



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

Distr.: General
9 October 2015
Original: English

Committee against Torture

Communication No. 642/2014

**Decision adopted by the Committee at its fifty-fifth session
(27 July-14 August 2015)**

| | |
|------------------------------------|--|
| <i>Submitted by:</i> | M.T. (represented by counsel, Eeva Heikkila) |
| <i>Alleged victim:</i> | The complainant |
| <i>State party:</i> | Sweden |
| <i>Date of complaint:</i> | 2 December 2014 (initial submission) |
| <i>Date of present decision:</i> | 7 August 2015 |
| <i>Subject matter:</i> | Deportation to the Russian Federation |
| <i>Procedural issues:</i> | Examination under another procedure of international investigation or settlement; failure to substantiate claims |
| <i>Substantive issues:</i> | Risk of torture upon return to the country of origin |
| <i>Articles of the Convention:</i> | Article 3 |



Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fifth session)

concerning

Communication No. 642/2014*

Submitted by: M.T. (represented by counsel, Eeva Heikkila)
Alleged victim: The complainant
State party: Sweden
Date of complaint: 2 December 2014 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 7 August 2015,

Having concluded its consideration of the admissibility of complaint No. 642/2014, submitted to it by M.T. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complaint is submitted by M.T., a Russian national born in 1987. He claims that his deportation to the Russian Federation would constitute a violation by Sweden of article 3 of the Convention. The complainant is represented by counsel.

1.2 On 4 December 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from expelling the complainant to the Russian Federation while his complaint was being considered by the Committee. On 10 December 2014, the complainant's counsel informed the Committee that the complainant had been released from custody and that his deportation had been suspended.

1.3 On 16 April 2015, at the request of the State party, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to examine the admissibility of the complaint separately from the merits.

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Felice Gaer, Abdoulaye Gaye, Claudio Grossman, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

The facts as presented by the complainant

2.1 The complainant submits that he was born and raised in Grozny, Chechnya, in the Russian Federation, and that when he was 12 years old, the Russian federal authorities started to persecute members of his family as they were perceived as supporters of rebel groups within the context of the so-called “second Chechen war”. Some of his relatives joined rebel groups, but he had no connection to any such groups. In 2000, the authorities fabricated charges of illegal possession of weapons against one of his uncles. After his uncle was convicted, the Russian authorities regularly broke into the complainant’s family home and interrogated members of his family. He alleges that he was tortured and ill-treated at that time.

2.2 According to the complainant, in 2004 he suffered severe injuries when a landmine exploded right outside his house; he lost one eye and several fingers and still has pieces of shrapnel in his head. He argues that after the explosion, the Russian authorities referred to him publicly as a terrorist and maintained that he had been injured in combat, as he was allegedly connected with rebels groups. Given that context, he had to escape and hide several times.

2.3 The complainant submits that he was charged with the crime of assisting rebels and was tried by the Russian judicial authorities. He claims that the authorities promised to stop harassing his family in exchange for a guilty plea. Under family pressure, the complainant pleaded guilty. He was imprisoned and severely beaten in detention. As a result of the beatings, he had to undergo surgery, during which his spleen was removed. Thereafter, the complainant was released and granted amnesty. However, the Russian authorities continued to persecute him as they believed that he had intelligence about rebel groups. He moved to Abkhazia and went into hiding, but the authorities found him and sent him back to Chechnya.

2.4 On 2 June 2010, armed law enforcement agents broke into the complainant’s home and searched it. He claims that they stole personal effects and documents belonging to several of his relatives. While they were searching for things to steal, he fled through the backyard of the house. The agents shot at him and he was injured in one leg, but he managed to escape. The following morning, his relatives went to the Oktyabrsky district police department where they had their personal documents and belongings returned. According to the complainant, his relatives were told by the authorities that the aim of the raid had been to detain him as they had been informed that the complainant was a former member of a rebel group. After that, he decided to flee to Sweden.

2.5 Upon the complainant’s arrival in Sweden, he filed an application for asylum before the migration authorities. On 3 October 2010, the Swedish migration authorities refused the complainant’s request for asylum. The complainant submitted an application for appeal before the Swedish Migration Court.

2.6 The complainant submits that after his departure, the Russian authorities continued to search for him. He claims that on 8 January 2011, his mother was summoned by the Oktyabrsky district police department, interrogated by a man who did not identify himself and asked whether the complainant was involved in Wahhabi activities. His mother denied that he was involved with Wahhabi militants and maintained that she had not seen him since July 2010.

2.7 On 4 August 2011, the Swedish Migration Court rejected the complainant’s application for appeal.

2.8 The complainant submits that on 12 December 2011, he travelled to Austria and applied for asylum there. On 2 March 2012, his application was rejected by the Austrian authorities. They stated that he had arrived in Sweden first and that, according to the

European Union Dublin Regulation procedure,¹ he had to be sent back to Sweden. However, his return to Sweden was on hold as he needed to undergo surgery to remove two pieces of shrapnel from his head. Between March 2012 and the spring of 2013, he stayed in Austria, but was homeless during that time. On 4 May 2012, he had the operation, but the surgeons were unable to remove the larger piece of shrapnel. A second operation was scheduled for 6 May 2013, but the complainant decided to move to France, as he feared that, once he had recovered, he would be sent back to Sweden and then back to Chechnya in the Russian Federation. He claims that he applied for asylum in France, but that his request was refused on the same grounds as in Austria. Thereafter, he was deported to Sweden.

2.9 While he was waiting to be deported to the Russian Federation, he married a Chechen asylum seeker who had been granted temporary stay in Sweden. They had a child, who was born on 18 February 2014. The complainant argues that in March 2014, the Swedish Migration Court refused to accept another application submitted by him.

2.10 On 17 November 2014, the complainant lodged an application and requested interim measures before the European Court of Human Rights. According to his initial complaint, he claimed before the European Court that his deportation to the Russian Federation by Sweden would put him at serious risk of torture. On 21 November 2014, the European Court rejected the complainant's request for interim measures and stated that "in the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court, sitting in a single-judge formation, found that they did not disclose any appearance of violation of the rights and freedoms set out in the Convention or its Protocols and declared your application inadmissible". The complainant submits that on 28 November 2014, he was arrested by the Swedish authorities in preparation for his deportation on 5 December 2014.

The complaint

3.1 The complainant submits that by forcibly returning him to the Russian Federation, the State party would breach its obligations under article 3 of the Convention. His removal would expose him to persecution, torture and inhuman treatment by local authorities.

3.2 The Swedish authorities did not adequately assess the risk he would face if returned to the Russian Federation. They failed to assess his personal situation in Chechnya prior to his departure and the fact that the Russian authorities believe him to have connections with rebel groups. The complainant also points out that the general human rights situation in Chechnya is such that the use of torture and other cruel and inhuman treatment is widespread.

3.3 Should the complainant be deported, he would be separated from his wife and child. In addition, he claims that his health has been deteriorating. He still has a piece of shrapnel in his head and needs surgery to remove it. He would be unable have such surgery in Chechnya.

State party's observations on admissibility

4.1 In a note verbale dated 25 November 2013, the State party objected to the admissibility of the complaint pursuant to article 22 (5) (a) of the Convention, and maintained that the same matter had already been examined by the European Court of Human Rights.

¹ Council Regulation (EC) 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

4.2 The State party points out that the complainant lodged an application before the European Court of Human Rights in which he claimed that he would face the risk of ill-treatment if returned to the Russian Federation. It maintains that his application before that Court and his complaint before the Committee refer to the same parties, the same facts and the same substantive rights.²

4.3 The State party notes that the European Court of Human Rights declared the complainant's application inadmissible, as the application did not disclose any violation of the European Convention on Human Rights. It can therefore be assumed that the European Court declared the application inadmissible for reasons related to the substance of his application, rather than on purely procedural grounds. Accordingly, it must be considered that the European Court has examined the complainant's application within the meaning of article 22 (5) (a) of the Convention. Should the Committee consider that the decision of the European Court is unclear, the State party invites the Committee to contact the Court in order to clarify that issue.

4.4 Should the Committee consider the complaint to be admissible under article 22 (5) (a), the State party maintains that the complaint is manifestly ill-founded.

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

5.1 On 18 March 2015, the complainant submitted his comments on the State party's observations. He argues that the decision of the European Court of Human Rights does not constitute an examination of the same matter within the meaning of article 22 (5) (a) of the Convention against Torture.

5.2 The complainant submits that the decision of the European Court of 21 November 2014 declaring his application inadmissible does not allow the Committee against Torture to assume that the same matter has been examined by the European Court. Furthermore, the European Court decision indicated that the complainant's application did not disclose any appearance of violation of his rights, but the European Court did not examine the merits of the case.

5.3 The complainant refers to the Human Rights Committee's decision in communication No. 1945/2010 in which it states that "when the European Court bases a declaration of inadmissibility not solely on procedural grounds but also on reasons that include a certain consideration of the merits of the case, then the same matter should be deemed to have been 'examined' within the meaning of the respective reservations to article 5, paragraph 2 (a), of the Optional Protocol [to the International Covenant on Civil and Political Rights]; and it must be considered that the European Court has gone well beyond the examination of the purely formal criteria of admissibility when it declares a case inadmissible because 'it does not reveal any violation of the rights and freedoms established in the Convention or its Protocols'. However, in the particular circumstances of this case, the limited reasoning contained in the succinct terms of the Court's letter does not allow the [Human Rights] Committee to assume that the examination included sufficient consideration of the merits in accordance with the information provided to the Committee by both the author and the State party. Consequently, the Committee considers that there is no obstacle to its examining the present complaint under article 5, paragraph 2 (a), of the Optional Protocol".³ Likewise, in the complainant's case, the decision of the European

² The State party refers to communications No. 305/2006, *A.R.A. v. Sweden*, decision adopted on 30 April 2007, paras. 6.1-6.2; and No. 140/1999, *A.G. v. Sweden*, decision adopted on 2 May 2000, paras. 6.2 and 7.

³ See Human Rights Committee, communication No. 1945/2010, *Achabal Puertas v. Spain*, Views adopted on 27 March 2013, para. 7.3.

Court of Human Rights does not allow the Committee against Torture to assume that the Court's examination included sufficient consideration of the merits of the case.

5.4 The complainant maintains that he brought his complaint before the Committee in response to his arrest on 28 November 2014 by the State party's authorities and his detention in a deportation centre, and that his extradition to the Russian Federation was imminent, and points out that those events had not occurred when the European Court of Human Rights reached its decision of inadmissibility. Furthermore, his complaint before the Committee not only refers to his imminent persecution by the Russian authorities if he is deported, but to the fact that his deportation would result in his separation from his wife and child.

5.5 The complainant refers to the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties, and submits that States parties are obliged to ensure that victims of torture obtain full and effective redress and reparation. Should he be returned to Chechnya in the Russian Federation, he would be deprived of any prospect of redress, such as rehabilitation or a guarantee of non-repetition, which are currently available to him in Sweden. Moreover, in the Russian Federation, there is no independent and effective complaint mechanism, not even the judiciary, with which he could lodge a complaint about the violations he suffered prior to his departure. Therefore, he would have no realistic prospect of obtaining redress and reparation. He also points out that his health is extremely poor and that he still needs complex surgery and probably long-term medical treatment, which would not be available to him in Chechnya in the Russian Federation.

State party's additional submissions on admissibility

6.1 On 26 May 2015, the State party provided additional submissions on admissibility. As to the facts of the case, it clarified that it has not received an extradition request concerning the complainant from the Russian Federation. Its migration authorities decided on the expulsion of the complainant to his country of origin. In order to enforce the expulsion order, he was detained, not arrested, on 28 November 2014. On 3 December 2014, he was released from detention.

6.2 Nothing substantial has changed in the light of the decision of the European Court of Human Rights on the complainant's case. The State party maintains that his application before the European Court and his complaint before the Committee raised the same matter, namely whether the decision of its authorities to expel him to the Russian Federation would put him at serious risk of torture. Hence his complaint should be declared inadmissible under article 22 (5) (a) of the Convention.

Complainant's additional submissions on admissibility

7. On 16 June 2015, the complainant confirmed that there was no extradition request against him and that he had mistakenly used the wrong terminology when referring to his arrest. He also reiterated that the European Court of Human Rights was not able to rule on the inhuman suffering and distress he suffered as a result of the imminent risk of being removed to the Russian Federation, where he would allegedly risk being subjected to torture and his life would be in danger.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention.

8.2 The Committee takes note of the State party's observation that the complaint should be declared inadmissible under article 22 (5) (a) of the Convention, given that the same matter has already been examined by the European Court of Human Rights. The Committee also takes note of the complainant's observation that his application was not examined by the European Court, as its inadmissibility decision stated only that his application "did not disclose any appearance of violation" and that its limited reasoning does not allow the Committee against Torture to conclude that the European Court gave sufficient consideration of the merits of the case. In addition, he submits that his complaint before the Committee refers to his detention on 28 November 2014 by the State party's authorities for his imminent removal to his country of origin, that such removal would result in his separation from his wife and child, and that those facts were not considered by the European Court.

8.3 The Committee recalls its consistent jurisprudence that it shall not consider any complaint from an individual under article 22 (5) (a) of the Convention unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.⁴ The Committee considers that a complaint has been or is being examined by another procedure of international investigation or settlement if the examination by the other procedure related or relates to the same matter within the meaning of article 22 (5) (a), which must be understood as relating to the same parties, the same facts, and the same substantive rights.⁵

8.4 The Committee observes that the present complaint raises claims under article 3 of the Convention, mainly in relation to the alleged risk of torture to which the complainant would be subjected if removed to the Russian Federation. In this connection, the Committee considers that the complainant's detention on 28 November 2014 by the State party's authorities does not constitute a relevant new fact that could lead it to conclude that his complaint before the Committee and his application before the European Court of Human Rights raise different matters. Accordingly, in the light of the information contained in the case file, the Committee concludes that complainant's application submitted to the European Court of Human Rights on 17 November 2014 concerned the same person, was based on the same facts, and related to the same substantive rights as those invoked in the present complaint. The Committee therefore proceeds to examine whether his application was examined by the European Court of Human Rights in the sense of article 22 (5) (a) of the Convention.

8.5 In the present case, the Committee observes that the European Court of Human Rights declared the complainant's application inadmissible as it considered that "the material in its possession ... did not disclose any appearance of violation of the rights and freedoms set out in the Convention or its Protocols". In the light of the information provided by the parties, and in the particular circumstances of the present case, the Committee considers that the decision of the European Court of Human Rights was not solely based on mere procedural issues, but on reasons that indicate a sufficient consideration of the merits of the case.⁶ Accordingly, the Committee considers that the claims raised by the complainant regarding the alleged risk he would face if deported to the Russian Federation are inadmissible in accordance with article 22 (5) (a) of the Convention.

8.6 In view of the above, the Committee considers that the requirement of article 22 (5) (a) of the Convention has not been met in the present case.

⁴ See, for example, communication No. 305/2006, *A.R.A. v. Sweden*, para. 6.1.

⁵ See, for example, communications No. 247/2004, *A.A. v. Azerbaijan*, decision adopted on 25 November 2005, para. 6.8; and No. 479/2011, *E.E. v. Russian Federation*, decision adopted on 24 May 2013, para. 8.4.

⁶ See, for example, communication No. 479/2011, *E.E. v. Russian Federation*, paras. 8.2-8.4.

9. The Committee therefore decides:
- (a) That the complaint is inadmissible under article 22 (5) (a) of the Convention;
 - (b) That this decision shall be communicated to the complainant and to the State party.
-