



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. 889/2018*, **

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| <i>Communication submitted by:</i> | D.C. (represented by counsel, Vadim Drozdov) |
| <i>Alleged victim:</i> | The complainant |
| <i>State party:</i> | Switzerland |
| <i>Date of communication:</i> | 17 October 2018 (initial submission) |
| <i>Document references:</i> | Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 22 October 2018 (not issued in document form) |
| <i>Date of adoption of decision:</i> | 22 April 2022 |
| <i>Subject matter:</i> | Risk of torture in case of deportation to the Russian Federation (non-refoulement) |
| <i>Procedural issue:</i> | Admissibility – exhaustion of domestic remedies |
| <i>Substantive issues:</i> | Torture and cruel, inhuman or degrading treatment or punishment |
| <i>Article of the Convention:</i> | 3 |

1.1 The complainant is D.C., a national of the Russian Federation born in 1973. He sought asylum in Switzerland, where his application was rejected. He is detained in a pre-deportation facility and has asked the Committee to request interim protection measures to stay his deportation. He claims that the State party would violate his rights under article 3 of the Convention if it deported him to the Russian Federation. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 6 October 1986. The complainant is represented by counsel, Vadim Drozdov.

1.2 On 22 October 2018, the complaint was registered with a request for interim measures. On 6 December 2018, the State party submitted its observations on admissibility, with a request to consider admissibility separately from the merits, and a request to lift interim measures. On 12 July 2019, the Committee decided not to lift the interim measures and to deny the request to consider admissibility separately from the merits. On 19 March 2021, the Committee rejected the State party's request of 3 April 2020 to discontinue consideration of the case.

* Adopted by the Committee at its seventy-third session (19 April–13 May 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, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



Facts as submitted by the complainant

2.1 The complainant used to live in Malgobek, republic of Ingushetia, in the Russian Federation, with his wife and six children.

2.2 In September 2015, the complainant's stepbrother was reported to have disappeared and in March 2016, was accused by the Russian authorities of participating in extremist and/or terrorist activities and his name was placed on the national list of persons allegedly participating in such activities. In February 2017, the complainant accused the authorities of Ingushetia of being responsible for his stepbrother's disappearance. In April 2017, two police officers were killed in Malgobek and the complainant's stepbrother was held to be one of the main suspects of the crime.

2.3 By that time, the complainant was obliged¹ to record a video urging his stepbrother to surrender. The complainant also criticized radical Wahhabism in the video. On 29 April 2017, the complainant was shot in the head and the hip with a rifle fired from a car while he was working on his tractor on a farm.² Months later, an investigation was opened into the attack against the complainant. He claims that those responsible were radical Islamists who had infiltrated the special security forces and were seeking revenge after he released the video in which he publicly criticized radical Wahhabism.

2.4 On 23 August 2017, the complainant's stepbrother was reported to have died after a counter-terrorism special forces operation. However, as his body was never returned to the complainant's family, they doubted that he was dead. After the stepbrother's reported death, a Malgobek prosecutor advised the complainant to leave the Russian Federation.

2.5 On 15 October 2017, the complainant entered Switzerland and requested international protection that same day, based on the disappearance of his stepbrother and the rifle attack against him.

2.6 On 18 October 2017, after the complainant had a phone conversation with his wife, a hand grenade was thrown into the complainant's house in Malgobek.³ He submits that the police have never opened an investigation into that attack.

2.7 On 20 October and 14 November 2017, the complainant was interviewed by the Swiss asylum authorities. During the interviews, the complainant was asked several times whether he could move to Moscow to avoid persecution, to which he responded that he would also be a target in Moscow.

2.8 On 21 December 2017, the State Secretariat for Migration rejected the complainant's request for international protection, stating that the risks to the complainant's well-being in the Russian Federation were limited to the location where he used to live before entering Switzerland. Therefore, the State Secretariat considered that the complainant could move to Moscow, from where his wife originated,⁴ and be safe. The complainant claims that the authorities did not conduct a proper assessment of his fears of persecution, but merely stated that he could move to another part of the Russian Federation. Moreover, he notes that the authorities did not question the authenticity or credibility of his story and that the State Secretariat indicated that his story was credible and supported by persuasive evidence.

2.9 The complainant could have appealed against the decision of the State Secretariat for Migration of 21 December 2017 within 30 days, but did not do so. He alleges that, as all instructions were given to him in German, which he does not speak, when he was summoned at the refugee reception centre concerning collection of the letter enclosing the State

¹ The communication does not specify by whom.

² The complainant was hospitalized and had two bullets removed from his head. The communication includes a note from the hospital as supporting evidence.

³ The communication includes a video of the complainant's house after the grenade was thrown into it.

⁴ During his asylum interview in November 2017, the complainant stated that his wife was originally from Moscow.

Secretariat's decision, he did not understand that the letter had already arrived and that he needed to collect it.⁵

2.10 In January 2018, the decision of the State Secretariat for Migration entered into force and on 15 February 2018, the complainant was ordered to leave Switzerland.

2.11 On 13 March 2018, the complainant requested that the State Secretariat for Migration re-examine his application for international protection, and provided additional information about the risk of being persecuted by Da'esh, Russian intelligence forces and relatives of the police officers who were allegedly killed by the author's stepbrother (in a so-called blood feud), mainly because the author's relative is suspected of having committed terrorist acts. On 21 March 2018, the State Secretariat suspended the complainant's deportation order pending review of his request for re-examination and charged him the fee for the re-examination.

2.12 On 9 May 2018, the State Secretariat for Migration rejected the complainant's request for re-examination of his initial application, stating that, as no new facts had been submitted, there was no need for a review. Accordingly, the State Secretariat decided that his deportation order was no longer suspended and that any further complaint would not have a suspensive effect regarding his deportation order.

2.13 On 25 May 2018, the complainant appealed against that decision before the Federal Administrative Court, submitting once again that he would be persecuted in the Russian Federation by security services, violent extremists or relatives of the police officers who were allegedly killed by his stepbrother.⁶ On 28 May 2018, the Federal Administrative Court suspended the execution of the deportation order, but then lifted the suspension on 11 June 2018. On 25 June 2018, the complainant appealed against the Court's decision to lift the suspension, but his appeal was rejected on 27 June 2018. Since then, the deportation order against the complainant has remained enforceable.

2.14 On 4 September 2018, the Federal Administrative Court rejected the complainant's appeal against the decision of the State Secretariat for Migration denying the re-examination of the complainant's request for international protection.

2.15 The complainant indicates that new information is available that he has not yet provided to the Swiss authorities, as follows: (a) on 2 and 4 November 2017 and 10 January, 14 March, 12 June, 10 July and 30 July 2018, the complainant's wife, who resides in Malgobek, received summons addressed to the complainant requesting him to appear before an investigator as a witness, but providing no further information;⁷ (b) in August 2018, the complainant's son was assaulted by several masked individuals while he was in the backyard of the family's house in Malgobek;⁸ and (c) the motivation for the attack on his son was the fact that his son's uncle was suspected of terrorism. The complainant alleges that if he is returned to the Russian Federation, he will be forcibly taken to Malgobek to comply with the seven summons, and in that city, he would also face persecution.

2.16 The complainant claims to have exhausted all available and effective domestic remedies. He has appealed against the decisions of 9 May and 11 June 2018 and no other domestic remedies are available. He maintains that he has substantiated his claim that he faces a personal and present risk of persecution in the Russian Federation, providing evidence of physical attacks against him and his family in their country of origin. He also indicates that the new information should be considered and assessed by the Swiss asylum authorities.

⁵ The Committee secretariat contacted the complainant's counsel requesting further clarification of the reasons why the decision of the State Secretariat for Migration had not been appealed, the notification of that decision and the lack of information in a language that the complainant understood.

⁶ The complainant submitted as supporting evidence the expert opinion of a Russian non-governmental organization addressing the specific risks for the complainant if he is returned to the Russian Federation, and a report of a Swiss non-governmental organization.

⁷ The communication includes copies of the seven summons as supporting evidence.

⁸ The communication includes a video showing the complainant's son's injuries.

Complaint

3.1 The complainant claims that his deportation to the Russian Federation would constitute a violation by Switzerland of article 3 of the Convention. His claims are based on the fact that, if returned to his home country: (a) he might be persecuted by the Russian law enforcement authorities due to his family ties with his stepbrother, who is suspected of terrorism; (b) he might be persecuted by relatives of the police officers allegedly killed by his stepbrother in a blood feud; and (c) he might be persecuted by violent extremists, as a person who has publicly criticized their ideology.

3.2 He points to the credibility of his claims and submits that the Swiss asylum authorities did not cast doubt on his allegations, as they considered that the risk was limited only to a part of the Russian Federation, without assessing all of the information brought to their attention.

3.3 The complainant calls on the Committee to request that Switzerland suspend his deportation to the Russian Federation while his complaint is under consideration by the Committee and to request that the Swiss authorities review his claim for international protection.⁹

State party's observations on admissibility

4.1 On 6 December 2018, the State party submitted its observations on admissibility. It argued that the complainant had not exhausted all available domestic remedies. As reflected in the Committee's jurisprudence, the complainant should have submitted all the new facts that came to light to the national authorities, even after the final rejection of his asylum application.¹⁰ Doubts about the effectiveness of a remedy are not generally dispelled when the complainant fails to substantiate that appeals would be unlikely to succeed.¹¹ In general, it is not the Committee's role to assess the prospects of success of domestic remedies, but only to evaluate whether they are proper remedies for the determination of the complainant's claims.¹² In the Committee's practice, a remedy appears ineffective when it is deprived of all suspensive effect¹³ or when the cost of the procedure is too high.¹⁴

4.2 On 15 October 2017, the complainant submitted an asylum application, which was rejected on 21 December 2017. The negative decision of the State Secretariat for Migration could be appealed before the Federal Administrative Court within 30 days, with a suspensive effect. On 13 March 2018, the complainant submitted a request for re-examination, for which he provided supplementary information on 23 April 2018. On 9 May 2018, that request was rejected, as no new evidence had been submitted. On 4 September 2018, the Court upheld the State Secretariat's decision not to re-examine the complainant's asylum application, since the request appeared to be an attempt to rectify the fact that the complainant had not appealed against the initial negative State Secretariat decision of 21 December 2017. In that context, both the State Secretariat and the Court duly examined whether it was necessary to suspend the complainant's removal. Since the appeal had a suspensive effect, it constitutes an effective remedy.¹⁵

4.3 The State party recalls that the complainant did not submit to the Federal Administrative Court an appeal against the decision of State Secretariat for Migration of 21 December 2017, which would have had a suspensive effect. The decision of the Court of 4 September 2018 dealt only with the request for re-examination, namely, to determine whether the evidence submitted in support of the request contained sufficient new elements to reassess the decision of the State Secretariat of 21 December 2017. The complainant has not submitted new facts to the national authorities (as opposed to the Committee), as he considered that the

⁹ Based on the grounds submitted by the complainant in his request for re-examination of 13 March 2018 and his subsequent communications with the authorities.

¹⁰ E.g. *F.M.-M. v. Switzerland* (CAT/C/46/D/399/2009), paras. 6.3–6.5.

¹¹ E.g. *R.K. v. Canada* (CAT/C/19/D/42/1996), para. 7.2.

¹² E.g. *M.A. v. Canada* (CAT/C/14/D/22/1995), para. 4.

¹³ E.g. *Arkauz Arana v. France* (CAT/C/23/D/63/1997), para. 6.1.

¹⁴ E.g. *A.E. v. Switzerland* (CAT/C/14/D/24/1995), para. 3.

¹⁵ E.g. *Arkauz Arana v. France* (CAT/C/23/D/63/1997), para. 6.1.

appeal to the Court would not automatically have a suspensive effect. In addition, the complainant did not argue that the domestic remedies are not available or are ineffective.

4.4 In principle, the complainant could have submitted a new application for asylum or an application for re-examination of the negative decision on his asylum application. In conclusion, the State party requested that the interim measures be lifted and the communication declared inadmissible.

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

5.1 On 3 April 2019, the complainant submitted comments on State party's observations on admissibility. He noted that the State party objected to the admissibility of his communication, particularly because he did not avail himself of a new application for asylum or apply for re-examination of the negative decision on his asylum application.

5.2 The complainant submits that requesting a re-examination of his asylum application before the Swiss authorities would not provide him with international protection because it would not automatically suspend the execution of his deportation order. He notes that when the State Secretariat for Migration rejected his application for re-examination of his initial asylum application on 9 May 2018, the Federal Administrative Court subsequently informed him that any further complaints would not have a suspensive effect on his deportation. This, in combination with the language of article 111b (3) of the Asylum Act, which provides that "the submission of an application for re-examination does not delay enforcement" of the removal order, led the complainant to believe that any further requests for re-examination of his application would not suspend the deportation order, and would not therefore constitute an effective remedy. He does not intend to file a new request with the State Secretariat for Migration for re-examination of the denial to grant him international protection. As indicated in article 111b (3) of the Asylum Act: "The authority responsible for processing may suspend enforcement on request if there is a specific danger to the applicant in his or her native country or country of origin."

5.3 In the present circumstances, the complainant cannot file a new application for asylum as he does not have new grounds for seeking international protection. Pursuant to article 111c (2) of the Asylum Act, applications for asylum "that state the same grounds shall be dismissed without a formal decision being taken". The complainant provided the Swiss authorities with all his grounds for seeking international protection in his initial request for asylum submitted in October 2017, his request for re-examination of 13 March 2018 and his subsequent communications with the authorities. The complainant argues that he does not intend to submit a new asylum claim before the Swiss authorities. The new facts referred to by the State party only added additional context to the grounds submitted initially. In any case, a new application for asylum would not suspend the current deportation order, in accordance with the decision of the State Secretariat for Migration of 9 May 2018. Should the complainant try to use information obtained from his relatives at the national level, the appropriate procedure would be to file a new request for re-examination. As stated above, a request for re-examination of his asylum application is not an effective remedy in terms of the Convention, as it does not have an automatic suspensive effect. The complainant asserts that his individual communication is admissible and that there are no grounds for lifting the interim measures, as requested by the State party.

5.4 The complainant also argues that the State party, by ratifying the Convention, has agreed to cooperate with the Committee in good faith. The State party should have complied with the Committee's request to transmit its observations both on admissibility and the merits of the communication, as indicated in the Committee's registration letter dated 22 October 2018. The complainant requested that all correspondence concerning the present case be conducted in English.

State party's observations on the merits

6.1 On 10 December 2019, the State party recalled the three grounds for the complainant's asylum application, arguing that some of the allegations and evidence submitted to the Committee had not been presented to the national asylum authorities. Therefore, the present communication should be considered inadmissible on the ground of non-exhaustion of all

available domestic remedies. In the alternative, the State party suggests that the communication should be considered to be without merit.

6.2 The State party argues that the complainant has not submitted substantiated, credible arguments that he would face a foreseeable, present, personal and real danger of being subjected to torture if removed.¹⁶ There is no generalized violence, nor are there grave or systematic violations of human rights. The complainant would have to present additional grounds to substantiate the fact that he would face a risk of torture.¹⁷ No such evidence of a personal risk has been submitted.

6.3 The complainant has not alleged that he has suffered torture or ill-treatment in the past.¹⁸ According to his own statements in the interview on 14 November 2017, he has never had a problem with the authorities of the Russian Federation and has had no reason to fear them, despite his stepbrother's alleged radicalization. The attack against the complainant by the armed group in April 2017 was the subject of a criminal investigation by the Russian authorities. The State party presumes that the authorities are able and willing to offer the complainant protection.

6.4 The complainant has not claimed that he engaged in political activities within or outside his country of origin.¹⁹ In addition, some of his statements were imprecise and contradictory. For example, in his interview on 20 October 2017, the complainant claimed that he could stay in Moscow, where he had been offered a job with the medical emergency service. In addition, the complainant provided an address and professional occupation in Moscow when he applied for a visa there in the Swiss Embassy. When submitting his communication to the Committee, he included facts that had not been provided to the Swiss authorities. His wife, for example, was not originally from Moscow, but from Ingushetia. After her parents' violent death during the first war in Chechnya, she was adopted by a couple from Ingushetia and moved to Moscow, where she subsequently married. As a consequence, the complainant and his family had no parents of their own or housing in Moscow. The complainant did not explain why he made different statements at different times or why he could not live in Moscow. The complainant also did not mention to the authorities the seven summons addressed to him between 2 November 2017 and 30 July 2018. Although he originally received them as a witness, the reason for the summons was not explained in detail and the complainant's wife did not provide any updates. It is not clear why the complainant did not mention the summons during the asylum proceedings or the subsequent proceedings concerning his request for re-examination. However, it is understandable that a victim of an armed attack would be summoned as a witness by the authorities. As the complainant had to travel from Moscow to Malgobek (Ingushetia) in response to the summons for a witness hearing, the State party submits that the fact that the complainant was summoned as a witness is evidence that the authorities were available and willing to offer him protection following the attempted assassination in April 2017.

6.5 Another of the new facts the complainant mentioned is that his son, Osman, was assaulted by unknown individuals in August 2018. One of the assailants allegedly told Osman that he had been beaten up because his uncle was suspected of terrorism. In this context, the State party recalls that the complainant's accounts in support of his asylum application have not been contested by the asylum authorities (State Secretariat for Migration decisions of 21 December 2017 and 9 May 2018 and the Federal Administrative Court decision of 4 September 2018) and that the violent acts against the members of his family may well have taken place. Nonetheless, the complainant could move with his family to Moscow or to another part of the Russian Federation in order to avoid the risk of persecution. The State party assumes that the Russian authorities are ready and willing to offer him protection.

6.6 The complainant has presented three grounds to substantiate his fear that he risks being subjected to torture or ill-treatment if removed to the Russian Federation. As for the alleged fear on the ground that he is a family member of a presumed terrorist suspect, the State party recalls that the summons to a hearing were addressed to the complainant as a

¹⁶ Committee against Torture, general comment No. 4 (2017), para. 38.

¹⁷ *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.3.

¹⁸ Committee against Torture, general comment No. 4 (2017), para. 49 (b)–(d).

¹⁹ *Ibid.*, para. 49 (f).

witness. The complainant's stepbrother disappeared in September 2015 and it is unclear why the authorities would have waited so long – until November 2017 – to summon him to a hearing. In addition, after the attack against him in April 2017, the complainant was allowed to leave his country legally on two separate occasions and, according to the statements he made during his interviews on 20 October and 14 November 2017, he faced no repercussions when he returned following his first departure.

6.7 As for the fear of persecution by family members of the policemen who were reportedly killed by his stepbrother, the complainant submitted general background documents from a Swiss non-governmental organization called "Citizens' Support", and from the Memorial human rights centre in the Russian Federation. However, those reports are not linked in any way to the complainant's circumstances. In addition, the complainant's contacts with the authorities of Malgobek have not been established in any way.

6.8 As for the complainant's fear of persecution by extremists, the State party submits that the assault on the author has not been disputed by the authorities. His allegations of a lack of protection have not been corroborated. Moreover, based on his own statements during an interview, the complainant could stay in Moscow without any risk. The complainant has not submitted any specific evidence that he would face a foreseeable, present, personal and real danger of being subjected to torture or ill-treatment, in the context of article 3 of the Convention, if he were deported to the Russian Federation.

6.9 In conclusion, the State party claims that the complainant has submitted no evidence of reasonable grounds to believe that he would face a real and personal risk of torture if he were removed to the Russian Federation. The present communication should therefore be declared inadmissible or without merit. The complainant's removal would not amount to a violation of article 3 of the Convention.

State party's additional observations

7.1 On 3 April 2020, the State party submitted a request to discontinue the consideration of the present case, as the complainant had submitted a new asylum application on 28 February 2020.

7.2 The State Secretariat for Migration suspended the enforcement of the complainant's removal to the Russian Federation on 3 April 2020. Both the cantonal authorities and the complainant were informed of the suspension on 26 March 2020. Given that the complainant no longer risks being removed from the State party and that any decision on his new asylum application would be subject to appeal, with a suspensive effect, before the Federal Administrative Court, the State party requested that the Committee discontinue the consideration of the present complaint. The State party held that the complainant might submit a new complaint to the Committee if he again considered that his rights had been violated by the national asylum authorities. The State party referred to the Committee's discontinuance decision in the case of *N.A.A. et al. v. Switzerland*.²⁰

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

8.1 On 29 December 2020, the complainant submitted his comments on the State party's observations on admissibility and the merits, objecting also to the State party's discontinuance request. He argues that the Committee's discontinuance decision in the case of *N.A.A. et al. v. Switzerland* concerned the complainants' removal to Italy under Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 (the Dublin III Regulation). In that case, the complainants still had a chance to submit an asylum application to prevent their removal to their country of origin. However, the present case concerns the decisions concerning the complainant's removal directly to his country of origin. The two cases are not identical. The complainant's victim status under article 3 of the Convention has been demonstrated in the present case. This is confirmed in the letter of the State Secretariat for Migration dated 26 March 2020, in which it requested the cantonal authorities to suspend the complainant's deportation until the Committee had considered the

²⁰ CAT/C/64/D/814/2017.

case and indicated that his new asylum application would be considered by the national authorities.

8.2 On 14 May 2020, the State Secretariat for Migration rejected the complainant's asylum application of 28 February 2020, submitted by a representative at the national level,²¹ and ordered him to leave Switzerland by 31 July 2020. The complainant did not appeal that decision before the Federal Administrative Court, as he considered that any such appeal would be ineffective, as he had argued in his initial complaint and in his comments on the State party's observations on admissibility of 6 December 2018 in regard to non-exhaustion of that remedy. Moreover, the complainant's representative at the national level advised him that the appeal would not be successful.

8.3 The complainant is subject to a new deportation order, which is executable. Following the decision of 14 May 2020 of the State Secretariat for Migration, the State party's arguments in favour of discontinuance seem unsubstantiated, given that the same risk factors and claims were raised in the new asylum procedure concerning the risk of removal to the Russian Federation; the risk of removal to the country of origin has not ceased to exist. The complainant continues to face a risk of deportation to the Russian Federation, the suspension of which has been only temporary.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any complaint contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

9.2 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. Nevertheless, this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief.²² The Committee notes that, in the present case, the State party has contested that the complainant has exhausted all available domestic remedies.

9.3 The complainant claims that Switzerland would violate article 3 of the Convention, as he would face a risk of persecution and torture if removed to the Russian Federation.

9.4 The Committee notes the complainant's argument that the State Secretariat for Migration rejected his asylum application on 21 December 2017 and that he could have appealed that decision before the Federal Administrative Court within 30 days, but did not do so as he did not understand that he was required to collect a letter from the State Secretariat at a post office. On 13 March 2018, the complainant requested that the State Secretariat re-examine his asylum application, providing additional information about the alleged risks he was facing. On 21 March 2018, the State Secretariat suspended his deportation order pending review of his request for re-examination. On 9 May 2018, the State Secretariat rejected the complainant's request for re-examination of his initial application since no new facts had been submitted, lifting the suspension of the deportation order and indicating that any further complaint would not have a suspensive effect. On 25 May 2018, the complainant appealed against the State Secretariat's decision of 9 May 2018 before the Federal Administrative Court. On 28 May 2018, the Federal Administrative Court once again suspended the execution of the deportation order, but then lifted the suspension on 11 June 2018. On 25 June 2018, the complainant appealed against the Court decision lifting the suspension, but

²¹ The complainant's counsel for his complaint before the Committee was not authorized to represent the complainant in the national proceedings prior to 1 October 2020. On 24 September 2018, the complainant signed the authorization form in Russian mandating the counsel to represent him only before the Committee.

²² Committee against Torture, general comment No. 4 (2017), para. 34.

that decision was upheld on 27 June 2018. Since that day, the deportation order against the complainant has been enforceable. On 4 September 2018, the Court upheld the State Secretariat decision not to re-examine the complainant's asylum application, since the request appeared to be an attempt to rectify the fact that the complainant had not appealed against the initial negative State Secretariat decision of 21 December 2017. In the view of the State party, that appeal concerned only a request for re-examination. The Committee also notes the complainant's assertion that not all the new facts brought to the Committee were submitted to the domestic asylum authorities. The Committee further notes the State party's argument that the complainant did not exhaust all available domestic remedies as he has not submitted all the new facts to the national authorities, even after the final rejection, and he has not appealed the negative decision of the State Secretariat of 21 December 2018 before the Federal Administrative Court, which could have a suspensive effect. The State party also argued that the complainant could submit a new asylum application or request a re-examination. However, the complainant pointed out that requests for re-examination of his application would not automatically suspend the deportation order and would not therefore constitute an effective remedy. In that context, the Committee notes that on 14 May 2020, the State Secretariat rejected the complainant's new asylum application of 28 February 2020 and ordered him to leave Switzerland by 31 July 2020. The State party has argued that, once again, the complainant did not appeal that decision before the Court, as he considered that any such appeal would be ineffective, as he had argued previously. The complainant refused to pursue that remedy because he doubted that it would be successful. The Committee recalls its jurisprudence that mere doubts about the effectiveness of a remedy do not absolve the complainant from the duty to exhaust it,²³ and that such doubts are not generally dispelled when the complainant fails to substantiate that appeals would be unlikely to succeed.²⁴

9.5 In the circumstances, the Committee considers that the State party should have an opportunity to evaluate all the evidence gathered by its asylum authorities, including upon appeal to the Federal Administrative Court, before the communication is submitted for examination under article 22 of the Convention. Moreover, the Committee cannot conclude that a review by that Court, based on appeal against the negative decision of the State Secretariat for Migration in the present case, entailing an automatic suspensive effect, would be *a priori* ineffective. The Committee therefore finds that the complainant has not exhausted all available domestic remedies.

10. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22 (5) (b) of the Convention, due to non-exhaustion of all available domestic remedies;
- (b) That the present decision shall be communicated to the complainant and to the State party.

²³ *J.S. v. Canada* (CAT/C/62/D/695/2015), para. 6.5.

²⁴ E.g. *R.K. v. Canada* (CAT/C/19/D/42/1996), para. 7.2.