



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

Distr.: General  
15 February 2023

Original: English

## Committee against Torture Seventy-fifth session

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1065/2021\* \*\*

<i>Communication submitted by:</i>	A.D. (represented by counsel, Yegor Boychenko)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Cyprus
<i>Date of complaint:</i>	18 March 2021 (initial submission)
<i>Document references:</i>	Decisions taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 29 March 2021 (not issued in document form)
<i>Date of adoption of decision:</i>	4 November 2022
<i>Subject matter:</i>	Deportation to the Russian Federation
<i>Substantive issues:</i>	Risk of torture upon return to country of origin (non-refoulement); torture and cruel, inhuman or degrading treatment or punishment; measures to prevent acts of torture; obligation of the State party to ensure that the competent authorities conduct a prompt and impartial investigation
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Articles of the Convention:</i>	2, 3, 11 and 16

1.1 The complainant is A.D., a national of the Russian Federation born in 1972. He claims that Cyprus would violate his rights under article 3 of the Convention if it removed him to the Russian Federation. He also claims that the State party has violated his rights under articles 2, 11 and 16 of the Convention. The State party made the declaration pursuant to article 22 (1) of the Convention on 8 July 1993. The complainant is represented by counsel, Yegor Boychenko.

1.2 On 29 March 2021, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant to the Russian Federation while his case was being considered by the Committee. On 8 April 2021, the Committee reiterated its request for

\* Adopted by the Committee at its seventy-fifth session (31 October–25 November 2022).

\*\* The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane and Sébastien Touzé.



interim measures to the State party.<sup>1</sup> On 13 April 2021, the Committee decided not to accept the State party's request of 9 April 2021 to lift the interim measures.

1.3 On 15 July 2021, the Committee decided, in accordance with rule 115 (3) of its rules of procedure, to examine the admissibility of the complaint together with the merits.

1.4 On 7 September 2021, the Committee, acting through its Rapporteur on new complaints and interim measures, denied the complainant's new request for interim measures for his immediate release from the central prison of Nicosia in order to prevent irreparable harm (paras. 7.1–7.7 below).

1.5 On 8 September 2021, the Rapporteur on reprisals sent a letter to the State party, in accordance with article 22 of the Convention, informing it that, since 15 July 2021, the complainant had allegedly become subject to constant psychological and physical pressure from other detainees in the central prison of Nicosia, as well as from prison staff, due to the fact that he had submitted a complaint to the Committee. The Rapporteur drew the attention of the State party to its obligations under the Convention. In view of the seriousness of the allegations, the Rapporteur requested that the State party send her information with regard to the above-mentioned situation of the complainant. To date, this information has yet to be received.

1.6 On 8 December 2021, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested that the State party secure an alternative measure to detention of the complainant while his case was being considered. The State party's responses are contained in paragraph 8.1 of the present decision.

#### **Facts as submitted by the complainant**

2.1 The complainant was a businessman and shareholder in the largest meat-processing company in Primorsky Krai. He started his business in the 2000s and was an entrepreneur who did not have any connections with the local authorities. The complainant explains that to be a successful businessman in the Russian Federation, one needs to have connections in Government. The business in Primorsky Krai is controlled by local criminal groups, which have close connections with corrupt local authorities. The complainant submits that the criminal bosses use physical violence and threats of murder in order to pressure individual entrepreneurs to transfer their businesses to the criminal bosses. Meanwhile, the law enforcement authorities fabricate criminal charges instead of protecting the actual victims. Due to the influence of the local organized crime groups in the region, he was forced to share his business with another businessman, S.H., who was a member of a criminal group and had close connections with the local authorities.<sup>2</sup>

2.2 In November 2014, the complainant received a telephone call from another shareholder in his company, I., who complained that S.H. was demanding that he transfer his shares to S.H., under threat of criminal prosecution in case of refusal. I. also warned the complainant that S.H. had a plan to force all the shareholders to hand over their shares to him. In December 2014, I. was found dead in his house and his death was officially ruled a suicide from a self-inflicted gun wound. However, the complainant believes that S.H. was somehow involved in the death.

2.3 The complainant decided to end any business relations with S.H. after this, fearing for his and his family's lives and physical integrity. Thus, he proposed to S.H. to buy out his shares in two companies in which they were partners, to which the latter agreed. However, on 30 October 2015, S.H. fraudulently obtained the complainant's shares in both companies by forging his signature on documents transferring ownership and, subsequently, refused to pay for those shares.

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<sup>1</sup> On 15 April 2021, the State party informed the Committee that the extradition of the complainant had been suspended.

<sup>2</sup> The complainant has provided links to various Internet resources that describe the ties of S.H. and his partners to government officials and alleged local criminal bosses.

2.4 In March and December 2016, the complainant filed two lawsuits to invalidate the transfer of shares. He also lodged a criminal complaint with the Ministry of the Interior of the Russian Federation against S.H. and his partners alleging fraud. In this context, the complainant provided the authorities with forensic reports confirming that the sale and purchase agreement of the shares did not contain his real signature. However, the investigator refused to open a criminal investigation based on the conclusion of a different forensic examination, which had determined that all the signatures on the transfer documents had been made by the complainant himself.

2.5 Following the criminal complaint, he started receiving threats of physical violence and criminal prosecution from persons associated with S.H. Soon thereafter, three associates of S.H. filed criminal complaints against the complainant accusing him of various unlawful business activities related to his companies, which resulted in four criminal investigations. On 1 June 2017, another criminal case was launched against the complainant on charges of fraud under article 159 (4) of the Criminal Code.<sup>3</sup> However, he was not notified of any criminal proceedings in that case and was not summoned for any investigative actions. The complainant submits that his lawyer accidentally found out about the case in August 2017, while participating in a court hearing on another case. The complainant's lawyer requested a copy of the case file, but nothing was provided to him. In February 2018, the complainant was questioned as a witness by an investigator in Moscow. According to the complainant, the investigator lied to him about being just a witness because, as he found out later, since July 2017 all criminal investigations into his companies had been merged into one criminal case in which he was the main suspect.

2.6 In June 2018, the complainant and his family left the Russian Federation for a holiday in Europe and, on 21 December 2018, he was arrested at Larnaca International Airport (Cyprus), on the basis of a Red Notice of the International Criminal Police Organization (INTERPOL). According to the documents shown to the complainant, he was placed on the list of persons wanted by the Russian Federation on 4 July 2018, and an international arrest warrant was issued on 5 September 2018. The complainant is convinced that the investigative authorities issued the international arrest warrant in violation of the Criminal Procedure Code of the Russian Federation, since he was not a fugitive. He subsequently learned that, on 5 September 2018, the Ussuriysk District Court had rejected the investigator's request for the complainant's detention. The complainant submits that, on 29 September 2018, he was charged with a different crime and the Ussuriysk District Court decided to detain the complainant pending trial.

2.7 The complainant submits that he was not aware of any judicial proceedings involving him after his departure for Europe in June 2018, and no documents were sent to his address in Moscow, which was known to the investigator, or to his lawyer. He further submits that, when obtaining a court order for his arrest and detention, in his absence, the investigator appointed an ex officio lawyer to represent him, despite the fact that the complainant already had a lawyer. According to the complainant, the appointed lawyer failed to appeal the two-month detention order, since he missed the filing deadline.

2.8 On 22 January 2020, the Larnaca District Court rejected the request of the Russian Federation to extradite the complainant and released him from detention. The Court determined that the extradition request made by the Russian Federation was missing a detailed description of the crime the complainant was charged with. The Court also found that there was a reasonable possibility that the complainant's right to a fair trial would be violated because it had already been violated at the stage of the court hearing sanctioning his arrest in absentia. Although the complainant raised the issue of persecution by a local criminal group affiliated with government officials and the risk of torture or death if returned to the Russian Federation, the Court found those claims to be unsubstantiated.

2.9 On 8 October 2020, the Commission for the Control of INTERPOL's Files, upon appeal by the complainant, ruled that the processing of data concerning the complainant was not in line with the organization's rules and ordered that the data should be deleted from the

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<sup>3</sup> Article 159 (4) of the Criminal Code of the Russian Federation relates to fraud committed by an organized group or on an especially large scale.

records. The Commission held that the Russian authorities had failed to notify the complainant of the charges against him and expressed doubts regarding the criminal charges against the complainant.<sup>4</sup>

2.10 On 17 February 2021, after an appeal by the Prosecutor General of Cyprus, the Supreme Court of Cyprus quashed the decision of the Larnaca District Court, and ordered the complainant's extradition and detention prior to removal. The complainant submits that during the hearing, he was not provided with an interpreter and thus was deprived of his right to effective participation in the extradition procedure. The Supreme Court held that the extradition request contained a detailed and consistent description of the facts of the criminal case and no further information was necessary. Violating his right to a fair trial, the Supreme Court ruled that, since the complainant had left the Russian Federation in June 2018 and was not available at the address given to the investigator, the authorities could not inform him about the criminal case.<sup>5</sup> The Court also noted the diplomatic assurances offered by the Russian Federation in its extradition request and held that there was no evidence put forward by the complainant that the guarantees of a fair trial offered by the Office of the Prosecutor General of the Russian Federation would not be respected. The Supreme Court did not consider the complainant's claims of persecution and the risk of torture, which had been raised during the first-instance hearing, since those claims had been found to be unsubstantiated by the Larnaca District Court.

### **Complaint**

3.1 The complainant claims that if he is extradited to the Russian Federation he would be put in the pretrial detention facility in Primorsky Krai under the exclusive command of the penitentiary authorities, which are controlled by S.H. and his criminal partners. Therefore, he would face imminent risk of torture by prison staff or by inmates in order to either obtain his confession for the crime that he is charged with or to make him agree to the terms of S.H. with respect to the non-payment for his transfer of shares to the latter. Moreover, he would be held in conditions of detention amounting to ill-treatment, as recognized by various international human rights organizations.<sup>6</sup> The complainant notes the lack of fair trial guarantees in the Russian Federation and claims that the general human rights situation continues to deteriorate with widespread torture in places of detention and the police often using torture to extract confessions from detainees.<sup>7</sup>

3.2 The complainant submits that S.H. has very strong connections with both the criminal world and the administrative/law enforcement authorities in Primorsky Krai. His close ties with high-ranking law enforcement officials is evidenced by the fact that, despite the complainant's numerous claims that were sent to the Minister of the Interior, the Head of the Investigative Committee and others, none of them resulted in any kind of criminal investigation of S.H. or his partners. The complainant has also submitted screenshots of messages that his wife, who is currently in the Russian Federation, allegedly received after his detention in Cyprus from S.H., in which he threatens that things "will end badly for the complainant and his family" if the complainant is returned to Primorsky Krai and does not agree to the conditions set by S.H.<sup>8</sup>

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<sup>4</sup> The Commission for the Control of INTERPOL's Files is an independent, impartial body, officially responsible for ensuring that the processing of personal data by INTERPOL complies with the applicable rules.

<sup>5</sup> It was established that there was one attempt to locate the complainant at his Moscow address, however, it happened after he had already left the Russian Federation.

<sup>6</sup> Reference to cases in which the European Court of Human Rights held that the conditions of pretrial detention in the Russian Federation amounted to degrading and inhuman treatment.

<sup>7</sup> Reference to reports of Human Rights Watch, Amnesty International and the United States State Department.

<sup>8</sup> The complainant notes that the authenticity of the screenshots is verified by a notary public. It appears that the message was sent on 14 March 2021 and that the sender demanded that the complainant return money and call off all his lawsuits and complaints. Even though the complainant submits that the threat came from S.H., the messages suggest that there are other people who are after the complainant and S.H. only acts as an intermediary.

3.3 The complainant claims that, by returning him to the Russian Federation, the State party will breach article 3 of the Convention. He requests that the Committee recommend that the State party refrain from extraditing him and quash the decision of the Supreme Court of Cyprus dated 17 February 2021.<sup>9</sup>

*Additional information from the complainant*

4.1 On 2 April 2021, the complainant submitted additional information, noting that on 30 March 2021, on the day of the hearing at the Supreme Court of Cyprus, on his habeas corpus claims, the complainant sought a replacement for his lawyer due to the latter's withdrawal from the case. Since the complainant was not able to secure a lawyer for the hearing within the two hours allocated by the judge, the complainant represented himself with the assistance of an interpreter. The complainant submits that the interpreter lacked sufficient knowledge of the Russian language and was not able to ensure that the complainant adequately understood the deliberations in court in violation of article 3 of the Convention.

4.2 The complainant also claims that the judge of the Supreme Court dismissed the Committee's request for interim measures as irrelevant to the habeas corpus proceedings.

4.3 On 31 March 2021, at 10 a.m., the complainant was asked to leave his cell with his luggage. Not seeing any other way to stop his extradition, the complainant inflicted injuries on his forearms by cutting his veins. The prison guards called an ambulance one hour after the incident. When the ambulance arrived, the prison guards tried to put the handcuffs on the complainant's wrists, although he had no strength and no intention to resist.

4.4 The complainant claims that, by the time that he was taken to the hospital, he had lost a lot of blood. When he was urgently taken to the surgery unit, the prison guards pressed the doctor to complete the surgery as soon as possible in order to be able to transfer him to the Russian authorities at the arranged time. Only after the doctor said that he would not be able to finish until 3 p.m. and asked the guards to leave did the guards leave the operating theatre. The surgery on his forearms lasted for five hours but he had to stay for another two hours in the hospital to undergo a psychiatric examination before he was transferred back to his prison cell.

4.5 The complainant submits that the following day he was not given any painkillers and could not sleep due to extreme pain, and his wounds were not treated. He notes that he was given antibiotics two days after the surgery and only after he saw some medication on the prison guard's table when he was returning from the medical unit to his cell.

4.6 The complainant claims that the State party also violated article 16 (1) of the Convention because prison guards tried to handcuff him when he was bleeding and had no strength and intention to resist; his immediate transfer back to the prison after the surgery; attempts to take a blood sample despite the evident injuries on the forearms; and failure to provide him with adequate post-surgery medical treatment and medication. The complainant also claims that the State party violated article 22 of the Convention since it failed to respect the Committee's request for interim measure.

**State party's observations on admissibility**

5.1 On 9 and 15 April and 5 May 2021, the State party requested that the Committee lift the interim measures<sup>10</sup> and challenged the admissibility of the communication.

5.2 The State party claims that, on 22 January 2021, the Larnaca District Court rejected the complainant's extradition because in the Russian Federation he was not represented by a lawyer of his choice but by a government appointed ex officio lawyer who had failed to file an appeal against the pretrial detention order. The Court ruled that the complainant would be detained for two months if returned to the Russian Federation, thus his rights under article 6

<sup>9</sup> The complainant adds that he intends to make a claim for pecuniary expenses to the State party concerning his legal fees, the amount of which will be indicated later.

<sup>10</sup> On 13 April 2021, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to deny the State party's request to lift the interim measures dated 9 April 2021.

of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) would be violated.

5.3 The State party observes that the Larnaca District Court examined evidence of the alleged persecution of the complainant due to his political views and rejected those claims as unsubstantiated. The complainant failed to appeal this decision, although domestic law allows an appeal to be filed with the Supreme Court. It refers to several domestic cases of a similar nature in which such appeals were filed by defendants. The State party submits that the complainant's failure to file an appeal is a matter for which the State party cannot be held responsible, especially since the complainant was represented by counsel. Therefore, the complainant has failed to exhaust all available domestic remedies and his complaint should be found inadmissible.

5.4 The State party also observes that, on 17 February 2021, the Supreme Court, after a thorough examination of the evidence provided, decided to overturn the findings of the Larnaca District Court and established that the complainant could not be found at the address that he had provided to the Russian authorities. After testifying as a witness, the complainant changed his birth certificate by adopting a different name before fleeing the Russian Federation to avoid the criminal charges that he was facing. The Supreme Court decided that the complainant had failed to provide sufficient evidence to prove that he would not be represented by a lawyer of his choice and his rights to a fair trial would not be respected.

5.5 Concerning the complainant's claims about the decision of INTERPOL to delete him from its information system, the State party notes that this decision does not affect the ruling of the Supreme Court and that the complainant failed to raise this claim before the Court, although he had every opportunity to do so.

5.6 The State party further observes that, on 19 March 2021, the complainant filed a writ of habeas corpus requesting that the Supreme Court find that his detention pending extradition was unlawful. On 30 March 2021, the date on which the writ was scheduled for hearing, the complainant decided that he did not want to be represented by his lawyer, C., and requested the postponement of the hearing until a new lawyer was appointed to represent him. The Attorney General's office objected to his request since his extradition was already agreed with the Russian authorities – his departure from Larnaca Airport was scheduled for 2.35 p.m. on 31 March 2021. The court postponed the hearing for a few hours in order for the complainant to have enough time to secure a lawyer of his choice. However, the complainant failed to secure a new lawyer and decided to represent himself before the Court with the help of an interpreter.<sup>11</sup>

5.7 The Supreme Court rejected the writ and stated that its decision was final and could not be subject to further appeals. The Supreme Court also noted that it was not possible to adjudicate on the merits of the main application or accept further evidence in the course of the habeas corpus proceedings.

5.8 Concerning the complainant's claims that he was not able to sufficiently understand the Supreme Court hearing of 30 March 2021 due to the quality of interpretation, the State party notes that, on 26 March 2021, the Supreme Court appointed an interpreter following consent from his lawyer. The complainant did not request to change the interpreter even if he was, as he claims, not satisfied with the interpretation. The State party observes that this claim was not raised in domestic proceedings, but with the Committee, and should therefore be inadmissible due to non-exhaustion of domestic remedies.

5.9 The State party contests the complainant's claims of a violation of article 22 of the Convention, stating that the Committee's request for interim measure was respected; the Committee was informed of that fact in a letter dated 15 April 2021 from the Ministry of Justice and Public Order.

5.10 The State party further rejects the complainant's allegations that, after injuring himself, he was subjected to ill-treatment by prison guards and,<sup>12</sup> in this context, reports that, on 31

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<sup>11</sup> The State party claims that the following day, on 31 March 2021, the same counsel was reappointed by the complainant to represent him.

<sup>12</sup> The State party submitted a report provided by the prison authorities.

March 2021, immediately after the incident took place, the ambulance was called and the medical officer of the prison, together with nursing staff (not prison guards as was claimed by the complainant), provided the complainant with first aid in order to stop the bleeding. The complainant was very reactive and non-cooperative, kicking with his legs. The prison guards did not, in any case, try to put handcuffs on him during his departure from the prison. Instead, foot-cuffs were placed on him for safety reasons both for himself and to prevent any further self-inflicted injuries. At the Nicosia General Hospital, the foot-cuffs were removed from the complainant and he was taken to the small surgery section of the First Aid Department. The closed-circuit surveillance system confirms that, at the time of his departure, the complainant was not restrained. After he had received stitches for his injuries, instructions were given by the prison management not to move the detainee from the hospital without a psychiatric evaluation by the psychiatrist on duty. The handcuffs were only put on very carefully when waiting for the arrival of the psychiatrist since the complainant continued to be very reactive and there was a danger that he might escape. Therefore, the State party underlines that the complainant's claim that his move from the hospital was expedited cannot be accepted as true. The prison guards followed the established procedure on medical treatment of detainees and their evaluation by mental health services in incidents involving self-inflicted injuries, in line with the recommendations of the World Health Organization.

5.11 The State party disagrees with the complainant's assertions that no medication was provided following the surgery. The State party claims that, after returning to the prison, the complainant took antibiotics for six days, starting on 31 March 2021, until the night of 6 April 2021, according to the instructions of the medical officer who examined him in Nicosia General Hospital. The State party provided annual statistics on the number of detainees who underwent various forms of medical treatment in medical centres of the Department of Prisons and private and public hospitals.

5.12 The State party requests that the Committee consider the present communication inadmissible due to the arguments presented above.

#### **Complainant's comments on the State party's observations on admissibility**

6.1 On 11 June 2021, the complainant submitted his comments on the State party's observations on admissibility. He argues that the domestic remedies suggested by the Government are ineffective and not likely to bring him relief. He submits that there is no clarity or legal certainty as regards the available remedies in extradition cases. He refers to domestic case law, which demonstrates that there is no right of appeal in extradition cases for a defendant if a court of first instance has authorized extradition. The only remedies available in such cases are habeas corpus proceedings.<sup>13</sup> Thus, he finds it contradictory for the State party to argue that the complainant had the right to submit an appeal in his case.

6.2 The rules of civil procedure in Cyprus do not consider a cross-appeal as a remedy that must be exhausted.<sup>14</sup> He notes that all of his arguments and evidence, which were submitted to the Larnaca District Court, including those concerning the risk of torture and the risk to life in the event of his return to the Russian Federation, were also submitted to the Supreme Court. However, the Supreme Court chose not to examine those arguments and dismissed the findings of the Larnaca District Court.

6.3 Finally, filing a cross-appeal against the findings of the Larnaca District Court on his claims, raising the issues of the risk of torture and the risk to life in the event of his extradition to the Russian Federation, had no real chance of success. The complainant notes that, until now, the Supreme Court has not accepted any arguments of a similar nature in extradition cases and, as a rule, has accepted diplomatic assurances from the Russian Federation or other requesting countries to reject arguments concerning torture.

6.4 Lodging a cross-appeal on the basis of the arguments concerning torture could potentially undermine the efforts of the complainant to defend the findings of the Larnaca District Court as regards flagrant violation of his right to a fair trial. As a rule, in accordance with settled case law, the Supreme Court, on appeal, cannot interfere in the evaluation of the

<sup>13</sup> The complainant filed an unsuccessful habeas corpus appeal after the Supreme Court ruling.

<sup>14</sup> Reference is made to the Civil Procedure Rules, order 35, rule 10.

evidence by the court of first instance, unless it is illogical and/or contradictory. In the complainant's case, the Supreme Court did not explain why the findings of the Larnaca District Court were wrong, but rather reassessed its findings to the detriment of the complainant.

6.5 The complainant further maintains that the delay of 15 days between the decision of the Committee on the interim measures and the official recognition by the Government to comply with them amounts to a violation of article 22 of the Convention.

6.6 Concerning the interpretation of the court proceedings of 30 March 2021, the complainant explains that his lawyer withdrew from the process one day before the hearing due to a misunderstanding between them. Although the same interpreter was indeed present at the court hearing of 26 March 2021, her interpretation skills had not been tested properly. It was only on 30 March 2021, when interpretation was essential, that the complainant realized that her skills were not up to standard.

6.7 The complainant reiterates that the State party failed to provide adequate post-surgery treatment, noting that he only started to receive antibiotics on 2 April 2021 (i.e. on the third day after surgery), although they had been prescribed on 31 March 2021.

6.8 The complainant raised his claims under article 16 of the Convention before the Department of Prisons, which responded that the complainant had been provided with medical treatment for his injuries; it did not go into detail on the specific questions posed by the complainant.

6.9 The complainant submits that lodging a complaint with the Prisons Board could not be considered an effective remedy, since, according to the relevant law, the results of investigations and suggestions by the Prisons Board are not binding on the authorities and do not afford complainants adequate relief in the form of improvements to their conditions of detention or medical treatment or their claims for compensation.

#### **Additional information from the complainant**

7.1 On 16 August 2021, the complainant submitted additional information, in which he claimed that, since 15 July 2021, he had become the subject of constant psychological and physical pressure exerted by other detainees in the central prison of Nicosia. Certain detainees constantly provoked the complainant into fights, which created situations in which he could have suffered physical injuries or even been killed. The complainant believes that this pressure is directly linked to the decision of the Committee to continue the examination of his complaint.

7.2 The complainant submits that, on 15 July 2021, a new detainee was placed in wing No. 5 of the central prison of Nicosia, in which the complainant is being held. He approached the complainant in the common corridor and instigated a dispute, trying to lure him into the shower area, which is not equipped with surveillance cameras. The complainant noticed that the other detainee had a shank<sup>15</sup> and thus refused to move from the corridor. A physical fight ensued, but in the presence of other detainees and under the surveillance cameras, the other detainee did not use the shank against the complainant. On the following day, the other detainee was transferred to another wing.

7.3 Starting from 26 July 2021, detainees suspected of violent crimes began to incite the complainant into fights during his daily walks. He also claims that some prisoners, known as "responsible", approached him and demanded that he withdraw his complaint about prison conditions, threatening that he would be moved to another cell. Aware that he would risk imminent danger to his life and health in case of his transfer to wing No. 2 of the prison, which is under the control of the "responsible", who are the highest authority among detainees, the complainant withdrew his claims about his conditions of detention.

7.4 The complainant further submits that other detainees also provoked him into fights, subjecting him to serious risk of injury or death. The complainant submits that the aim of the prison administration was not only to exert psychological pressure and make him withdraw

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<sup>15</sup> A home-made knife-like weapon that is commonly associated with prison inmates.



his complaint about the conditions of detention, but also to force him to eventually withdraw his complaint before the Committee.

7.5 According to the complainant, since 26 July 2021, he has been in a state of permanent distress, anguish and fear for his health and life. The complainant was also told that an influential individual from the Russian Federation had issued orders to kill him. The complainant believes that it might well be S.H., who is persecuting him using his contacts in the criminal world, far away from the Russian Federation.

7.6 The complainant submits statements from two witnesses,<sup>16</sup> who are detained with him at the central prison of Nicosia, which confirm the facts described by the complainant above. The complainant claims that the psychological and physical pressure exerted on him amounts to torture, noting that the State party was also involved in these actions, thus violating articles 2, 11 and 16 of the Convention.

7.7 The complainant requests that the Committee grant interim measures and recommend that he be immediately released from the central prison of Nicosia to prevent possible irreparable harm.

7.8 On 5 October 2021, the complainant was summoned to meet a police officer for questioning. The interview was supposed to take place in English, without an interpreter and in the presence of the prison guard who was accused of unlawful actions, namely organization and instigation of physical and psychological pressure. The complainant therefore refused to take part in the police questioning. He notified the Minister of Justice and Public Order and the Nicosia police headquarters in writing about the incident and requested them to organize his questioning in a confidential manner and in the presence of an interpreter.

7.9 On 26 November 2021, he was placed in solitary confinement in his cell (No. 32), in prison wing No. 5, for six days. He submits that the reasons for this punishment were never explained to him, but he presumes that it could have been because there was a television set in his cell that did not belong to him and that he never used. He was allowed to leave his cell twice a day for a walk or to take a shower. He had to ring a bell to go to the toilet, while the prison guards rarely opened the door. Only on 28 November 2021 was the complainant allowed to make a phone call to his wife, whom he could speak to for only a few minutes before the line was cut off. He explains that, while he managed to inform her that he had been placed in solitary confinement, he could not call his lawyer in Cyprus since the line was cut off. On 30 November 2021, the complainant was visited by his lawyer whom he told about the reprisals he was facing due to his complaint to the Committee. He also informed his lawyer that there was a rumour among the detainees that the Director of the prison wanted to organize the provocation in order to have a reason to transfer him to another prison wing, where he did not know anybody and where his killing by violent detainees could be arranged to look like suicide. The lawyer could not hand over the papers regarding the habeas corpus application directly to the complainant, which is a gross violation of the guarantee of the confidential lawyer-client relationship.

7.10 On the same day, at 9 p.m., between six and eight detainees, among them M. and G., opened his cell, although the door was supposed to be locked, and started to beat the complainant heavily on his head, stabbing him with plastic shanks/knives. They also tried to lift him up, to the level of the top bed, and to drop him down, so that he would break his neck. No guards came to stop the beating, which lasted for five minutes before the other detainees came to stop it. The complainant was left bleeding, lying on the floor of his cell, having lost his eyesight. A prison guard came to see him after two hours but refused to call an ambulance. After half an hour, he returned with the prison doctor, who asked the complainant to sit on a chair, but he could not stand up to do it. Then the prison guard slapped the complainant to make him stand up. The prison guard and the doctor lifted him and forced him to sit on the chair. The doctor stitched the wounds on his head and administered an injection; no painkillers were given. He was not taken to the medical unit for further examination and monitoring of his state of health, although he displayed all the symptoms of concussion; no painkillers were given and no examination of his eyesight was performed.

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<sup>16</sup> Third witness statement was submitted by the complainant on 15 September 2021.

7.11 Then a prison guard threw him on the bed and left him there. Thus, the complainant submits that he was not even taken to the medical unit, although he had headaches, dizziness and could not see well. He alleges that the prison guards continued their cruel and degrading treatment by not opening the door for the entire night when he rang to go to the toilet.

7.12 The complainant notes that neither his wife nor his lawyer was informed about this incident. His wife found out about it by chance, on 1 December 2021, through the lawyer of the complainant's cellmate who happened to be in the same court and delivered the message. The complainant adds that his lawyer was able to visit him on the following day.<sup>17</sup>

7.13 On 1 December 2021, a police officer from the Nicosia police station came to the prison to question the complainant about complaints lodged by K., which also included information about threats to the complainant and his family. The police officer questioned the complainant about the incident of 30 November 2021 and invited the forensic doctor to examine him and draft a report.<sup>18</sup> Following the visit of the police officer, the complainant was transferred, first, to wing No. 9 for several hours and then to wing No. 10. He claims that the prison administration did not allow him to make any phone calls.

7.14 The complainant submits that he escaped death and urgently requests that the Committee intervene to apply interim measures and release him from detention.

7.15 On 23 December 2021, the complainant submits that, following the Committee's request, dated 8 December 2021, to the State party to secure an alternative measure to detention, he notified the appropriate national authorities requesting them to ensure compliance with the Committee's request. The complainant reports that, soon after, he was visited by two representatives of the prison administration in his cell, including the Head of the Prison Guards, who accused him of providing false information and exerted pressure on him to withdraw his complaints.<sup>19</sup> The complainant also reports that individuals working on his case started to receive threatening messages.<sup>20</sup>

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

8.1 On 3 January 2022, the State party submitted the letter of the Minister of Justice and Public Order, dated 31 December 2021, noting that, in response to the Committee's request for interim measures, the complainant had been transferred, on 18 December 2021, to the prison wing of his choice. Referring to multiple complaints and various allegations raised in the complainant's additional submission of 23 December 2021, the State party indicated that once the respective national authorities had fully and properly examined them, a detailed report would be duly submitted to the Committee.

8.2 On 5 and 20 January 2022, the State party observed that the complainant had filed an appeal in relation to the decision of the Supreme Court on the writ of habeas corpus and that the hearing date before the Court had yet to be scheduled. Furthermore, the State party adds that the complainant filed two intermediary applications to be granted leave by the Court to submit supplementary testimony before it; the hearing was scheduled for 12 January 2022.

8.3 Referring to the complainant's claims about the conditions of detention, the State party observes that they were investigated by all appropriate independent mechanisms, including the Commissioner for Administration and the Protection of Human Rights, as well as the Council of the Prison Administration, and were dismissed as unfounded. During the investigation, all 35 Russian-speaking inmates mentioned in writing that they were very

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<sup>17</sup> The complainant notes that the prison administration did not allow his lawyer to visit him in prison on the same day.

<sup>18</sup> The complainant states that he will submit a copy of the report once he has access to it.

<sup>19</sup> The complainant notes that his lawyer sent a letter to the head of the prison administration requesting it to ensure the physical and psychological safety of the complainant, to which a response letter was received accusing the complainant and his lawyer of distorting the facts and spreading lies and threatening to initiate criminal proceedings against the lawyer. The complainant did not provide a copy of the response letter.

<sup>20</sup> Reference is made to phone calls received from a Russian-speaking person who warned the lawyer and one of the witnesses about supporting the complainant and asked them to stop it.

satisfied with the conditions in the prison, noting that the complainant's claims did not correspond to reality, expressing also their thanks for their conditions of detention.<sup>21</sup>

8.4 The State party observes that his extradition was postponed due to the delay related to his examination by a psychiatrist. Otherwise, there was no other medical reasons that could have precluded his departure by airplane.

8.5 The State party dismisses the complainant's assertions concerning the lack of effective remedies and the related reference to the Council of the Prison Administration, noting that he never addressed any of these claims to the Council and/or the Commissioner for Administration and the Protection of Human Rights when they visited the prison, nor did he file any complaint about his conditions of detention. Furthermore, previously he had never complained to the staff on duty in the wing or to the officer in charge of the wing, who speaks Russian fluently – rather, this was a strategy of groundless claims with the intention of being released and staying his extradition. According to the State party, the multiple groundless claims of the complainant's lawyer were also investigated by the two independent institutions, as well as the Department of Prisons.

8.6 The State party categorically rejects claims related to the solitary confinement of the complainant and indicates that he was placed under restrictions while he was being investigated for disciplinary offences linked to the unlawful possession of electronic devices, namely a television and a DVD player. The investigation revealed that those objects belonged to a person who had been released but the complainant had never applied for permission to possess them. The State party observes that the complainant submitted false and distorted information in relation to the lack of communication with his lawyer, stating that permission was granted for meetings even when there was no scheduled appointment for a visit.

8.7 According to the Department of Prisons, all letters from the complainant's lawyer were duly and promptly answered. Therefore, the claims about restricted communication/contact with his lawyer are distorted and are rejected categorically. The insistence of the lawyer that the complainant should be treated differently from others, although he has committed disciplinary offences, is inconsistent with the principles of the Department of Prisons. The latter provides equal treatment for more than 800 prisoners and strives to prevent any type of discrimination. The State party notes that the lawyer's requests are unethical and unacceptable as they are aimed at non-application of the relevant legislation, undermining discipline and the rule of law in prisons.

8.8 Referring to the alleged beating of the complainant that took place on 30 November 2021, the State party observes that this is being investigated by the police.

8.9 Regarding the complainant's claims about insufficient medical treatment on that day, the State party notes that, immediately after the incident, which took place during the closing of the cells for the evening, a member of the medical centre visited both the complainant and the other prisoner who had suffered injuries inflicted by the complainant. The complainant refused any treatment and was behaving rudely, pushing a member of the medical centre away from his cell. Afterwards, both prisoners were examined by the medical officer on duty and a nurse from the Ministry of Health who were called upon to treat the prisoners. The State party informs the Committee that he was provocative and quarrelsome with his co-detainees, as a result of which he was moved to another wing the following day, where he preferred to remain.

8.10 Concerning the complainant's claims that, following the incident, he was not allowed to go to the toilet, the State party considers that they are baseless because, between the moment when the medical officer left and the opening of the cells at 6 a.m., the member on duty and the chief guard in that wing conducted eight patrols. Referring to alleged issues in communication, the State party notes that it was the complainant himself who informed his wife about the incident. The lawyer requested a visit after the closure of the prison, which is

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<sup>21</sup> The State party, upon request, could provide this information, along with hundreds of other letters received by the prison administration during the last seven years from prisoners and individuals who have been released from prison.

forbidden for security reasons, hence, the meeting between the complainant and his lawyer was arranged for the following day.

8.11 Concerning the complainant's claim that prison guards deliberately opened his cell so that he could be "murdered", the State party notes that these arguments are unacceptable and do not make any sense. The State party claims that the incident happened at the moment of closure of cells, when the door of his cell was opened remotely from the control centre after officials had communicated with the prison officers on duty, to let his cellmate enter the cell. The State party also claims that the inmates who entered his cell, according to witness testimonies, tried to stop him from injuring himself. The incident lasted approximately one minute, instead of five as was claimed by the complainant, whereas the prisoners and staff arrived at the scene immediately. According to the State party, the prison is known for the lowest rate of violent incidents in the world and, therefore, the claims of the complainant are untrue.

8.12 The State party notes that it was the complainant's decision to communicate through his wife and not directly with his lawyers, as he never provided the telephone numbers of his lawyers for inclusion on the list of such numbers.

8.13 The State party also notes that the prison guard was not present during police interviews, as was claimed by the complainant. According to the closed-circuit monitoring system, the prison guard left right after he had accompanied the prisoner to the meeting with the policeman.

8.14 On 15 November 2021, the complainant was examined by a psychiatrist, who confirmed that he did not wish to cooperate with either the mental health services or with the medical services.

8.15 The State party notes that, throughout his stay in the prison, the complainant had free access to effective procedures to contest the legality of his detention, as well as to lodge complaints about his conditions of detention, each of which were granted without any delay by the prison administration, sending his complaint to the competent authorities

8.16 The State party concludes that the complainant's claims are baseless and do not correspond to the reality.

#### **Additional submissions by the parties**

##### *By the complainant*

9.1 On 10 February 2022, the complainant maintained his claims that he would be subjected to imminent risk to life and physical integrity in the event that he were returned to the Russian Federation and that he continued to be subjected to acts amounting to cruel, inhuman and degrading treatment and even torture. He also claims that he continues to be subjected to everyday mental distress and cruel treatment in the prison: in winter, he was put in a cell without any heating and not provided with warm clothes; he was warned by other inmates not to eat the food delivered to his cell since there was a rumour that he could be poisoned; he was not allowed to add the telephone number of his lawyer to the list of such numbers; and he continues to be approached by detainees demanding that he withdraw his complaints.

9.2 The complainant notes that the beating incident was under investigation by the police in Nicosia, which is, theoretically, in accordance with the provisions of the Convention. However, the complainant argues that the final decision by the Attorney General on whether to prosecute cannot be challenged. He also claims that the progress of the investigation is unknown, contrary to the law on the rights of victims. He further claims that his letters regarding ill-treatment in prison have not been answered by the Minister of Justice and Public Order. The complainant lodged, on 6 December 2021, an urgent complaint with the Commissioner for Administration and the Protection of Human Rights, complaining about torture and ill-treatment in the central prison of Nicosia, which was registered on 3 January 2022 and is currently under investigation.

9.3 The complainant reiterates that the State party violated article 22 of the Convention by not respecting the Committee's two requests for interim measures.

9.4 The complainant states that, on 8 December 2021, the Supreme Court accepted the interim measures granted by the Committee as new evidence. The complainant and the State attorney are given 10 and 15 days, respectively, to file their observations on the merits.

9.5 The complainant requests that the Committee recommend that the State party: immediately release the complainant; refrain from extraditing him; quash the decision of the Supreme Court of 17 February 2021; fulfil its obligations and respect the request for interim measure made on 8 December 2021; pay the complainant €2 million for moral damages and to reimburse him for the expenses incurred in protecting his rights at the national level (€23,348) and at the international level (€50,600).

9.6 On 29 March 2022, the complainant notes that he continues to be kept in detention despite the Committee's request to the State party, made on 8 December 2021, to secure an alternative measure to detention of the applicant. He adds that the hearing on the habeas corpus proceedings before the Supreme Court is scheduled for 6 April 2022.

9.7 Referring to State party's argument that he has presented new claims involving moral damages, the complainant notes that these claims were already reflected in his original submission.

9.8 On 1 August 2022, the complainant states that, on 8 July 2022, the bench of five judges of the Supreme Court allowed his appeal against the decision of the Supreme Court (single judge) of 20 July 2021 and ordered his immediate release due to the exclusion of the Russian Federation from the Council of Europe and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Although the Supreme Court's decision partly remedied the situation, the complainant requests that the Committee take into account that the Court failed to analyse and properly appraise his claims regarding torture, both if extradited to the Russian Federation and those endured by him in the central prison of Nicosia. Therefore, the complainant requests that the Committee examine all his claims under articles 2, 3, 11, 16 and 22 of the Convention, bring all those responsible to justice and compensate him for his legal costs and for moral damages. On 3 November 2022, the complainant reiterated his claims.

#### *By the State party*

10.1 On 17 March 2022, the State party rejected all the allegations raised in the complainant's last submission, particularly his claims in which he requested compensation for moral damages. However, should the Committee intend to consider the claim, the State party requests that it be given more time to be able to provide detailed observations, particularly given that the Committee is not the appropriate forum to examine and decide upon this claim. The State concludes by reiterating its position that the allegations raised by the complainant are non-existent and are aimed at delaying his extradition.

10.2 On 25 July and 27 October 2022, the State party notes that, on 8 July 2022, the Supreme Court, in the context of the habeas corpus appeal, ruled to release the complainant and annulled the extradition order to the Russian Federation. The Supreme Court based its decision on the fact that the Council of Europe had suspended the membership of the Russian Federation and, as a consequence, it would no longer be a party to the European Convention on Human Rights (as of 16 September 2022). Therefore, the rights and guarantees prescribed therein, especially the right to a fair trial, could no longer be guaranteed. In this context, the State party requested that the Committee reject the complainant's communication on extradition as it had now become devoid of purpose.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

11.1 Before considering any complaint submitted 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.

11.2 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, in his original submission dated 18 March 2021, the complainant claimed that, by returning him to the Russian Federation, the State party would breach article 3 of the Convention. Whereas, in his later submissions dated 2 April, 16 August and 3 December 2021, he complained that he had been subjected to torture and ill-treatment in the central prison of Nicosia, raising claims under articles 2, 11 and 16 of the Convention.

11.3 Regarding claims under article 3 of the Convention, the Committee takes note of the State party's objection that the complaint is inadmissible due to non-exhaustion of domestic remedies. The State party argues that the complainant failed to file a cross-appeal to the Supreme Court on the ruling of the Larnaca District Court, which dismissed the complainant's claims pertaining to the risks of persecution and torture, if returned to the Russian Federation. The Committee also notes the complainant's claim that the Civil Procedure Rules do not consider a cross-appeal as a remedy that must be exhausted. The Committee further notes the arguments of the complainant that: the claims relating to the possible risk of torture, if extradited to the Russian Federation, have already been dismissed by the Supreme Court; and filing a cross-appeal against the findings of the Larnaca District Court had no possibility of success as the Supreme Court did not accept any arguments of a similar nature in extradition cases and accepted the diplomatic assurances of the Russian Federation and other requesting countries to reject the claims of the possibility of torture. In these circumstances, and taking into account that no additional information was adduced by the State party to support its argument, the Committee concludes that it is not precluded by the requirements of article 22 (5) (b) of the Convention from considering the communication.

11.4 The Committee notes the State party's submission that, on 8 July 2022, the Supreme Court, in the context of the habeas corpus appeal, ruled to release the complainant and annulled the extradition order to the Russian Federation, hence observing that the complainant's communication on extradition had become devoid of purpose. In this context, the Committee notes the complainant's argument that, although he was released, the Supreme Court still failed to analyse and appraise his claims that he would be subjected to torture if extradited to the Russian Federation. However, the Committee considers that the case has become moot due to the fact that the complainant has already been released and the extradition order against him has been annulled. Accordingly, the Committee considers that, because the complainant is not presently at risk of being extradited to the Russian Federation by the State party, the claim under article 3 is incompatible with the provisions of the Convention and is therefore inadmissible under article 22 (2) of the Convention. When taking this decision, the Committee is aware that, in any event, the complainant would be able to submit a new case to the Committee against the State party if a new risk for his forcible removal to the Russian Federation occurs in the future.

11.5 With regard to the complainant's claims under articles 2, 11 and 16 of the Convention, the Committee notes that the complainant must raise all of his claims in his initial submission, before the State party is asked to provide its observations on admissibility and the merits of the communication, unless the complainant can demonstrate why he was unable to raise all of his claims at the same time. In the present case, the Committee notes that the complainant presented several urgent and serious claims that required the State party's prompt consideration. The complainant claimed that: he suffered psychological and physical pressure from inmates and prison staff; on 30 November 2021, he had been placed in solitary confinement, where he had been beaten by other prisoners; prison guards had failed to prevent inter-prisoner fighting involving the complainant; following the incident, the complainant had not been taken to the medical unit for further examination; and he continued to suffer psychological pressure in the cell, thus alleging a violation of his rights under articles 2, 11 and 16 of the Convention. Concerned about the gravity of these claims, the Committee requested the State party, pursuant to rule 114 of its rules of procedures, to secure an alternative measure to detention of the complainant. The Committee notes that, on 18 December 2021, the State party transferred the complainant to the prison wing of his choice. The Committee further notes that, in its submissions dated 5 and 20 January 2022, the State party provided detailed observations on the complainant's claims and confirmed that it had launched an investigation into the beating incident that had taken place on 30 November 2021.

In the circumstances of this case, the Committee finds that the State party should have an opportunity to evaluate the new evidence before the communication is submitted for examination under article 22 of the Convention and therefore concludes that the part of the communication in respect of articles 2, 11 and 16 of the Convention is inadmissible because of non-exhaustion of domestic remedies under article 22 (5) (b) of the Convention. The finding above is without prejudice to the complainant's ability to submit a separate communication with regard to any alleged violations of his rights under the Convention that may have occurred.

12. The Committee therefore decides:

- (a) That the communication is inadmissible;
  - (b) That the present decision shall be communicated to the complainant and to the State party.
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