



# 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. 698/2015\*, \*\*

<i>Communication submitted by:</i>	Z.K. and A.K. (represented by counsel, Stephanie Motz)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	20 August 2015 (initial submission)
<i>Date of present decision:</i>	11 May 2018
<i>Subject matter:</i>	Removal of complainants to the Russian Federation
<i>Procedural issue:</i>	Lack of substantiation of claims
<i>Substantive issues:</i>	Non-refoulement; risk of torture or cruel, inhuman or degrading treatment or punishment in the event of removal to the Russian Federation
<i>Article of the Convention:</i>	3

1.1 The complainants are Z.K. and A.K., mother and son, Russian nationals of Chechen ethnicity, born in 1971 and 1997, respectively. They are subject to deportation to the Russian Federation, following the rejection of their asylum application in Switzerland. The complainants assert that their rights under article 3 of the Convention will be violated if Switzerland proceeds with their deportation. Switzerland made the declaration under article 22 of the Convention on 2 December 1986. The complainants are represented by counsel, Stephanie Motz.

1.2 On 2 September 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to expel the authors to the Russian Federation while their complaint was being considered by the Committee.

\* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Honghong Zhang. Pursuant to rule 109, read in conjunction with article 15, of the Committee's rules of procedure, and article 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Bakhtiyar Tuzmukhamedov did not participate in the examination of this communication.



**The facts as presented by the complainants**

2.1 Z.K. (the first complainant) and her son,<sup>1</sup> A.K. (the second complainant), are Russian nationals of Chechen ethnicity and Muslim. The first complainant divorced her first husband in 2000<sup>2</sup> and married her second husband, A.D., in 2007. In 2008, A.D. was arrested and accused of belonging to the Chechen rebel movement. At the time of the initial submission of the communication, the complainant had had no news from her husband since his arrest. She alleges that her husband's brother was detained for one month and interrogated about her husband's whereabouts.<sup>3</sup> Approximately one month after the husband's arrest, the military started to regularly search the complainants' house, looking for weapons and Chechen militants.<sup>4</sup>

2.2 In June 2012, a deputy commander of a battalion,<sup>5</sup> named Yusup, allegedly recognized the first complainant at a coffee shop in Grozny, where she used to work as a waitress. He asked her about her husband and wanted information about her husband's militant friends and their activities, as well as about the clients of the coffee shop. He wanted to know who had ties to the rebel group and to drug gangs. The complainant informed Yusup that she had no such information. She states that Yusup waited for her until the coffee shop closed at around 10 p.m. and forced her into his car, threatening her with a gun. He asked her again for information and then brought her to an alleyway where he hit and raped her. He then threw her out of the car near her home. The complainant claims that Yusup did this to her approximately 10 times. The second time he attacked her, he showed up at her home. He knocked on the door at around 11 p.m. and asked her to come with him. She informed him that she could not leave her mother, who was sick, and her son, but he forced her to go with him. On 28 December 2012, Yusup brought the complainant to an apartment where there were three men and a woman. Yusup had to leave because he received a telephone call, and asked the others to keep the complainant there until he was back. The complainant was kept in the apartment for about three hours, during which she was raped by the three men. When Yusup came back she informed him what happened, but he did not care and sent her home. The complainant claims that at this point she realized that the violence against her would not stop. When her mother died sometime afterwards, the complainant decided to leave the country with her son. The complainant also claims that her son was aware of the violence she was suffering. He wanted to join the rebels in the mountains; as she wanted to prevent this from happening, it was another reason for her to leave the country.

2.3. On 7 January 2013, the complainants entered Switzerland and filed an application for asylum. On 22 July 2013, their asylum application was rejected by the Federal Office for Migration,<sup>6</sup> as it considered that the assertions of the first complainant were contradictory and diverged in essential points, including with respect to the date of the arrest of her husband (in the first interview she said it was in mid-September 2008 and in a later interview she said it was in the beginning of August 2008); the place where she was first raped by Yusup (in one interview she said it was in an apartment and in another she said that it was in an alley); and the date of the last attack she suffered (in the first interview she said that it took place in the beginning of December 2012 and in a later interview she said that it was on 28 December 2012). The Office also considered that her allegations were not credible because she did not mention that she had opposed any of the rapes by physical force and did not take any legal steps to accuse Yusup and his accomplices of the sexual violence and attacks she suffered. Neither did she ask her social network for any help. In addition, she did not hide to escape the attacks and did not see a doctor after the first rape. The Office also considered that the second complainant was not credible because he contradicted himself and gave general statements, including regarding the place where his mother used to work (the coffee shop), the time his mother was married to her second

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<sup>1</sup> The second complainant had reached majority age at the time of the initial submission to the Committee. He is the son of the first complainant from her first marriage.

<sup>2</sup> The complaint does not contain any details regarding the complainant's first marriage.

<sup>3</sup> The complaint does not contain further information on this allegation.

<sup>4</sup> The complaint does not contain further information on this allegation.

<sup>5</sup> The complaint does not indicate to which body the battalion belongs to.

<sup>6</sup> The complainant provided an unofficial translation of the decision issued by the Office.

husband, and his encounters with Yusup. He said first that he had seen Yusup once in 2012 and a second time soon after the funeral of his grandmother. However, when asked again later, he could not remember when he met Yusup for the first time.

2.4 The complainants appealed the decision of the Office. On 9 September 2013, the Federal Administrative Court dismissed the appeal because it had no prospect of success.<sup>7</sup> The Court considered that the complainants' statements were not credible and reaffirmed the arguments of the Federal Office for Migration. It also indicated that it was very odd that Yusup had become interested in the complainant four years after her husband had been arrested, and that the complainant would not be at any risk in Chechnya, since, even though she was single mother, she had a social network who could help her upon her return, including her brother and uncle. On 28 November 2013, the complainants filed an application for a re-examination of their asylum request, which was received as a new asylum application. In the application, the complainants indicated that their landlord in Grozny had found two summonses from the investigation department of the regional office of the Ministry of Internal Affairs of the Russian Federation addressed to the first complainant, asking her to attend a hearing before a magistrate.<sup>8</sup> According to the complainants, the neighbours accepted the summons on behalf of the complainant.<sup>9</sup> The landlord had also indicated that another time he went to the complainant's apartment he had found someone from the military, who had asked him about her whereabouts. On 18 November 2014, the Federal Office for Migration rejected the application. It considered that it was contrary to logic that the complainant's neighbours would accept the summonses on her behalf months after she had left the apartment. The complainants appealed this decision to the Federal Administrative Court, which, in an interim decision of 23 January 2015, stated that the appeal was devoid of any prospect of success.<sup>10</sup> The complainants requested a re-examination of this interim decision, as the International Committee of the Red Cross had found the husband of the first complainant in a prison located in a northern area of the Russian Federation. He sent her a message through the International Committee of the Red Cross. The Court issued another interim decision on 5 February 2015, in which it stated that the new evidence did not prove that the complainants would face persecution if returned to the Russian Federation. The Court reiterated that it was not logical that the neighbours would receive the summonses and considered that the letter sent by the complainant's husband was too general and did not give any grounds to indicate a possibility that the complainants would be persecuted if returned to the Russian Federation. On 11 March 2015, the Court issued a final decision that confirmed the arguments of the interim decision of 5 February 2015.

### **The complaint**

3.1 The complainants submit that if they are returned to the Russian Federation, they would face a real risk of torture. Therefore, Switzerland would violate article 3 of the Convention, in particular the non-refoulement obligation. The complainants submit that their claims are detailed, credible and genuine.

3.2. The complainants allege that the Federal Administrative Court gave too much weight to some minor inconsistencies in the complainants' statements, and failed to take into account the general situation in Chechnya, which has been in turmoil for decades and where it is known that authorities and government officials subject to arbitrary treatment, including torture, anyone who is perceived as a supporter of the Chechen rebel cause. The complainants state that the small discrepancies in the first complainant's interviews are understandable, as victims of sexual violence cannot be asked to provide complete accuracy in relation to such traumatic facts. For instance, the first complainant gave different statements regarding the place she was harassed the first time and the exact date and

<sup>7</sup> The complainant provided an unofficial translation of the Court's decision. The Court asked the complainants to advance 800 Swiss francs to cover the procedural costs, as the appeal had no prospect of success. As the complainants could not pay such an amount, the Court struck out the case on 4 October 2013. The complainant did not provide a translation of the latter decision.

<sup>8</sup> The complaint does not contain further details regarding the summonses.

<sup>9</sup> The landlord gave the summonses to the complainant's brother, who sent them to her in Switzerland.

<sup>10</sup> The complainant did not provide a translation of the decision.

circumstances of the last rape. However, this should not be seen as a lack of credibility, but more as a result of the confusion of a person who has been subjected to various traumatic events that have merged into one trauma. The complainants recall the Committee's jurisprudence according to which alleged multiple rapes clearly constitute an infliction of severe pain and suffering and that complete accuracy rarely can be expected from victims of torture.<sup>11</sup>

3.3 Furthermore, the complainants state that the argument of the Federal Administrative Court that the first complainant was not credible because she did not oppose the rapes physically and did not denounce the sexual violence to the authorities was unjustified and cynical. It is clear that the first complainant could not physically oppose Yusup, as he was threatening her with a gun. In addition, he was the deputy commander of a battalion, which made it pointless to denounce him to the authorities. As to the Court's argument that she did not hide, the first complainant indicated that it was very difficult to find a cheap apartment that she could afford and that, in any case, Yusup was well connected and could find her anywhere in the Russian Federation.

3.4 Regarding the allegations that the summonses did not constitute evidence of the possible persecution the complainants could suffer if returned to the Russian Federation, it is alleged that not even the first complainant's brother knew whether the neighbours had accepted the summonses personally or whether the police had left them at the door and the neighbours had found them afterwards. The complainants cannot explain why there is no contact number on the summonses or why a second page with an acknowledgement of receipt is missing. They state that Chechen officials, in particular police officers, often work in a non-professional manner and that it is likely that the acknowledgement page is registered only in those cases where summonses are delivered personally. The complainants state that none of those circumstances should be perceived as suggesting that the summonses were forged.<sup>12</sup>

3.5 The complainants further state that the husband's message to the first complainant is strong supporting evidence of their claims, as it shows that he is imprisoned in a place known for its hard conditions and that is often used to imprison Chechen rebels (Yamalo-Nenets region, penal colony 18). Therefore, the complainants are in danger of persecution. They quote several reports from non-governmental organizations and migration departments of a number of countries that indicated that there was a climate of repression in Chechnya, that the use of torture by the Russian authorities was notorious and that there was a lack of independent and effective investigations into allegations of torture and ill-treatment by officials.<sup>13</sup> The complainants also quote reports and jurisprudence indicating that law enforcement and security agencies punish relatives and suspected supporters of members of the Chechen rebel movement.<sup>14</sup>

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

4.1 On 25 February 2016, the State party submitted its observations on the merits of the communication. It summarizes some of the facts, with clarifications. It notes that the first complainant has alleged before the Committee that she had been mistreated because of the activities of her second husband, who had been arrested in 2008. The second complainant does not make any allegations of a risk of ill-treatment or personal risk of persecution in the event of deportation. Before the domestic authorities, however, he had raised the risk of

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<sup>11</sup> The complainants cite the Views adopted in *V.L. v. Switzerland* (CAT/C/37/D/262/2005), para. 8.10 and *Alan v. Switzerland* (CAT/C/16/21/1995).

<sup>12</sup> In its decision of 11 March 2015, the Federal Administrative Court stated that the fact that there was no reasonable explanation for the way the complainant's brother had obtained the summonses constituted an indication of forgery and therefore there was no need to evaluate whether the documents showed signs of forgery.

<sup>13</sup> The complainants cite the Committee's concluding observations on the fifth periodic report of the Russian Federation (CAT/C/RUS/CO/5).

<sup>14</sup> Human Rights Watch, "World report 2013: Russia"; Swiss Refugee Council, "Tschetschenien: Verfolgung von Personen mit Kontakten zu den Mudschahed" (Chechnya: persecution of persons with contacts to the mujahidin) (22 April 2013); and European Court of Human Rights, *I v. Sweden*, Application No. 61204/09, Judgement, 5 September 2013.

being considered the son of his detained stepfather. Moreover, he had expressed a fear of being forced to serve in the Russian army, a complaint that he does not seem to maintain before the Committee.

4.2 In their submission, the complainants mostly refer to the alleged grounds and evidence in support of their claims for asylum. With the exception of a medical certificate dated 27 July 2015, the elements presented to the Committee have already been the subject of a detailed examination by the national asylum authorities. The complainants thus do not bring new elements in challenging the decisions rendered by the Federal Office for Migration and the Federal Administrative Court.

4.3 The complainants applied for asylum in Switzerland on 7 January 2013. They were interviewed personally and separately twice, on 14 January 2013 and 26 March 2013. The first complainant was reheard on 7 June 2013 by the Federal Office for Migration before it issued two decisions rejecting the asylum claims. The Office noted in particular that the complainants' allegations contained contradictions on key points, were partly contrary to logic and lacked credibility.

4.4 By a decision dated 9 September 2013, the Federal Administrative Court noted that the complainants' allegations could prove to be unfounded and, as a result, required them to pay an advance of 800 Swiss francs. In particular, the Court considered it unlikely that, four years after the arrest of her second husband, the first complainant had been recognized and contacted by an army official named Yusup who had questioned her about the activities of her still-detained husband, then abducted and raped her several times. The Court also found that the first complainant had presented different versions of the incidents at the various hearings and that she did not seem to have sought help from relatives or co-workers or filed a criminal complaint. As the advance of costs was not paid within the time allowed, the Court did not enter into the matter of the complainants' appeal.

4.5 On 28 November 2013, the complainants filed an application for a re-examination of their asylum request, which was received as a new asylum application. On 24 September 2014, the Federal Office for Migration heard each of the complainants a third and fourth time. By a decision rendered on 18 November 2014, the Office rejected their second asylum claims. It found, among other things, that the story of the first complainant lacked credibility and was contrary to logic. In addition, it noted that the police summonses presented to support the first complainant's claim of persecution showed many signs of forgery. With regard to the second complainant, the Office found that verbal opposition to the regime of Ramzan Kadyrov in Chechnya did not in itself constitute a risk of persecution and/or a risk of treatment prohibited by article 3 of the Convention. Since the second complainant had not received basic military training, his fears of having to participate in the fighting in Ukraine were not plausible either.

4.6 On 11 March 2015, the Federal Administrative Court, noting several aspects casting doubt on the plausibility of the complainants' claims, rejected the appeals against the decisions of the Federal Office for Migration. In its submission, the State party explains the reasons supporting the decisions of the asylum authorities in more detail. It examines the case in consideration of article 3 of the Convention, the Committee's case law and the specific guidelines concerning the application of article 3 outlined in paragraphs 6 to 8 of general comment No. 1 (1997) on the implementation of article 3 in the context of article 22,<sup>15</sup> which provide that a person must prove that he or she runs a personal, present and serious risk of being subjected to torture in the event of deportation to his or her country of origin. The existence of such a risk must be assessed according to elements that are not limited to mere speculation or suspicion.

4.7 In order to consider whether there are substantial grounds for believing that a complainant would be in danger of being subjected to torture if deported, the Committee must take into account all relevant considerations, in accordance with article 3 (2) of the Convention, in particular the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, in the course of this examination, it is necessary to determine whether the person concerned would personally be in danger of being subjected

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<sup>15</sup> General comment No. 1 has been replaced by general comment No. 4, effective 6 December 2017.

to torture in the country of return.<sup>16</sup> It follows that the existence of a pattern of human rights violations, as mentioned in article 3 (2) of the Convention, does not constitute a sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to his or her country. There must therefore be additional grounds for the risk of torture to be foreseeable, real and personal for the purpose of article 3 (1) of the Convention.<sup>17</sup> The Committee has confirmed its practice after noting that the human rights situation in the Russian Federation remains of concern in a number of areas, in particular in the northern Caucasus.<sup>18</sup> In paragraph 6 of its general comment No. 1, the Committee unequivocally stated that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

4.8 In their submission, the complainants claim that because of their connection to the second husband of the first complainant, they would have a political profile exposing them to the concrete, real and personal risk of being tortured in the event of removal. However, they have not substantiated their allegations. The situation in their country cannot on its own constitute a sufficient ground for concluding that the complainants would be in danger of being tortured in the event of removal. The complainants have not demonstrated that they would run a foreseeable, personal and real risk of being subjected to torture upon return to the Russian Federation.

4.9 With regard to the allegations of torture in the past, the State party asserts that torture or ill-treatment that a complainant has suffered in the past is one of the elements to be taken into account in assessing the complainant's risk of being subjected to torture or ill-treatment in case of return to his or her country. In the present case before the Committee, the first complainant argues that, ostensibly, in June 2012, four years after the arrest of her second husband, a certain "army official" named Yusup recognized her at her place of work and asked her questions about her second husband's friends and their activities. Then he ostensibly kidnapped her, threatened her and raped her on several occasions. The first complainant made the same allegations in the domestic process and they were examined carefully by the national authorities. In particular, the Federal Office for Migration noted that the first complainant did not, according to her own account, consult a doctor after being raped.

4.10 The medical certificate dated 27 July 2015 presented to the Committee is the only document to support the allegations of rape. However, its contents do not allow conclusions to be drawn as to the acts that the first complainant claims to have suffered. The present case is thus different from *V.L. v. Switzerland*, referred to by the complainants, given the absence of evidence.<sup>19</sup> In addition, the national authorities considered that the allegations of the first complainant concerning the alleged ill-treatment suffered were not credible.

4.11 Another factor that must be taken into account in assessing a complainant's risk of being subjected to torture upon return to his or her country of origin is whether he or she has engaged in political activities in or outside of the State of origin. In the present case, the complainants do not claim to have engaged in any political activities in their country of origin or in Switzerland.

4.12 Furthermore, the State party explains the factual inconsistencies in the complainants' claims and challenges the credibility of the latter. It refers in full to the reasons given in the decisions of the national asylum authorities as to why the complainants' allegations are not credible and why, therefore, their statements cannot lead to the conclusion that there are substantial grounds for believing that they would be exposed to torture in case of return to their country of origin. The State party highlights several points in this regard.

4.13 In the first asylum procedure, the first complainant claimed to have entered into a religious marriage with her second husband in 2007. The latter was reportedly arrested by masked soldiers in August 2008 as a suspected Chechen fighter. Yusup, one of the soldiers

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<sup>16</sup> See, for example, *K.N. v. Switzerland* (CAT/C/20/D/94/1997), para. 10.2.

<sup>17</sup> *Ibid.*, para. 10.5; *J.U.A. v. Switzerland* (CAT/C/21/D/100/1997), paras. 6.3 and 6.5; and *T.M. v. Republic of Korea* (CAT/C/53/D/519/2012), para. 9.7.

<sup>18</sup> See *S.K. et al. v. Sweden* (CAT/C/54/D/550/2013), para. 7.6.

<sup>19</sup> *Ibid.*, para. 7.8.

involved in the arrest, reportedly recognized her about four years later at the restaurant where she worked as a waitress. He asked her questions about her husband's activities, threatened her, harassed her and then repeatedly raped her.

4.14 In this regard, the Federal Administrative Court noted in particular the evolution of the first complainant's story. Initially, she reported that the first rape occurred in Yusup's apartment, then she stated it was in an apartment and, finally, that it was in a dead-end street. At the first hearing, the first complainant stated that on 28 December 2012, allegedly the date of the last rape, there were soldiers and a woman in the apartment. Subsequently, she insisted that there were only three men in the apartment. Such contradictions must be considered as important. This is especially so since the first complainant did not consult a doctor after the alleged rapes, seek the assistance or support of relatives, friends or co-workers or denounce the facts to the authorities.

4.15 With regard to the information requested by Yusup, the State party submits that the first complainant at no point in the proceedings succeeded in making plausible the reasons why Yusup had addressed her instead of directly questioning her second husband, since he was aware that her second husband was still detained. In this context, the State party also notes that the second complainant was not able to give the name of the restaurant in which his mother claimed to have worked for several years. In the light of these contradictions and the absence of evidence, the Federal Administrative Court, in its decision of 9 September 2013, considered the first complainant's allegations that she was repeatedly threatened and then raped by Yusup as lacking credibility.

4.16 As regards the first complainant's allegations during the second asylum procedure, they were also examined in detail by the national authorities. The first complainant notably submitted two summonses, dated 1 March and 14 April 2013, that her landlord had found in her apartment in Grozny. These summonses differ from the official form in several ways, for example, with respect to the absence of items indicating the capacity in which the person is being summoned (such as suspect, accused, witness or expert), and the absence of a telephone number at which the recipient can contact the issuing authority. In addition, the second summons was issued on a Sunday. Faced with these irregularities concerning the alleged summonses, the first complainant could not make them plausible before the national authorities, nor can she do so before the Committee.

4.17 The first complainant could not explain why these summonses – by her account, the first she had received – would have been sent to her almost five years after the arrest of her alleged second husband and 8 to 10 months after the man referred to as Yusup had recognized her in the restaurant where she used to work. Moreover, it is also not credible that the former neighbours of the first complainant would have acknowledged receipt of the summonses. On the contrary, in view of her continuous absence, they would have had every reason to indicate that she had been absent for more than two months. That the police could simply have left the summonses at the door of the apartment, as suggested by the first complainant, is hardly imaginable. The allegations that the first complainant's former landlord had sent the summonses to her brother, who had subsequently sent them to her, are also not credible.

4.18 With regard to the second husband's messages, the first complainant did not present any evidence regarding their marriage to date. She declared that she had searched for her second husband and that, through the International Committee of the Red Cross, she had received a response from someone claiming to be him. Contrary to what the first complainant contends, such an exchange of communications cannot prove the alleged marriage or establish that the detention of the person concerned is related to former combatant activities.

4.19 The State party notes that the first complainant always uses her maiden name and not that of the so-called second husband. It is therefore unlikely that, in the case of return to Chechnya, any link would be made between her and her alleged second husband. This observation is also valid for the second complainant, and has been confirmed by the Committee in the case of *S.K. et al. v. Sweden*, in which the Committee stated that, according to the available country-of-origin information, a substantial part of the population in Chechnya had supported rebels at some point; however, the authorities were currently

not interested in people who had done so only sporadically. The Committee noted, moreover, that the Chechen authorities focused on persons who were suspected of having supported or collaborated with high-profile rebels and had given substantial support for a longer period of time.<sup>20</sup>

4.20 The State party fully supports the reasons given by the Federal Office for Migration and the Federal Administrative Court for the determination of the lack of credibility of the complainants' claims. The complainants' assertions that they would be in danger of being subjected to torture if returned to the Russian Federation do not reflect the facts and are insufficiently substantiated. Before the Committee, the complainants essentially repeat their story, yet do not make it more plausible. This also applies to the medical certificate produced by the first complainant before the Committee, which was issued in Switzerland after the completion of the second asylum procedure. This document is not suitable for questioning the findings of the national authorities and, while it attests to the first complainant's psychological problems, it does not prove the cause of those problems.

4.21 According to the State party, nothing indicates that there are serious grounds for fearing that the complainants would be specifically and personally exposed to the risk of torture upon return to the Russian Federation. Their allegations and the evidence adduced do not make it possible to consider that their removal would expose them to a real, concrete and personal risk of being tortured. Therefore, the State party submits that their removal would not constitute a violation of its international commitments under article 3 of the Convention.

#### **Complainants' comments on the State party's observations**

5.1 The complainants submitted comments, dated 17 May 2016, in response to the State party's observations. They state that they both relied on arguments regarding the risk to them as family members of an imprisoned Chechen rebel in their initial submission to the Committee. The second complainant, 19 years old at the time of the submission, would also be of interest to the Chechen military. It is very common for sons of Chechen rebel fighters to also join the cause, once they are old enough; this was the fear of the first complainant. As a result, both complainants would be targeted as family members of a Chechen rebel fighter and would face a real, personal and present risk of torture upon return to the Russian Federation.

5.2 The personal, real and present risk of torture for the complainants results from the cumulative aspects of this case. The complainants argue that they fall within a risk category – that of family members of Chechen rebel fighters – that is exposed to a real, present and personal risk of torture upon removal to the Russian Federation. This is in addition to falling within the risk category of persons who have already come to the attention of the authorities and have been tortured in the past.

5.3 The complainants address the issue of credibility regarding the rapes suffered by the first complainant at the hands of the military commander named Yusup, with regard to the contradictions surrounding the details of the rapes, the lack of medical evidence, the failure to report the rapes to the authorities or a doctor and the delay between the husband's arrest and the rapes.

5.4 As to the alleged contradictions regarding the place of the first rape and the number of persons in the apartment at the time of the rape, the first complainant notes that it is important to recognize that victims of rape face particular difficulties, as a result of trauma, stigma and shame, in recounting the sexual abuse they have suffered. In its guidelines on gender-specific persecution, the Office of the United Nations High Commissioner for Refugees recognizes that, in relation to such accounts, it is crucial to create an atmosphere of trust for the victim to be able to recount the suffered experience of sexual abuse. In addition, female victims of sexual abuse face particular difficulties when faced with male interviewers or interpreters. Moreover, detailed questioning regarding sexual abuse should be minimized, if at all possible, given that it can be retraumatizing for victims to have to recount the details of rape. The Committee has recognized that complete accuracy can

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<sup>20</sup> *S.K. et al. v. Sweden*, para. 7.7.

rarely be expected from victims of torture and that contradictions and inaccuracies in the account are not material and do not raise doubts about the general veracity of the claims.<sup>21</sup> In one of the substantive interviews, the person representing the legal advice centre was a man, which made it more difficult for the first complainant to recount the details of the various instances of rape. She does not recall which interview, but remembers it was one of the first two substantive interviews, held in March and June 2013.

5.5 The first complainant also maintains that the inconsistencies that the State party relies on are clearly not of the sort that go to the core of her account of rape so as to render the entire account not credible. On the contrary, one of the inconsistencies concerns a confusion between the last and the penultimate instances of rape. One instance took place in a two-room apartment and the other in a three-room apartment, and on one occasion there were only the three military officers and on the other occasion there was also a woman present. This confusion concerns an ancillary aspect of the account of repeated rapes and clearly cannot render the first complainant's account, which she has otherwise recounted in a genuine and credible manner, not credible.

5.6 Similarly, the alleged discrepancy between the first interview in January 2013 and the first and second substantive interviews in March and June 2013 cannot render the first complainant's account not credible. Great caution must be taken when relying on the first interview, as its aim is not to elicit the details of an asylum claim. Applicants are often reminded to keep their answers brief as they will later have an opportunity to expound their claim. Therefore, the first complainant's account in the January 2013 interview must be viewed with great caution. The correct account was given in the interview in June 2013, when the first complainant stated that the first rape took place in an isolated alleyway. Regarding her answer in the March 2013 interview, it is important to consider the context of this question. Just before being asked about the first incident of rape, the first complainant had been asked about the last incident of rape. After these questions she was already confused and struggling to answer further questions, as the questioning had evoked traumatic memories. In this state of mind, she was not able to recount the details regarding the first incident of rape correctly. This is precisely the type of detail that, after repeated questions about the rape she had suffered, a traumatized rape victim would not be able to recall properly anymore. The first complainant had provided a genuine and credible account with ample detail and without embellishment, which supports the credibility of her account.

5.7 The fact that the first complainant cannot submit a medical certificate regarding her trauma is neither due to her unwillingness to submit herself to psychotherapy, nor due to a therapist's unwillingness to provide her with therapy. She requires therapy and clearly shows signs of exposure to traumatic events. However, without further therapy, no proper diagnosis can be made. The only reason she is barred from accessing psychological or psychiatric treatment is her current status as a refused asylum seeker. She is therefore unable to submit a full medical certificate proving her trauma from the rape. It is due to the cantonal authorities denying her access to such treatment that she has not submitted such a report. Indeed, it was already recommended by the person from the legal advice centre after the second interview in March 2013 that the Federal Office for Migration obtain a report from a psychological expert. However, no such steps were taken by the authorities. Therefore, the lack of medical evidence cannot be considered as diminishing the first complainant's credibility. In the circumstances of the case, the complainant submits that this in fact supports and corroborates her case, as she has always wanted to undergo psychotherapy and still desperately requires such treatment. It is for the State party to enable the first complainant to undergo an expert psychological or psychiatric examination and obtain a full psychiatric report.<sup>22</sup>

<sup>21</sup> The complainant cites *Alan v. Switzerland* and *V.L. v. Switzerland*.

<sup>22</sup> The complainant refers to the case *R.C. v. Sweden* before the European Court of Human Rights (Application No. 41827/07), in which the complainant had submitted a certificate from a doctor as evidence that he might have suffered torture and in which the State party had argued that the certificate was insufficient to prove the torture. The Court held that upon the indication in the certificate, it would have been for the government authorities to commission a full medical report.

5.8 The first complainant thus submits that the lack of a report from a psychiatric or psychological expert cannot count as a factor reducing her credibility. Rather, the existing medical certificate, together with the fact that from a very early stage (March 2013) the authorities were made aware by the independent observer of the asylum interview (the person from the legal advice centre) of the need for such a report and the first complainant's wish to undergo therapy, corroborates her credibility.

5.9 Concerning the fact that the first complainant did not report the rape to the authorities or a doctor, she has explained at length why making reports to either would not have made sense. As Yusup was a deputy commander of a battalion, she was afraid to file charges against him. She explained in her interview in June 2013 that when Yusup first started beating her she had told him that she would not let him treat her like that, and implied that she would complain to the police. However, he had replied that he was a commander of a battalion and was thus the boss himself. When she had replied that he was not her commander, he had threatened to kill her if she told anyone what he was doing to her. The complainant further explained that the military men were "Kadyrov's men", meaning closer to the government than any other official. She stated that they were above the law and treated the Chechens as if they were worth less than nothing, and women especially so. She could not see the point of seeing a doctor, because she would not have known what to tell him due to the shame and stigma attached to rape in Chechnya. She was in distress because she had to rent an apartment for her and her son, and it was not easy to find a cheap one. Because Yusup was the deputy commander of a battalion, he was well connected and could have easily found her elsewhere in the Russian Federation. She states that the State party's argument in this respect is patently unreasonable and displays no awareness of the reality of rape victims in Chechnya.

5.10 As to the several years of delay between the arrest of the first complainant's husband and her rape, she explains that Yusup had not been informed that her husband had been taken to a prison in the north of the Russian Federation in the meantime. Yusup had thought that her husband was still free and had inquired about his whereabouts, as the military personnel who had executed the arrest had transferred the first complainant's husband to another department. Thus they were not aware of the results of the proceedings that would have followed. It is entirely plausible that the wife of a formerly arrested Chechen rebel would still be of interest to the Chechen military, even after the husband was arrested.

5.11 The first complainant's evidence has been genuine, materially consistent and detailed. She has never sought to embellish her account or to exaggerate her evidence and has displayed typical symptoms of an inability to speak about the traumatic events of the rape. Her son has given a credible account of his experience witnessing the trauma of his mother. He states that he did not know what Yusup used to do to his mother, when he came and took her away, but that she would cry because of Yusup, which indicated to the son that Yusup must have tortured his mother in some way. The second complainant had struggled to express himself in Russian (rather than Chechen) and the style of questioning was challenging for a 16-year-old boy suffering from blackouts. In addition, the first complainant did not think it was appropriate that her son, 14 years old at the time of the rapes, would be questioned about the rapes, because she had not wanted to tell her son about them. The second complainant could not remember the name of the café in which his mother had worked; however, he was able to correctly state that the café was near a bus terminal. The correct name of the café is clearly not a material aspect of the complainants' claim. It is pertinent that the second complainant had clearly struggled to express himself and to follow the questions. The first complainant's reactions and answers, which were sometimes inconsistent in small respects, do not diminish her credibility but rather constitute credible and typical behaviour of a rape victim.

5.12 To the extent to which the State party seeks to question that the first complainant is actually religiously married to her husband, it is submitted that the relationship between the two is proved by the International Committee of the Red Cross message from the husband to the first complainant. As regards the Chechen authorities' awareness of this relationship, they were clearly aware of it and the first complainant was questioned about her husband by Yusup. Both she and her son would form part of the risk category of family members of

Chechen rebels.<sup>23</sup> Returnees are generally at a heightened risk of interrogation and torture by security services. Former victims of the security services or military, and family members of Chechen rebels, are at even higher risk. To the extent that the State party seeks to question the authenticity of the Red Cross search result and the response received by the first complainant from her husband, it is submitted that this questioning is untenable. The husband is imprisoned in a remote prison in the north of the Russian Federation, to which not even Red Cross employees can obtain access in person. It is impossible to understand on what basis the State party suggests that the message conveyed by the husband to the first complainant is not genuine or does not constitute solid evidence of their relationship. The fact that the husband is detained in that isolated prison rather than a prison in Chechnya is a clear indication that he has been convicted of a serious crime, such as terrorism. Finally, regarding the summonses and the alleged inconsistencies, the complainants refer to the explanations in their initial submission.

### Complainants' further comments

6.1 On 14 March 2017, the complainants submitted further comments and evidence. They explain that after many attempts to obtain medical treatment, the first complainant was finally able to obtain permission to undergo psychological treatment in June 2016 and has been in regular psychological treatment since then.

6.2 The psychosocial service report of 1 February 2017 states that the first complainant has difficulties recounting what happened to her, because she has kept it "hidden inside her" for a long time. She normally cries during the entire session; despite the medication prescribed she displays depressive symptoms, which are difficult to contain given the real fear of removal to the Russian Federation. She has been diagnosed with adjustment disorders, including prolonged depressive reaction, and difficulties relating to having been a victim of crime and terrorism and to her exposure to disasters or war; she was prescribed antidepressant sleeping medication and Valium. As regards signs of torture, the report states that strong inner tension and an alarmed state can be observed as evidence of a traumatic event. The report's conclusion is that without further treatment the first complainant's illness will become chronic. She is suffering from stress directly related to the traumatic events in her country of origin and the strong fear of possibly having to return.

6.3 The first complainant argues that she raised her medical issue at an early stage of the asylum procedure and that the authorities have failed in their duty to obtain medical evidence in the face of credible torture allegations.<sup>24</sup> This medical report is pertinent to the assessment of the first complainant's credibility with regard to her statements that she was raped by a military officer.

6.4 Several of the husband's relatives,<sup>25</sup> currently recognized as refugees in France, have written letters confirming the marriage between the first complainant and her husband. The first complainant submits that there can be no doubt regarding the credibility of her marriage. She also submits further messages that she has sent to her husband in prison through the Red Cross tracing service, which show the intimate relationship and familiarity between the two, and demonstrate that the first complainant's husband is still in prison, in support of her claim that he was a Chechen rebel fighter.

6.5 Finally, the complainants provide country background information and submit that there is a real risk that, if returned to the Russian Federation, they would be exposed to torture in the form of physical ill-treatment and, in the first complainant's case, rape. They refer to a report of the Danish Immigration Service, according to which violence against women in Chechnya at the hands of State actors has been increasing in recent years.<sup>26</sup> They

<sup>23</sup> The complainant refers to European Court of Human Rights jurisprudence, for example, *I v. Sweden*.

<sup>24</sup> The complainants' counsel refers to general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, in which the Committee indicates that State authorities should refer persons alleging previous torture to an independent medical examination free of charge.

<sup>25</sup> The husband's mother, sister and brother, and a person who witnessed the religious marriage between the first complainant and V.D.

<sup>26</sup> Danish Immigration Service, *Security and Human Rights in Chechnya and the Situation of Chechens in the Russian Federation – Residence Registration, Racism and False Accusations* (2015), p. 43.

also stress the vulnerable situation of single women who live without a male protector (husband or brother),<sup>27</sup> like the first complainant, and maintain that rape is suspected to be widespread in Chechnya, even though it does not get reported. Close relatives of Chechen insurgents, such as the complainants, are at a real risk of arrest, ill-treatment, torture and rape.<sup>28</sup> In the present case, the rape was repeatedly perpetrated by a State official, namely, an army officer.

### **State party's further observations**

7.1 On 11 September 2017, the State party submitted further observations and notes. As a preliminary point, it states that the evidence annexed to the complainant's additional comments is, for the most part, subsequent to the proceedings before the national authorities. As a result, the authorities have not had the opportunity to examine its relevance.

7.2 The medical report dated 1 February 2017 contains the diagnoses of adjustment disorders, of difficulties related to having been a victim of crime and terrorist acts, and of difficulties related to exposure to a disaster, war and other hostilities. These are not entirely new elements. As is apparent from the State party's earlier observations, at least two of these diagnoses were made in the medical report of 27 July 2015. The State party reiterates that the diagnoses made do not in themselves prove the ill-treatment alleged by the first complainant (rape), which was considered to be improbable by the national authorities. It further contends that that analysis cannot be called into question by the report of 1 February 2017, which contains an anamnesis established solely on the basis of the first complainant's statements. Regarding the question as to whether the first complainant showed signs of torture or ill-treatment, the doctors only noted that the symptoms observed could be caused by a traumatic event, without indicating the cause.

7.3 In addition, the first complainant has submitted handwritten certificates from several family members of her alleged husband, V.D., who is currently in detention in the Russian Federation. According to her, these documents establish, on the one hand, the existence of a marriage tie between her and V.D. and, on the other hand, the fact that she would be in danger if she returned to Chechnya. In this respect, it should be recalled that mere letters from third parties cannot establish a marriage bond to the satisfaction of the law. This also applies to the certificate of the International Committee of the Red Cross, which shows that the first complainant and V.D. corresponded between 2014 and 2015. Furthermore, the State party points out that regardless of whether or not there is a marriage bond, the fact that V.D. is currently in prison does not establish his former fighting activities.

7.4 As regards the status of single women in Chechnya, the State party recalls that the first complainant is to be removed from Switzerland together with her son, who is an adult now. She will therefore benefit from his support upon their return.

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

#### *Consideration of admissibility*

8.1 Before considering any claim contained in a complaint, the Committee against Torture must decide whether it is admissible under article 22 of the Convention.

8.2 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.

8.3 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it should not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in

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<sup>27</sup> European Asylum Support Office, "EASO country of origin information report: Chechnya – women, marriage, divorce and child custody" (September 2014), p. 17.

<sup>28</sup> Danish Immigration Service, *Security and Human Rights in Chechnya*, p. 54. (The report refers to close relatives of suspected active insurgents and supporters.)

the present case, the State party concedes that the complainant has exhausted all available domestic remedies.

8.4 The Committee recalls that for a claim to be admissible under article 22 (2) of the Convention and rule 113 (b) of its rules of procedure, it must rise to the basic level of substantiation required for purposes of admissibility.<sup>29</sup> The Committee notes the State party's argument that the second complainant does not make any allegations of ill-treatment in the past or personal risk of persecution in case of deportation. He had raised the risk of being considered the son of his stepfather, who has been detained in prison since 2008. Moreover, he had expressed the fear of being forced to serve in the Russian army – a complaint he does not seem to maintain before the Committee. The Committee observes that the second complainant has no political affiliation and has not been in contact with his stepfather since his childhood, has not suffered any ill-treatment in the past, has not been engaged in any political or other activity as a supporter of the Chechen rebels that would appear to make him vulnerable to the risk of being subjected to torture, and has not attracted the authorities' attention in any possible way. The Committee therefore observes that the second complainant's claims are insufficient to establish a direct risk of torture if he were to return to the Russian Federation. In this light, the Committee considers that the second complainant has failed to sufficiently substantiate for the purpose of admissibility his claim that he will be at a foreseeable, personal, present and real risk of torture. The Committee finds that, in the present case, the second complainant's claim under article 3 is inadmissible pursuant to article 22 (2) of the Convention.

8.5 The Committee considers, however, that the arguments put forward by the first complainant raise substantive and procedural issues under article 3 of the Convention, and that those arguments should be dealt with on the merits. Accordingly, as the Committee finds no further obstacles to admissibility, it declares the communication as regards the first complainant admissible under article 3 of the Convention.

#### *Consideration of the merits*

9.1 In accordance with article 22 (4) of the Convention, the Committee has considered the present communication in the light of all the information made available to it by the parties.

9.2 The issue before the Committee is whether the removal of the first complainant to the Russian Federation would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture or ill-treatment upon return to the Russian Federation. In assessing this risk, the Committee must, pursuant to article 3 (2) of the Convention, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights.<sup>30</sup>

9.4 The Committee recalls its general comment No. 4, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which the person is facing deportation, either as an individual or a member of a group that may be at risk of being tortured in the State of destination, and that the Committee's practice has been to determine that "substantial grounds" exist whenever the risk is "foreseeable, personal, present and real".<sup>31</sup> The Committee further recalls that the burden of proof is upon the author of the communication, who has to present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when complainants are in a situation where they

<sup>29</sup> See, inter alia, *Z. v. Denmark* (CAT/C/55/D/555/2013), para. 6.3.

<sup>30</sup> General comment No. 4, para. 43.

<sup>31</sup> *Ibid.*, para. 11.

cannot elaborate on their case, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the communication is based.<sup>32</sup> 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 and 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.<sup>33</sup>

9.5 In the present case, the Committee notes the complainant's claim that, being a victim of repeated rape, she faced particular difficulties, as a result of trauma, stigma and shame, in recounting the sexual abuse she had suffered and that the minor inaccuracies in her account are not material and do not raise doubts about the general veracity of her claims.<sup>34</sup> Further, the Committee notes her objection to the State party's argument that she was not credible because she did not oppose the rapes physically, did not denounce the sexual violence to the authorities and did not consult with a doctor. The Committee notes the first complainant's assertion that she wanted to undergo a psychological assessment as part of the asylum proceedings, that the legal advice service representative had recommended after her second interview in March 2013 that the Federal Office for Migration obtain a report from a psychological expert, and that no such steps were taken by the authorities. It also takes note that in one of the substantive interviews the legal advice centre representative was a man, which made it more difficult for her to recount the details of the various instances of rape. It further notes the first complainant's assertion that the lack of medical evidence cannot be considered as diminishing her credibility, because she was unable to submit a full medical certificate proving her trauma from the rape given that the authorities denied her access to such medical assessment and treatment. It also notes her assertion that there can be no doubt regarding the credibility of her marriage, which she submits was established by the International Committee of the Red Cross and her husband's relatives.

9.6 The Committee recalls its general comment No. 4, wherein it states that in the procedure of assessment, the State party should provide the person concerned with fundamental guarantees and safeguards, especially if the person is in a particularly vulnerable situation. In particular, an examination by a qualified medical doctor, including as requested by the complainant to prove the torture that he or she has suffered, should always be ensured, regardless of the authorities' assessment of the credibility of the allegation,<sup>35</sup> so that the authorities deciding on a given case of deportation are able to complete the assessment of the risk of torture on the basis of the result of the medical and psychological examinations, without any reasonable doubt.

9.7 The Committee notes the first complainant's assertion that she is unable to submit a full medical certificate proving her trauma from rape. It takes note that it is undisputed that the first complainant was examined and was issued with a psychosocial service report in July 2015, that she was able to undergo psychological treatment in June 2016, that she has been in regular psychological treatment since then and that another psychosocial service report was issued on 1 February 2017. It further notes the State party's argument that the medical report of 1 February 2017 includes the diagnoses of adjustment disorders, of difficulties related to having been a victim of crime and terrorist acts and of difficulties related to exposure to a disaster, war and other hostilities, which are not entirely new elements as at least two of these diagnoses had been included in the complainant's earlier medical report of 27 July 2015 by the same psychologist. In this regard, the Committee notes the State party's assertion that the diagnoses made do not in themselves prove the ill-treatment, notably the rapes alleged by the first complainant, which were considered to be improbable by the national authorities, that the report of 1 February 2017 contains an anamnesis established solely on the basis of the first complainant's statements and that regarding the question as to whether she showed signs of torture or ill-treatment, the doctors only noted that the symptoms observed could be caused by a traumatic event, but without indicating the cause.

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<sup>32</sup> Ibid., para. 38.

<sup>33</sup> Ibid., para. 50.

<sup>34</sup> See *Alan v. Switzerland*.

<sup>35</sup> See, for example, *M.B. et al. v. Denmark* (CAT/C/59/D/634/2014), para. 9.8.

9.8 The Committee notes that the complainants were requested to pay an advance of 800 Swiss francs. It recalls its jurisprudence<sup>36</sup> and general comment No. 4, according to which the recourse should be accessible in practice without obstacles of any nature.<sup>37</sup> It also notes that the complainants' allegations were assessed as unfounded by the Federal Administrative Court because the first complainant had presented different versions of the incidents at the various hearings. The Committee further notes that the State party challenges the first complainant's credibility on all accounts. With regard to the material evidence provided by the complainants with the application for re-examination of their asylum request, the Committee takes note of the State party's assessment that the police summonses presented in support of the complainant's claim of persecution showed signs of forgery and were not accepted as genuine documents. The Committee observes that, faced with the irregularities concerning the alleged summonses, the first complainant could not make them plausible before the national authorities.

9.9 In the particular circumstances of the case and in view of the medical reports produced, the Committee considers that the State party has complied with the above-mentioned requirement to ensure a medical examination, by enabling the complainant to undergo medical and psychological examinations and subsequent treatment. It further considers that the State party has assessed sufficiently the complainant's personal experiences and the foreseeable risk or consequences of returning her to the Russian Federation.

9.10 On the basis of all the information submitted by the complainant and the State party, including on the general situation of human rights in the Russian Federation, the Committee considers that, in the present case, the first complainant has not discharged the burden of proof,<sup>38</sup> as she has not adequately demonstrated the existence of substantial grounds for believing that her removal to the Russian Federation would expose her to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention. Although the first complainant disagrees with the assessment of her accounts by the State party's authorities, she has failed to demonstrate that the decision to refuse her asylum claim was clearly arbitrary or amounted to a denial of justice.

10. Accordingly, the Committee against Torture, acting under article 22 (7) of the Convention, concludes that the complainant's removal to the Russian Federation would not constitute a violation of article 3 of the Convention.

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<sup>36</sup> *Abdulkarim v. Switzerland* (CAT/C/62/D/710/2015), para. 6.2

<sup>37</sup> General comment No. 4, para. 35.

<sup>38</sup> *Sivagnanaratnam v. Denmark* (CAT/C/51/D/429/2010), paras. 10.5–10.6.