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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 913/2019*, **

Communication submitted by:	L.H. and M.H. (represented by counsel, Viktoria Nystrom)
Alleged victim:	The complainants
State party:	Sweden
Date of complaint:	5 February 2019 (initial submission)
Document references:	Decisions taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 13 February 2019
Date of adoption of decision:	22 July 2021
Subject matter:	Deportation to the Russian Federation
Procedural issues:	Exhaustion of domestic remedies; non-substantiation of claims
Substantive issue:	Risk of torture or other cruel, inhuman or degrading treatment or punishment, if deported to country of origin (non-refoulement)
Article of the Convention:	3

1.1 The complainants are L.H., a national of the Russian Federation born in 1983 and her minor daughter, M.H., also a national of the Russian Federation, born in 2002; they are both of Ingushetia origin. The complainants claim that their return to the Russian Federation would constitute a violation by Sweden of article 3 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 1 October 1991. The complainants are represented by counsel.

1.2 On 13 February 2019, in application of rule 114 (1) of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party to refrain from expelling the complainants to the Russian Federation while the complaint was being considered by the Committee. On 24 September 2019, the State party

* Adopted by the Committee at its seventy-first session (12–30 July 2021).

** The following members of the Committee participated in the consideration of the communication: Essadia Belmir, Claude Heller, Erdoğan İşcan, Liu Huawen, Ilvija Pūce, Diego Rodríguez-Pinzón, Sébastien Touzé and Peter Vedel Kessing. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies, Bakhtiyar Tuzmukhamedov did not participate in the examination of the communication.

requested that the Committee lift the interim measures. On 26 November 2019, the Committee, acting through the same Rapporteur, granted the State party's request.

Facts as submitted by the complainants

2.1 In 2008, L.H.'s mother and brother were killed in their home with three friends of her brother who were active opponents to the regime in Ingushetia. Their house was burned and destroyed. At that time, L.H. was living elsewhere with her family. Two months later, her husband went missing in Moscow. She tried to investigate his disappearance, however, she was threatened by men in military clothes, who told her to stop searching for her husband. She was also questioned by the Federal Security Service of the Russian Federation, where she was told to stop her attempts to investigate her husband's disappearance and to never speak about it. After that, she went into hiding. Her relatives informed her that some people had come to look for her at their homes. After all of those events, being scared for her life and the life of her young daughter, she decided to flee the Russian Federation. In 2009, the cousin of L.H. was taken from his home, and he was later found to have been tortured and killed. In several local newspapers, he was accused of being part of a terrorist group along with the complainant's brother.

2.2 Beginning in 2010, on several occasions, people came looking for L.H. at the home of her uncle. Her uncle informed her that he had received a document summoning her to court. Moreover, L.H. was officially declared a missing person, with a request to establish her whereabouts. About 6 months before the submission of the present complaint to the Committee, her uncle and his son were arrested in Ingushetia.

2.3 L.H. suspects that her phone calls with her uncle had been monitored. For example, she received a call to her Swedish phone number from an unknown person speaking Chechen who threatened that she must return home and that the caller knew her whereabouts.

2.4 L.H. first applied for asylum in Sweden in 2009. The process resulted in the decision of the migration authorities to expel her, in February 2012. Due to the fear for her life and the life of her daughter, she decided to neglect the expulsion order and to stay in Sweden.

2.5 On 3 March 2016, L.H. applied for asylum again. She provided the same reasons for protection as the ones submitted in the previous asylum procedure, namely, that she and her daughter were at risk of being detained and killed by the police and the Federal Security Service because of her brother's political engagement. In the process, L.H. was allowed to clarify crucial parts of her story. Moreover, she presented certain documents that proved that the threat against her and her daughter's life was real. On 29 March 2018, the Swedish Migration Agency rejected her application. It questioned her credibility and noted that her account did not correspond with human rights reports on the Russian Federation. Furthermore, the Agency questioned the authenticity of the evidence provided as being of "limited value".

2.6 On an unspecified date, L.H. appealed that decision to the Migration Court of Appeal, which denied leave to appeal on 12 November 2018. At the time of submission of the communication, the complainants were residing in Sweden and awaiting deportation to the Russian Federation, following the rejection of their asylum application.

Complaint

3. The complainants claim that their forcible deportation to the Russian Federation by Sweden would amount to a violation of article 3 of the Convention. L.H. will be exposed to a real risk of arrest, detention and torture in case of return.

State party's observations on admissibility and the merits

4.1 By note verbale of 24 September 2019, the State party referred to its relevant domestic legislation and indicated that the Swedish authorities had considered the complainants' case in accordance with the Aliens Act of 2005, the Act temporarily restricting the possibility to obtain residence permits in Sweden of 2016 and article 3 of the Convention. It recalled the facts and the complainants' claims.

4.2 The State party submits that, on 30 May 2012, the complainants applied for residence permits, or a "re-examination" of the issue of residence permits, pursuant to chapter 12,

sections 18 and 19, of the Aliens Act, citing impediments to enforcement. The complainants cited the same circumstances that had already been examined during the asylum proceedings but submitted documents in Russian which were alleged to be summonses to the police. The Swedish Migration Agency decided, on 14 June 2012, not to grant the complainants residence permits or a new examination of their cited grounds for protection. In its decision, the Agency noted that the documents submitted were of a simple nature. Moreover, since the complainants' cited need for protection had already been examined by the Swedish authorities, the documentation was not deemed to constitute a lasting impediment to the enforcement of the complainants' expulsion order. The decision was appealed to the Migration Court, which, on 27 July 2012, rejected the appeal. The complainants did not appeal the Court's judgment.

4.3 On 14 December 2012, the complainants' case was handed over to the Swedish Police Authority for enforcement, given that the complainants had not complied with their expulsion order. However, instead of travelling back to their country of origin, the complainants went into hiding.

4.4 On 2 July 2013, the complainants submitted another application for residence permits, or a re-examination of the issue of residence permits. They cited the same circumstances and submitted the same written documentation that had previously been examined. On 12 July 2013, the Swedish Migration Agency refused to grant the complainants residence permits. The complainants did not appeal the decision.

4.5 On 18 July 2014, the complainants submitted another application for residence permits, or a re-examination. In addition to their previous claims, they submitted a translation of an alleged summons to a questioning at the Ministry of Internal Affairs in Ingushetia. The Swedish Migration Agency decided, on 21 November 2014, not to grant the complainants residence permits. In its decision, the Agency noted that no new circumstances had emerged regarding the cited need for protection that could be assumed to constitute a lasting impediment to enforcement of the expulsion order. The complainants did not appeal the decision.

4.6 The State party does not contest the fact that all available domestic remedies have been exhausted in the present case, with regard to the complainants' applications for asylum. However, the complainants have not exhausted the domestic remedies with regard to any of their applications for a residence permit, or a re-examination of the issue of residence permits.

4.7 Furthermore, the State party notes that the complainants have submitted a vast quantity of written evidence that has not been submitted to or scrutinized by the Swedish migration authorities. Some of those documents also disclose entirely new information that has not been cited before the domestic authorities. It is therefore evident that the complainants have not exhausted all domestic remedies with regard to that new evidence. In the light of the above, the State party holds that the communication should be declared inadmissible for failure to exhaust domestic remedies in relation to the new evidence submitted.

4.8 The State party maintains that the complainants' assertion that they are at risk of being treated in a manner contrary to article 3 of the Convention if returned to the Russian Federation fails to rise to the minimum level of substantiation required for the purposes of admissibility. The State party accordingly submits that the communication is manifestly unfounded and therefore inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure.

4.9 The State party recalls that, when determining whether there are substantial grounds for believing that the forced return of a person to another State would expose the person to such a danger of torture as to constitute a violation of article 3, the Committee must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in that country. However, as the Committee has repeatedly emphasized, the aim of such a determination is to establish whether the individual concerned would personally be at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture upon his or her return to that country. For a violation of article 3 to be

established, additional grounds must exist showing that the individual concerned would be personally at risk.[1]

4.10 Furthermore, the State party recalls the Committee's jurisprudence to the effect that the burden of proof in cases such as the present one rests with the complainants, who must present an arguable case establishing that they run a foreseeable, present, personal and real risk of being subjected to torture. In addition, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, although the risk does not have to meet the test of being highly probable.[2]

4.11 The State party recalls the human rights and security situation in Ingushetia. From 2010 onwards, there has been a steady decline in the number of rebellion-related violent incidents, although they still occur. According to reports from previous years, relatives of suspected rebels run the risk of being arrested and subjected to abuse. There are still reports of disappearances and use of torture in the republics of the North Caucasus.[3]

4.12 The State party does not wish to underestimate the concerns that may legitimately be expressed with respect to the current human rights situation in Ingushetia in the Russian Federation. However, in the light of the above-mentioned reports, the State party finds no reason to deviate from the domestic migration authorities' assessment that the prevailing situation there cannot be deemed to be such that there is a general need to protect all asylum seekers from that part of the country. The State party notes that the domestic migration authorities and courts have evaluated the prevailing human rights situation in Ingushetia in the Russian Federation in relation to the complainants' individual circumstances and found that they have not substantiated their claim that they are in need of international protection.

4.13 In connection with the complainants' first application for asylum, the Swedish Migration Agency held an extensive asylum investigation with L.H. on 18 January 2010. The investigation was conducted with the aid of an interpreter, whom L.H. confirmed that she understood well. The minutes from the investigation were later communicated to the public counsel, who was appointed on 19 January 2010. A supplementary investigation was held with L.H. on 16 February 2010 in the presence of the public counsel and with the aid of an interpreter. According to the minutes from the investigation, she had some difficulties understanding the interpreter. However, L.H. was subsequently invited to make corrections to and comments on the minutes through her public counsel. Upon appeal, the Migration Court held an oral hearing with her.

4.14 After the complainants had applied for asylum a second time, an asylum investigation was held with L.H. by the Swedish Migration Agency on 6 November 2017 in the presence of her public counsel. An investigation was also held with M.H. in the presence of the public counsel. The minutes from the investigations were subsequently communicated to the public counsel. Both investigations were conducted with the aid of interpreters, whom the complainants' confirmed that they had understood well. Upon appeal, the Migration Court held an oral hearing with L.H. on 7 September 2018.

4.15 Through their public counsel, the complainants have therefore been invited to scrutinize and submit written observations on the minutes of the interviews conducted and to make written submissions and appeals. It follows from that background information that the complainants have had several opportunities to explain the relevant facts and circumstances

[1] For example, *E.J.V.M. v. Sweden* (CAT/C/31/D/213/2002), para. 8.3; and, for a more recent reference, *A.B. v. Sweden* (CAT/C/54/D/539/2013), para. 7.3.

[2] For example, *H.O. v. Sweden*, communication No. 178/2001, para. 13; *A.R. v. Netherlands* (CAT/C/31/D/203/2002), para. 7.3; *Kalonzo v. Canada* (CAT/C/48/D/343/2008), para. 9.3; and *X v. Denmark* (CAT/C/53/D/458/2011), para. 9.3.

[3] See Finnish Immigration Service, "Current status of the insurgency in North Caucasus and persecution by the authorities", 2015. Available from https://migri.fi/documents/5202425/5914056/61472_Current_status_of_insurgency_in_the_North_Caucasus_and_persecution_by_the_au.pdf/81fb3ef8-652a-4a5b-9478-ccfb4b94e08c/61472_Current_status_of_insurgency_in_the_North_Caucasus_and_persecution_by_the_au.pdf.pdf.

in support of their claims and to argue their case, orally as well as in writing, before the Swedish Migration Agency and the Migration Court.

4.16 In the light of the above, and of the fact that the Swedish Migration Agency and the migration courts are specialized bodies with particular expertise in the field of asylum law and practice, the State party holds that there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or that it amounted to a denial of justice. Accordingly, the State party holds that considerable weight must be attached to the opinions of the Swedish migration authorities.

4.17 The State party emphasizes that the domestic migration authorities have based the assessments of the complainants' cited need for protection on their oral accounts, as well as the evidence submitted by them. L.H.'s claim before the Committee that she was denied an oral hearing by the Migration Court is incorrect. In fact, the Court held oral hearings on both occasions when the complainants appealed the decisions of the Swedish Migration Agency to expel them. The Agency and the Court have thoroughly examined all the facts of the complainants' case on several occasions, whereby they have considered whether their claims are coherent and detailed and whether they contradict generally known facts or available information on the country of origin.

4.18 Regarding the written evidence submitted to the domestic migration authorities, the State party notes the following. It is evident from the domestic decisions and judgment in the present case that those documents have been thoroughly examined by the Swedish Migration Agency and the Migration Court. As described in the rulings, the documents submitted could not plausibly demonstrate the complainants' cited need for international protection, because they, inter alia, were copies and of a simple nature and therefore easy to forge. Regarding the letter from a Russian activist submitted to the Committee, the State party notes that the letter was indeed submitted to the Swedish migration authorities as a letter from an ambassador in France. The domestic authorities questioned how the ambassador could be aware of the complainants' situation or whether they would be persecuted by the Russian authorities. L.H. was not able to answer those questions during the domestic proceedings. Moreover, the Swedish authorities noted that the letter was sent from a regular webmail account, which can be easily created. The letter was therefore deemed to be of low probative value. It is unclear to the State party why the complainants have changed their account in that regard to now allege that the letter is from an "activist". Irrespective of that matter, the same questions concerning the authenticity of the letters that were raised during the domestic proceedings can be raised with regard to the letter from the alleged activist.

4.19 Regarding the alleged summons to an interrogation, the Swedish migration authorities concluded that it was of a simple nature and that the summons did not say why L.H. had been summoned. Furthermore, the arrest warrant submitted was a copy and therefore of a simple nature. The documents were therefore deemed to be of low probative value. Furthermore, the photographs submitted could not be linked to the complainants in any way.

4.20 The State party notes that the complainants have submitted several other documents in support of their claims before the Committee. Nevertheless, the State party finds it pertinent to briefly comment on those new documents. The complainants now suggest that L.H.'s cousin was kidnapped and murdered in 2009 and that that information can be found on the Internet. Moreover, several of the warrants before the Committee have not been submitted to the domestic authorities. The State party notes that L.H. has not explained why she would have withheld those pieces of information during both of the domestic proceedings, and it must be concluded that it is reasonable to expect her not to omit such fundamental aspects of her claims during the domestic proceedings. The State party regards those claims by the complainants to be escalations of their asylum account before the Committee and strongly questions the veracity of those statements and documents. The State party also notes that L.H. has in no way substantiated her new claim that the person who was allegedly murdered is her cousin or is in any other way connected to her.

4.21 Regarding the complainant's oral account, the Swedish Migration Agency has repeatedly found that she provided vague information regarding why the Russian authorities would have an interest in her. It is evident from the recorded minutes from the asylum investigations that L.H. was unable to explain how and why she was of interest to the

authorities. Even though she received several questions from both the Agency and her public counsel, she was unable to develop her answers with regard to the cited events.

4.22 In its decision of 29 May 2018, the Swedish Migration Agency noted that L.H. had applied for, and was granted, a Russian passport in January 2018, at the same time that she had claimed that a warrant for her arrest had been issued. The Agency considered it unlikely that the Russian authorities would issue a passport to someone for whom an arrest warrant had been issued. In addition, the Agency noted that L.H. had claimed that information about her situation was available on the Internet. However, even though L.H. was given the opportunity to submit documentation of that, she did not do so. In an overall assessment of the complainants' cited evidence and their oral accounts, the Agency found that they had not plausibly demonstrated that they would risk treatment warranting international protection upon their return to the Russian Federation.

4.23 In its judgment of 19 December 2011, the Migration Court noted a number of inconsistencies in L.H.'s account. For example, she had never been politically active or had any problems with the authorities before the alleged attack at her family's home. She stated different information regarding her whereabouts when the attack happened at the latter hearing. She also provided three different accounts regarding when and why she supposedly travelled to Moscow with her husband. She furthermore provided completely different information regarding her alleged reporting to the police of her husband's disappearance. During her asylum investigations in January and February 2010, she stated that she had reported his disappearance to the police, the prosecutor's office, the president of Ingushetia and various human rights organizations. However, during the Court's oral hearing, she claimed that it would have meant a death sentence for her to have reported him missing. The Court held that she could not have felt very threatened by the Russian authorities, given that she stayed at her uncle's farm after the security service had supposedly been there to ask questions about her husband. In that regard, the Court also noted that it was strange that the uncle had not experienced any problems with the authorities, even though he had been in frequent contact with them. In an overall assessment, the Court did not deem L.H.'s account to be credible and found her cited grounds for asylum to be insufficient to grant the complainants international protection.

4.24 In its judgment of 21 September 2018, the Migration Court noted that L.H. had mainly cited the same circumstances as she had in her previous application for asylum. However, she claimed that the security situation in Ingushetia was poor and that the federal police had visited her relatives, conducted house searches and enquired about her. She also claimed that her brother was an active opponent of the regime before he was murdered and that her brother's opposition activities were the reason that she was being persecuted and the reason for her husband's disappearance.

4.25 Regarding L.H.'s oral account, the Migration Court noted several inconsistencies. During the oral hearing, L.H. claimed that her brother's opposition activities were the reason that he and her mother were murdered, and that those activities were the reasons for her husband's disappearance. However, during the two asylum investigations carried out in 2010, she had stated that she was unable to see any reason as to why her brother or mother were murdered. Furthermore, she denied that her brother had any connection to the rebels in Ingushetia or any other similar group. In 2010, she also claimed that she was persecuted because of her husband. However, she was unable to explain why her husband had disappeared and stated that it might be due to the fact that he had worked within the police and had links to a prosecutor who was murdered in 2007. The Court considered that the account regarding the alleged threat had changed substantially compared with the first time that the complainants applied for asylum.

4.26 The State party shares the assessment made by the domestic migration authorities that L.H. lacked credibility to such an extent that there was reason to question the veracity of her claims regarding the alleged threat from the Russian authorities. The State party holds that it is not a matter of minor inconsistencies; rather, L.H. has provided different accounts regarding events of crucial importance. Moreover, the complainants have submitted entirely new information before the Committee that has not been cited before the domestic authorities. The claim that L.H.'s alleged cousin was kidnapped and killed in 2009 was not cited before the domestic authorities and, as far as the Government is aware, neither was the claim that

L.H. had been threatened over the phone. The complainants have not provided any acceptable or reasonable explanation as to why they would withhold such important information while at the same time claiming that there is a threat to their lives. Consequently, the veracity of the complaint can be seriously questioned. The State party holds that the inconsistencies and escalations in the complainants' account cast serious doubts on the credibility of their claims.

4.27 In summary, and with reference to the above, the State party holds that the complainants' account and the facts relied upon in their complaint are insufficient to conclude that the alleged risk of ill-treatment upon their return to the Russian Federation meets the requirements of being foreseeable, present, real and personal. Consequently, an enforcement of the expulsion order would not, under the present circumstances, constitute a violation of the obligations of Sweden under article 3 of the Convention.

Complainants' comments on the State party's observations on admissibility and the merits

5.1 On 22 November and 20 December 2019, the complainants submitted that, with regard to the application for a re-examination, it was an extraordinary remedy in Sweden and therefore not a part of the ordinary process. After the decision becomes legally binding, the applicant does not have the right to a re-examination of the reasons stated. However, the applicant may be granted a new examination if new circumstances have arisen that have not been previously examined and which imply that there is a risk that the applicant will be exposed to treatment justifying international protection. An application for a re-examination does not entail a new examination of the case but an opportunity for the applicant to get a re-examination of the case. That, in turn, means that the opportunity to submit an application for a re-examination does not give the applicant an automatic right to have his or her stated reasons examined, but it does give the applicant an opportunity to apply for a re-examination and to be notified if the Swedish authorities intend to re-examine the case. In some cases, and in certain circumstances, the applicant may be granted a re-examination.

5.2 In order for a re-examination to be granted, as mentioned above, it is necessary that the grounds stated by the applicant are entirely new circumstances that have not previously been examined. It is established in Swedish law and case law that new evidence cannot constitute new circumstances. That means that the complainants cannot or could not get what the State party refers to as "new" evidence tried by the Swedish migration authorities. Therefore, even if the complainants would apply for a re-examination, it is clear in the light of Swedish law and established practice that they could not be granted a re-examination of their stated grounds or that their expulsion could in any way be prevented. Consequently, that procedure does not constitute a way for the complainants to obtain a residence permit in the way that the State party is trying to imply. The fact that Swedish law offers the opportunity to submit an application for a re-examination as an extraordinary remedy for all applicants whose decisions have become legally binding cannot affect the assessment of whether or not the appellant has exhausted all domestic remedies. The fact that L.H. and M.H. did not pursue their appeal in the latter processes, due to lack of help from a lawyer and understanding of the process, therefore has no bearing on the complainants' right to have their case examined by the Committee.

5.3 The complainants submit that the majority of the written evidence that the State party refers to as new evidence with new information has been available to the Swedish Migration Board and the Migration Court throughout the national process. Some information was available on the Internet, but, nevertheless, the national authorities have not endeavoured to investigate that further. The fact that some evidence to corroborate the complainant's story was not previously presented to the domestic authorities cannot lead to the conclusion that the complainants have not exhausted all domestic remedies. The evidence relates only to the reasons already stated by the complainants and does not therefore constitute support for any new reasons or new circumstances. In other words, the evidence submitted to the Committee is intended solely to substantiate the complainants' account, that is, information that the Swedish authorities have had access to throughout the process.

5.4 L.H. submits the following in relation to two arrest warrants, which were issued against her in July 2015 and August 2017. Given that she previously submitted an arrest warrant from 2012 in her name to the Swedish Migration Board, the arrest warrants from

2015 and 2017 should not therefore be considered either new information or completely new evidence. It is also important to take into account that the Swedish migration authorities have already examined that claim and did not find the warrant to be good enough evidence.

5.5 Regarding the letter from the Russian human rights activist submitted to the authorities as a letter from an ambassador in France, the complainants note that that person is Musa Taipov, a human rights activist in exile in France. They never described him as an ambassador in France. As for the authenticity of the letter, it should be noted that it is obvious that Mr. Taipov has written the letter, given that he signed it. In order to prove his identity, Mr. Taipov has also sent a copy of his identity documents, as well as his contact information, in case more information from him would be necessary. The fact that the letter was sent from a regular webmail account should not change that assessment; rather, it serves to prove the authenticity of the letter, given that the webmail account can be linked specifically to Mr. Taipov, who is a real person who evidently exists and who evidently has the title that he has indicated. If the letter by itself cannot be considered to constitute adequate evidence, the letter together with all the other submitted evidence must be considered more than sufficient to prove the risks that the complainants will face upon returning to their home country.

5.6 L.H. notes that her statement that her cousin has been murdered cannot be considered as a "new claim". That is simply wrong, given that she has previously told the Swedish Migration Agency about her cousin. In the minutes of the inquiry of 16 November 2017, it appears that L.H. spoke about her cousin on her mother's side and that there was information about him on the Internet, something that the Swedish Migration Agency apparently never followed up on in any way, even though it should at least be within the scope of their duty to investigate.

5.7 L.H. submits that neither the Swedish Migration Agency nor the Migration Court has thoroughly examined what she has submitted, nor what she has presented orally. Her explanations have been given little consideration, even though she was coherent and intelligible and provided detailed accounts. The Swedish migration authorities' assessments have been subjective and not based on objective fact. They have not examined the information that has constantly been available on the Internet and which has been submitted and specifically referred to by L.H. throughout the process. Given that the Swedish migration authorities chose not to examine the information given any further, they have thereby failed to ensure that they had all the information in the case and therefore all the information needed to make a well-informed and legally certain assessment.

5.8 The complainants state that, even if the State party has not committed procedural errors, the question of whether an expulsion would constitute a violation of article 3 of the Convention is an assessment issue. That means that, despite solid evidence, the State party can make incorrect assessments and therefore incorrect decisions as to when a deportation actually infringes the article. The present communication is therefore not about the Committee reviewing the Swedish authorities' decisions, but the Committee must nevertheless determine whether an expulsion of L.H. and M.H. would violate article 3 of the Convention.

5.9 The complainants submit that the State party has merely stated that their story was not credible, without ever examining the information available. The authorities argued that the documents could not demonstrate that the complainants were in need of international protection, because they were copies, of a simple nature and therefore easy to forge. However, that statement is very remarkable for several reasons. It should be noted that the fact that the documents, including the summons for interrogation and the arrest warrant referred to by the State party, are of a simple nature does not automatically mean that the documents are not authentic. It should also be noted that, in addition to the documents that have been filed, there are no other documents for L.H. to submit in support of her and her daughter's need for international protection. The documents submitted look as they do, and that is not something that L.H. has been able to influence. The complainants have submitted a large amount of evidence, including the documents referred to, which, both individually and together, provide strong support for what L.H. has stated orally. In addition, the documents submitted are in line with the relevant country information, which is why they must be considered to have a high evidentiary value and thereby provide further support to the complainants' accounts.

5.10 The complainants submit that, apart from the fact the Swedish Migration Agency has a requirement that asylum applicants must be able to prove their identity and therefore visit the relevant embassy, there are many reasons why a person may be able to visit their home country's embassy and apply for a passport, while still being wanted in their home country and therefore being in need of protection. The embassy is located in another part of the world. The Swedish authorities must also be aware that it is highly unlikely that the Russian authorities would openly take action against L.H. when she is in Sweden, even though she is inside the embassy's premises. That L.H. is wanted in the Russian Federation does not automatically mean that the authorities abroad can or want to stop the issuance of passports or that she would be arrested inside the embassy's premises. That is especially the case, given that the threat against L.H. is based on circumstances that the Russian authorities want to keep discreet. Notwithstanding that fact, L.H. has never applied for a passport at the embassy, nor has she been given a passport by the embassy of the Russian Federation in Stockholm.

5.11 To summarize, the complainants' oral accounts, together with the evidence presented and the relevant country information, clearly demonstrate that the complainants are facing a foreseeable, present, real and personal risk of being subjected to torture or other ill-treatment in violation of article 3 of the Convention upon their return to the Russian Federation.

Additional information from the State party

6.1 On 17 February 2020, the State party submitted that the complainants' further observations of 22 November and 20 December 2019 did not include any new submissions in substance which had not already essentially been covered by the State party's initial observations of 24 September 2019. However, the State party wishes to emphasize that it fully maintains its position regarding the admissibility and merits as outlined in its previous observations.

6.2 The State party also informs the Committee that the Swedish Migration Agency decided, on 20 January 2020, to repeal its decisions of 13 February 2019 to stay the enforcement of the complainants' expulsion orders.

Additional information from the complainants[4]

7.1 The complainants submit that they received more information from the Swedish Migration Agency and the court regarding L.H.'s case and more specifically her identity documents. Based on the information received, it is clear that the State party has falsely stated that L.H. applied for and was granted a Russian passport in 2018. The record sheet that L.H. received from the Swedish Migration Agency shows that L.H. did not submit an application for a new passport in 2018. The only identity document that L.H. has submitted to the Swedish authorities is her passport that she had with her when she first arrived in Sweden. It is therefore clear that she has never visited the Embassy of the Russian Federation in Stockholm and applied for a new passport. In addition, it is not clear where the State party or the Swedish migration authorities received such information, given that she had submitted no new passport application.

7.2 The fact that L.H. did not apply for or receive a new passport during her stay in Sweden is of great significance, because that appears to be one of the main reasons for which

[4] On 11 November 2020, the complainant's counsel informed the Committee that the complainants had submitted new evidence to the Swedish Migration Agency. On 9 October 2020, however, the Swedish Migration Board had decided not to take it into consideration, given that the evidence in question had already been assessed by the migration agencies. The Agency also stated that much of the written evidence had been taken into account during the previous processes, such as the document regarding the disappearance of L.H.'s husband, the letter from the human rights organization, the photographs, the summons for questioning, the arrest warrant and the letter from Mr. Taipov. On 15 April 2021, the Swedish Migration Court rejected the complainant's appeal. On 11 May 2021, the Migration Court of Appeal denied the complainant's leave to appeal. In the light of the above and given that the evidence has been submitted to the Swedish migration agencies, from the first instance to the last, the complainants consider that all available domestic remedies have been exhausted in relation to the "new" evidence submitted and in accordance with article 22 (5) (b) of the Convention.

the Swedish Migration Agency and the Swedish Migration Court denied her and her daughter's asylum applications in 2018.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee takes note of the information provided by the complainants indicating that they had exhausted all domestic remedies. The Committee also takes note of the information provided by the State party that, on 30 December 2009, the complainants unsuccessfully applied for asylum and for residence permits, or a re-examination of the issue of residence permits, citing impediments to enforcement of the expulsion order on 30 May 2012, 2 July 2013 and 18 July 2014, and that those decisions were not appealed. The Committee notes that, on 21 February 2016, the complainants' expulsion order became statute-barred. The Committee also notes that, in the present case, the State party has not contested the complainants' assertion that they have exhausted all available domestic remedies in relation to the asylum applications. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention as far as it relates to the complainants' deportation.

8.3 The State party submits that the communication is inadmissible as manifestly unfounded. The Committee considers, however, that the arguments put forward by the complainants raise substantive issues, which should be considered on their merits. Accordingly, the Committee finds no obstacles to admissibility, declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the complaint 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 return of the complainants to the Russian Federation would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainants 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, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such a 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. 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 a sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a

consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[5]

9.4 The Committee recalls that, according to its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, according to which the Committee will 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 its decision, would affect the rights of a complainant under the Convention in the case of his or her deportation.

9.5 The Committee recalls that the burden of proof is on the complainant, who must present an arguable case, i.e. submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real.[6] The Committee gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings. The Committee will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.[7]

9.6 The Committee takes note of the State party's argument that, from 2010 onwards, in Ingushetia there has been a steady decline in the number of rebellion-related violent incidents, although they still occur. According to reports from previous years, relatives of suspected rebels run the risk of being arrested and subjected to abuse. There are still reports of disappearances and use of torture in the republics of the North Caucasus.

9.7 In assessing the risk of torture in the present case, the Committee takes note of the complainants' allegations that they risk being subjected to torture and reprisals by the Russian authorities, if returned to the Russian Federation, owing to the fact that the Federal Security Service seems interested in the complainants because of L.H.'s brother's affiliation with opponents of the regime in Ingushetia and because of her investigation of her husband's disappearance. The Committee also takes note of the complainants' argument that the Swedish migration authorities' examination of their asylum application was arbitrary and deficient.

9.8 The Committee takes note of the State party's argument that the complainants had ample opportunities to explain the relevant facts and circumstances in support of their claims and to argue their case, orally as well as in writing, before migration authorities regarding their alleged grounds for protection and asylum, namely, that they were at risk of imprisonment and being killed because of their family connection to a person who allegedly was in opposition to the government in Ingushetia. The Committee takes note of the State party's allegation that the evidence submitted by L.H. of the threats that she alleged to have received by phone, the summons to a court for interrogation, the arrest warrant, the letter of support from a human rights activist and the claim that she was declared a missing person were not reliable, of a simple nature and therefore easy to forge.

9.9 While recognizing the concerns that may legitimately be expressed with respect to the current human rights situation in Ingushetia with regard to relatives of suspected rebels, the Committee recalls that the occurrence of human rights violations in the country of origin is not sufficient in itself to conclude that a complainant faces a foreseeable, present, personal and real risk of torture. The Committee emphasises that, in its assessment of the complainant's asylum application, the State party's authorities should adequately assess the possible risk of ill-treatment of relatives of suspected rebels. In the light of all the information submitted by the parties, the Committee observes that the parties do not contest the fact that L.H. was given a number of opportunities to explain the relevant facts and circumstances in support of her claim and to argue her case, orally as well as in writing, including the several oral interviews and rebuttals in writing before both the Swedish Migration Board and the Migration Court. The Committee notes that each oral hearing took place for several hours,

[5] *I.A. v. Sweden* (CAT/C/66/D/729/2016), para. 9.3; and *M.S. v. Denmark* (CAT/C/55/D/571/2013), para. 7.3.

[6] Committee's General comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 38.

[7] Ibid., para. 50.

with the assistance of an interpreter and in the presence of legal counsel, in connection with the complainant's alleged grounds for protection.

9.10 In the Committee's opinion, in the present case, the complainants have not discharged that burden of proof.[8] Furthermore, the complainants have not demonstrated that the authorities of the State party that considered the case have failed to conduct a proper investigation.

9.11 In the present communication, the Committee observes that L.H. had not been personally involved in any opposition activity or had any affiliation with opponents of the regime in Ingushetia. There is also not sufficient evidence of her brother's and husband's involvement with such opposition groups. It is observed in that respect that, even though in Ingushetia, a woman with a familial connection to the opposition who is forcibly returned to the Russian Federation may be at risk of torture, in the present case L.H. makes reference to a single instance of questioning by the Federal Security Service in relation to her husband's disappearance. The Committee notes that L.H. has never been either under the threat of arrest or torture or arrested or ill-treated by the authorities. Furthermore, considering the fact that L.H. was summoned to court and declared a missing person, the Committee notes that L.H. did not provide any detailed explanation as to how those facts can prove that she faces a real risk of torture. The Committee observes that the fact that L.H. was able to leave the Russian Federation freely on her own passport without any incident also shows a lack of interest by the State authorities in her whereabouts. In addition, she makes allegations of the harassment of her uncle and the murder of a cousin after her departure from the Russian Federation, without providing evidence. The Committee finds that the other submitted evidence, such as the letter from a human rights defender and the arrest warrant, are not plausible enough to prove a risk of torture. Furthermore, the Committee is mindful of the length of time (at least 10 years) that has elapsed since the alleged incidents occurred and of the absence of allegations as to whether L.H. has been sought by the Russian authorities in the interim.

9.12 Accordingly, in the light of the above considerations, and in the absence of any further explanations or information of pertinence on file, the Committee concludes that the complainants have not adduced sufficient grounds for believing that they would run a real, foreseeable, personal and present risk of being subjected to torture or inhuman treatment upon return to the Russian Federation.

10. The Committee, acting under article 22 (7) of the Convention, concludes that the complainants' removal to the Russian Federation by the State party would not constitute a violation of article 3 of the Convention.

[8] *Sivagnanaratnam v. Denmark* (CAT/C/51/D/429/2010), paras. 10.5–10.6.