



General Assembly

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1037/2020* **

<i>Communication submitted by:</i>	A.S. (represented by counsel, Marjaana Laine)
<i>Alleged victims:</i>	The complainant
<i>State party:</i>	Finland
<i>Date of complaint:</i>	4 November 2020 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 9 November 2020 (not issued in document form)
<i>Date of decision</i>	22 April 2022
<i>Subject matter:</i>	Deportation from Finland to the Russian Federation
<i>Procedural issues:</i>	Exhaustion of domestic remedies; manifestly ill-founded;
<i>Substantive issue:</i>	Risk of torture or other cruel, inhuman or degrading treatment or punishment
<i>Article of the Convention:</i>	Article 3

1.1 The complainant is A.S., who is a national of the Russian Federation, born in 1993. He claims to be victim of a violation by the State party of his rights under article 3 of the Convention. The complainant is represented by counsel.

1.2 On 9 November 2020, the Committee, acting through its Rapporteur on new complaints and interim measures, granted the complainant's request for interim measures and requested the State party not to remove him to the Russian Federation while his complaint was under consideration by the Committee. The State party informed the Committee that it would follow the Committee's request.

1.3 On 29 September 2021, pursuant to rule 115 (3) of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new complaints and interim measures, granted the State party's request for the admissibility of the communication to be examined separately from the merits.

* 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 Işcan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



Facts as presented by the complainant

2.1 The complainant submits that he was born in the Republic of Ingushetia, but lived his whole life in the city of Sernovodsk, Chechen Republic, Russian Federation. He is Chechen by ethnicity and Muslim by religion. He claims that he has been a victim of several episodes of torture in the past, specifically in 2016.

2.2 The complainant submits that he does not share the religious beliefs of the current government of his home country, although he has never been politically active, and that he has never participated in any rebel activities. His close relatives, however, have been actively involved in rebel activities in the Chechen Republic. Three of his uncles were arrested in 2004. One of them was wounded during the arrest and was later killed in hospital. Another uncle was sentenced to three years of imprisonment for his rebel activities. His uncle, A.R.B., managed to escape to Finland and was granted asylum there. The complainant clarifies that A.R.B. was a leader of an insurgent group during the war. In 2011, the Russian Federation submitted an extradition request to the authorities in Finland. According to the complainant, this request was based on fabricated terrorism-related charges.

2.3 As for himself, in August 2016 the complainant was arrested by the Chechen authorities for the first time. At that time, he was in a mosque with his friends during Friday prayers. The complainant and two of his friends, who were also present at the mosque, were taken to a police station. Police officers started interrogating them, threatening them with “serious consequences”. The complainant was then beaten for about 30–40 minutes, and officers also used an electric stun gun to torture him. The complainant and his two friends were tortured in different cells, but at night they were brought into one room. In the morning, they were separated and the torture continued. He was taken to hospital to be checked for any signs of injury that could have been taken as evidence of torture. The complainant was released on the third day and was told to report to the police regularly.

2.4 Since that first arrest, the complainant has been brought into the police station several times. He has been forced to watch video lectures on the government’s official ideology and was beaten on four or five occasions. Furthermore, on 30 November 2016, his house was raided by the Chechen authorities and he was taken to an unknown location and put in an underground cell. He was tortured by being hung with his hands tied behind his back. He was prevented from sleeping and officers regularly threw cold water over him. They also used electric shocks and threatened to kill him. During the torture, the authorities also mentioned his three uncles.

2.5 After 30 November 2016, the complainant never slept in his own house again. He learned that one of his acquaintances had also been arrested and then released. Together with that person, he travelled by car to St. Petersburg where they both obtained visas for Finland and travelled there by train on 27 January 2017. After arriving in Finland, the complainant received information from his mother that four or five young men, who like him had an obligation to report to the authorities, had been killed in the city of Grozny, Chechen Republic. He also received information that the authorities were looking for him and that they had told his mother that he should return voluntarily, otherwise they would issue a warrant for his arrest. In May 2018, the authorities sent a summons request for the complainant to appear at the police station. A copy of this summons was submitted to the Finnish asylum authorities. In March or April 2020, the authorities again came to his home. They told his mother that they knew that the complainant was in Finland living with his uncle A.R.B. The complainant is now concerned that the blood feud related to his uncle is now extended to him.

2.6 The complainant submits that the asylum authorities accepted as a fact that the complainant was detained by accident in August 2018 and that because of that detention, he had to report regularly. However, they found his description of arrests and abuse in the autumn of 2016 as “short and general” in description. The immigration authorities considered that the threat from the Chechen authorities usually came only against the closest family members of rebel activists, whereas more distant relatives rarely drew attention.

2.7 The asylum authorities considered, for example, that the complainant’s father had not had any difficulties with the authorities. They therefore did not accept the fact that the complainant would be profiled because of his uncles. Based on all the information provided

by the complainant and on the information on the country of origin, the Finnish authorities did not consider that the complainant had a reasonable fear of being persecuted in his home country, as would be required under article 87 (1) of the Aliens Act. Furthermore, they did not accept as a fact that the complainant was a person wanted by the Russian authorities. The complainant had not broken any laws or been charged with any crimes and he had left Russia legally using a lawfully issued passport.

2.8 According to the immigration authorities, the complainant could easily live and work in Moscow. He is a highly educated healthy person and Chechens constitute a well-connected minority group in Moscow. The initial decision was appealed, but the appeal was rejected by the Helsinki Administrative Court on 3 January 2020. The Supreme Court of Finland refused to issue a leave to appeal on 5 June 2020. The complainant attempted to file another asylum appeal on 10 June 2020, which was also rejected on 21 September 2020 without a hearing, since the authorities considered that all issues brought forward by the new asylum claim were already “legally settled”. The complainant therefore submits that domestic remedies have been exhausted.

2.9 The complaint submits a statement from a psychiatrist dated 27 August 2020, according to which, he has been diagnosed with post-traumatic stress disorder, adjustment disorder and prolonged depression, all of which require medical and therapeutic care.

Complaint

3. The complaint claims that his removal to the Russian Federation would constitute a violation of his rights under article 3 of the Convention.

State party’s observations on admissibility

4.1 On 9 March 2021, the State party submitted its observations on the admissibility of the complaint. The State party confirms that the complainant applied for asylum in Finland on 2 February 2017. On 17 August 2018, the complainant’s request for asylum was rejected by the Finnish Immigration Service, and he was ordered to be removed. On 3 January 2020, the Helsinki Administrative Court rejected the complainant’s appeal. The Supreme Administrative Court, by decision of 5 June 2020, denied the complainant’s leave to appeal.

4.2 On 10 June 2020, the complainant started a second set of proceedings by filing another asylum application, which was rejected on 21 September 2020. On 7 October 2020, the Helsinki Administrative Court rejected the complainant’s request to prohibit the enforcement of his removal. Later on, on 23 November 2020, the court issued the new interlocutory order, which prohibited the complainant’s removal to Russia, pending a new order being issued. Currently, there is no final decision on the complainant’s second asylum application.

4.3 The State party notes that according to article 22 (5) (b) of the Convention, the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The complainant completed a first set of proceedings but started a new set of proceedings, which are currently pending. The Committee’s jurisprudence, including the case of *A.K. v. Switzerland*, supports the State party’s position.¹ In that case, the Committee found the communication inadmissible, due to the fact that the Asylum Appeals Board had not yet taken a decision on the complainant’s appeal. Similarly, in the case of *L.M.V.R.G. and M.A.B.C. v. Sweden*, the Committee found the complaint inadmissible, since the complainant failed to submit an appeal to the Aliens Appeal Board.²

4.4 The European Court of Human Rights has taken a similar approach, for example in *L.T. v. Belgium*, where the applicant’s second asylum request was pending and that set of proceedings had a suspensive effect on removal. In the present case as well, the complainant’s second set of proceedings has a suspensive effect against his return to his home country.

4.5 The State party submits that were the Committee to decide on the complainant’s case, despite pending proceedings, that would preclude the domestic authorities from reviewing

¹ See CAT/C/36/D/248/2004/Rev.1.

² See CAT/C/19/D/64/1997.

the alleged new grounds for granting the complainant's request for asylum. The complainant's appeal to the Administrative Court is not a mere formality, and does not constitute an extraordinary remedy. Following the future Administrative Court decision, the complainant has a possibility to request leave to appeal to the Supreme Administrative Court, if he wishes to. Consequently, it is evident that the complainant has not, for the time being, exhausted the requirements of article 22 (5) (b) and his complaint should be declared inadmissible. Should the Committee find the complaint admissible, the State party requests it to suspend the present communication until final domestic decisions are issued.

4.6 The complaint is also manifestly ill-founded and not sufficiently substantiated. It is the Committee's well-established practice that the extent of article 3 of the Convention has been to determine whether "substantial grounds" exist that the risk of torture is "foreseeable, personal, present and real". The 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, if returned to his home country. Additional grounds must be adduced to show that the individual would personally be at risk. The complainant's applications were examined under the Aliens Act 301/2004. The provisions of that law reflect the principles of article 3 of the Convention and both applications were subject to appeal.

4.7 The Committee's approach has been, as reflected in the case of *Attia v. Sweden*, that risk of torture due to family ties is generally insufficient to put forward claims under article 3 of the Convention.³ In the present case, the Finnish Immigration Service considered that the alleged violations of the complainant's rights in Chechnya were the result of arbitrary action by the authorities. The complainant has not taken part in any action that would make him suspected of offences or affiliation with an extremist movement. The Finnish Immigration Service therefore did not find a "causal connection" between the alleged persecution and the reason for that persecution. Taking into account the complainant's background, the Immigration Service did not find reasonable grounds to believe that if he lived in other parts of the Russian Federation, he would risk suffering persecution or serious harm.

4.8 Although the complainant refers to the Committee's jurisprudence in its general comment No. 4 (2017) regarding internal flight alternatives and argues that this alternative cannot be considered as "reliable or effective" in his case, the case law of the Committee, relies on believing that the Chechen or Russian authorities would subject the complainant to persecution and return him to Chechnya, even if he were to live in a different part of the country. The State party considers that it has no reason to believe this.

4.9 The State party therefore believes that the complainant both failed to exhaust domestic remedies and that his complaint does not establish a *prima facie* case for the purposes of admissibility, and therefore should be declared inadmissible pursuant to article 22 (3) of the Convention, and rule 113 (b) of the Committee's rules of procedure. At any rate, the present communication does not reveal any breaches of article 3 of the Convention.

Complainant's comments on the State party's observations

5.1 On 16 August 2021, the complainant submitted his comments on the State party's observations. The complainant claimed that the State party had failed to put forward any real reasons to find the communication inadmissible. The authorities failed to consider the individual situation of the complainant and the relevant information on the country of origin. The State party has chosen to ignore, for example, that the Helsinki Administrative Court in its decision of 3 January 2020 made a finding that the complainant had a well-founded fear of persecution in Chechnya.

5.2 The Helsinki Administrative Court rejected the complainant's appeal on 5 March 2021. The court stated that on 3 January 2020, there was already a finding that the complainant was a victim of torture and looked into his health conditions. The court, however, stated that the complainant had not presented any new information about his profile and why the authorities would be interested in him. If there was no interest from the

³ See [CAT/C/31/D/199/2002](#).

authorities, then there would be a reason to consider the internal flight alternative, by living in another part of the Russian Federation.

5.3 The court further stated that the second application did not contain any new information that would increase the applicant's chances of qualifying for international protection. So the court considered the second application as a subsequent application, which did not fulfil the requirements of the Aliens Act, section 103, subsection 2, to consider the application admissible. The court stated at the end of the decision that for clarity purposes, even if the application had been rejected, it did not affect the interim measure taken by the Committee. The complainant filed for leave to appeal on 19 March 2021, which was granted by the Supreme Administrative Court on 24 March 2021. The case is currently pending with the Supreme Administrative Court.

5.4 The State party asserts that the complainant has not exhausted all domestic remedies, even though he himself initiated the second set of proceedings. It has to be noted that when the complainant approached the Committee, an order to return him to the Russian Federation became enforceable, all domestic remedies were exhausted and the police had started enforcement.⁴ The appeal to the Administrative Court does not prevent the enforcement of an order to return, unless otherwise ordered by the court itself. The complainant filed an appeal to the Helsinki Administrative Court, which rejected his claims on 7 October 2020 and the order to return became enforceable at that time. After the complainant filed his communication with the Committee, the police agreed to suspend removal. On 23 November 2020, the Helsinki Administrative Court issued a new interlocutory decision and granted interim measures.

5.5 Regarding the establishment of a *prima facie* case against the State party, the complainant submits that for the purposes of admissibility, the claims should fulfil basic level of substantiation. The complainant has sufficiently detailed the facts and the basis for his claims under article 3 of the Convention. In its decision of 3 January 2020, the Administrative Court established the causal link between persecution and the reason for persecution. The information on country of origin supports the fact that the Chechen authorities are keen on searching for persons of interest outside Chechnya.⁵ A recent report by the Norwegian Helsinki Committee states that a once-persecuted Chechen, even if he or she moves to another part of the country, will need to register with the local authorities and this information can be easily available to the Chechen authorities.⁶

5.6 The cases of the Committee to which the State party refers do not support the finding of inadmissibility. In the case of *Attia v. Sweden*, the Committee stated that when the complainant's allegations of the risk of torture were based solely on her familial ties, that risk was insufficient by itself to make a showing under article 3 of the Convention. The complainant's case, however, is based on the impossibility of the internal flight alternative and that he was himself a traumatized victim of torture, as accepted by the Finnish authorities. In the cases of *A.K. v. Switzerland* and *M.K.M. v. Australia*,⁷ the Committee raised questions on the merits, not the admissibility. In the case of *A.K. v. Switzerland*, the State party challenged the credibility of the complainant. In the present case, the State party authorities have accepted that the complainant was detained and tortured.

5.7 The complainant submits therefore that his complaint should be considered admissible and requests the Committee to examine his claims on the merits. The complainant accepts the alternative action to suspend consideration of the communication until a final domestic decision is issued and received. In addition, the complainant is respectfully requesting the Committee not to lift interim measures.

⁴ The complainant provides no further details as to the specific steps that were allegedly taken by the police.

⁵ The complainant refers to two reports by the European Asylum Support Office: *Country of Origin Information Report Russian Federation: The Situation for Chechens in Russia* (August 2018); and *Country of Origin Information Report Russian Federation: State Actors of Protection* (March 2017).

⁶ The complainant refers to "Lost in Russia: a critical assessment of Norway referring to Russia as a safe third country and safe country of origin" (2019).

⁷ See CAT/C/60/D/681/2015.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 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. This rule does not apply where it has been established that the application of those remedies has been unreasonably prolonged or is unlikely to bring effective relief.⁸

6.3 The Committee notes the State party's argument that the complainant has not exhausted domestic remedies because he filed his complaint to the Committee before the Helsinki Administrative Court could issue its findings in a procedure that, according to the State party, is not a mere formality, is not of extraordinary nature and could provide relief to the complainant. The complainant notes that when he first submitted his complaint to the Committee on 4 November 2020, there was an enforceable order to remove him to the Russian Federation. This order was not carried out only due to the fact that the Committee issued a request for interim measures not to remove the complainant and registered the present complaint; on 23 November 2020, the Helsinki Administrative Court issued a new interlocutory order prohibiting removal of the complainant to his home country.

6.4 The Committee notes that the complainant does not contest the fact that there is a set of active domestic proceedings occurring in the Helsinki Administrative Court and Supreme Administrative Court. In addition to this fact, the complainant would have had an opportunity to file a leave to appeal to the Supreme Administrative Court, but he has not used this remedy. The Committee also notes the uncontested fact that the order dated 23 November 2020 has a suspensive effect and prevents the State party from removing the complainant to the Russian Federation. The Committee further notes its jurisprudence, according to which mere doubt about the effectiveness of domestic remedies does not absolve the complainant from the duty to exhaust them, in particular when such remedies are reasonably available and have suspensive effect.⁹ In the light of the information before it, the Committee considers that, in the present case, the complainant has an available and effective remedy that is not exhausted. The Committee thus concludes that the communication should be declared inadmissible under article 22 (5) (b) of the Convention.

6.5 In the light of this finding, the Committee does not deem it necessary to examine any other inadmissibility grounds.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (5) (b) of the Convention;

(b) That the present decision shall be transmitted to the State party and to the complainants.

⁸ See, for example, *E.Y. v. Canada* (CAT/C/43/D/307/2006/Rev.1), para. 9.2. See also the Committee's general comment No. 4 (2017), para. 34.

⁹ See, for example, *F.K.A. v. Canada* (CAT/C/65/D/784/2016), para. 6.4, and *Shodeinde v. Canada* (CAT/C/63/D/621/2014), para. 6.7.