entities, including groups that are unlawfully exercising actions that inflict severe pain or suffering for purposes prohibited by the Convention and over which the receiving State has no or only partial de facto control, or whose acts it is unable to prevent or whose impunity it is unable to counter.⁹ The Committee considers that the so-called “internal flight alternative”, that is, the deportation of a person or a victim of torture to an area of a State where the person would not be exposed to torture, unlike in other areas of the same State, is not reliable or effective¹⁰. The Committee therefore considers that, by rejecting the complainant’s asylum applications on the basis of the assumption of availability of an internal flight alternative and without giving sufficient weight to whether they could be at risk of persecution from non-State entities over which the State has no or only partial de facto control, the State party failed in its obligations under article 3 of the Convention.

⁵ See, *M.S. v. Denmark* (CAT/C/55/D/571/2013), para. 7.3.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ See *Mondal v. Sweden* (CAT/C/46/D/338/2008), para. 7.4; and *M.K.M. v. Australia* (CAT/C/60/D/681/2015), para. 8.9; Committee against Torture, general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para 47.

⁹ Committee against Torture, general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 30.

¹⁰ *Ibid.*, para 47.

10. In the light of the foregoing, the Committee, acting under article 22 (7) of the Convention, concludes that the deportation of the complainant and his two minor children to the Russian Federation would constitute a breach of article 3 of the Convention.

11. The Committee is of the view that, pursuant to article 3 of the Convention, the State party has an obligation to refrain from forcibly returning the complainant and his two minor children to the Russian Federation or to any other country where there is a real risk of them being expelled or returned to the Russian Federation. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above.
