



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

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**Committee against Torture**

**Complaint 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, Ms. 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 by another procedure of international investigation or settlement;<br>Failure to substantiate claims |
| <i>Substantive issues:</i>         | Risk of torture upon return to the country of origin   |
| <i>Articles of the Convention:</i> | 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

#### **Complaint No. 642/2014**

|                           |  |
|---------------------------|--|
| <i>Submitted by:</i>      | M.T. (represented by counsel, Ms. Eeva Heikkila) |
| <i>Alleged victim:</i>    | The complainant                                  |
| <i>State party:</i>       | Sweden   |
| <i>Date of complaint:</i> | 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 the Committee against Torture by M.T. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

*Adopts* the following:

#### **Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complaint is submitted by M.T., 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 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("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 was released from custody and that his deportation was 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 facts as presented by the complainant**

2.1 The complainant submits that he was born and raised in Grozny, Chechnya, the Russian Federation, and that when he was 12 years old his family started being persecuted by Russian federal authorities as they were perceived as supporters of rebel groups within the context of the "second Chechen war". Some of his relatives joined rebel groups, but he had no connection with any of these 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 house, and interrogated members of his family. He alleges that he was tortured and mistreated at that time.

2.2 According to the complainant, in 2004 he was severely injured by an explosion of a landmine right outside his house, in which he lost one eye and several fingers. He has pieces of shrapnel in his head until now. He further argues that after the explosion the Russian authorities publicly referred to him as a 'terrorist' and maintained that his injuries were caused in combat as he was allegedly with rebels groups. In this 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 tried by the Russian judicial authorities. He claims that the authorities promised to stop harassing his family in exchange of a guilty plea. Due to family's pressure, the complainant pleaded guilty. He was imprisoned and severely beaten in detention. As a result of the beatings, he had to undergo a surgery in which his spleen was removed. After the ill-treatment, the complainant was released and granted amnesty. However, the Russian authorities continued persecuting him as they believed that he had intelligence information about the rebel groups. He moved to Abkhazia and went into hiding, but he was found by the authorities and returned 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 robbed several relatives' personal belongings and documents. When they were searching for things to rob, he ran away across the house's backyard. The agents shot at him and he was injured in one leg. However, he managed to escape. The following morning his relatives went to the Oktyabrsky District Police Department where their personal documents and belongings were returned. According to the complainant, his relatives were told by the authorities that the raid's purpose was to detain him as they were informed that he was a former member of a rebel group. After this, he decided to escape 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, 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 looking for the complainant. He claimed that on 8 January 2011, his mother was summoned by the Oktyabrsky District Police Department; that she was interrogated by a man who did not identify himself; and that she was asked about Wahhabi and whether the complainant was involved with it. His mother denied that he was involved with the Wahhabi and upheld 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. 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 Dublin Agreement II he had to be sent back to Sweden. However, his return to Sweden was on hold as he needed to undergo a surgery to remove two pieces of shrapnel from his head. Between March 2012 and the Spring of 2013, he stayed in Austria as a homeless person. On 4 May 2012, a surgery was carried out, but the doctors could not remove the larger shrapnel. A second surgery was scheduled for 6 May 2013, but the complainant decided to move to France, since he feared to be sent back to Sweden and then to Chechnya, the Russian Federation, once he would be recovered. He claimed that he also applied for asylum in France and that his request was also refused on the same grounds as in Austria. Afterwards, he was deported to Sweden.

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

2.10 On 17 November 2014, the complainant lodged an application and requested for interim measures before the European Court of Human Rights (ECtHR). According to his initial complaint, he claimed before the Court that his deportation to the Russian Federation by Sweden would put him at serious risk of torture. On 21 November 2014, the ECtHR rejected the complainant's request for interim measures and stated: "*In addition, 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 further submits that on 28 November 2014 he was "arrested" by the Swedish authorities in order to be deported 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 inhumane treatment by local authorities.

3.2 The Swedish authorities did not assess adequately the risk he would be subject to if returned to the Russian Federation. They failed to assess his personal situation in Chechnya prior to his departure, as well as the fact that he is perceived to have connections with rebel groups by the Russian authorities. 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 treatments is widespread.

3.3 Should the complainant be deported, he will be separated from his wife and minor child. In addition, he claims that his health condition has been deteriorating. He still has a piece of shrapnel in his head that requires a surgery which he will be unable to obtain in Chechnya, the Russian Federation.

### **State party's observations on admissibility**

4.1 By note verbale of 25 November 2013, the State party objected to the admissibility of the complaint pursuant to article 22, paragraph 5 (a) of the Convention and maintained that the same matter had already been examined by the ECtHR.

4.2 The State party points out that the complainant lodged an application before the ECtHR in which he also claimed about the alleged risk he would be subjected to if returned to the Russian Federation. It maintains that his application before the ECtHR and his complaint before the Committee refer to the same parties, same facts and the same substantive rights.<sup>1</sup>

4.3 The State party notes that the ECtHR declared his application inadmissible since it did not disclose any violation of the European Convention of Human Rights. Against this background, it must be assumed that the ECtHR 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 ECtHR has examined the complainant's application within the meaning of article 22, paragraph 5 (a) of the Convention. Should the Committee consider that the ECtHR's decision is unclear; the State party invites it to contact the Court in order to clarify this issue.

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

#### **Complainant's comments on the State party's observations on the 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 ECtHR does not constitute an examination of the same matter within the meaning of article 22, paragraph 5 (a) of the Convention.

5.2 The complainant submits that the ECtHR's decision of 21 November 2014, that declared his application inadmissible, does not allow the Committee to ascertain that the same matter has been examined by the Court. Furthermore, the ECtHR stated that his application did not disclose any appearance of violation of his rights, but it 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 "[W]hen 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 [Human Rights] Committee by both the author and the State party. Consequently, the [Human Rights] Committee considers that there is no obstacle to its examining the present complaint under article 5, paragraph 2 (a), of the Optional Protocol."<sup>2</sup> Likewise, in the complainant's case, the decision of the ECtHR does not allow the Committee to assume that the Court's examination included sufficient consideration of the merits of the case.

<sup>1</sup> The State party refers to Complaints No. 305/2006, A.R.A. v. Sweden, decision adopted on 30 April 2007, paras. 6.1-6.2; and 140/1999, A.G. v. Sweden, decision adopted on 2 May 2000, paras. 6.2 And 7.

<sup>2</sup> See Human Rights Committee, Communication No. 1945/2010, Achabal v. Spain, Views adopted on 27 March 2013, para. 7.3.

5.4 The complainant upholds that his complaint before the Committee was a consequence of his arrest on 28 November 2014 by the State party's authorities in a deportation centre and that his extradition to the Russian Federation was imminent, and points out that these facts had not occurred when the ECtHR took its decision of inadmissibility. Further, his complaint before the Committee not only refers to his imminent persecution by the Russian authorities if deported, but to the fact that it will result in the separation from his wife and minor child.

5.5 The complainant refers to the Committee's General Comment No. 3, and submits that the States parties are obliged to ensure that victims of torture obtain full and effective redress and reparation. Should he be returned to Chechnya, the Russian Federation, he would be deprived of any prospect of redress, such as rehabilitation and guarantee of non-repetition, which are currently available to him in the State party. Moreover, in the Russian Federation, there is no independent and effective complaint mechanism, including the Judiciary, where he can complain about the violations suffered prior to his departure. Therefore, he will have no realistic prospect of obtaining redress and reparation. He also points out that his health condition is very weak and that he still needs to undergo a complex surgery and probably a long-term medical treatment which will not be available for him in Chechnya, the Russian Federation.

#### **State party's and complainant's further submissions on admissibility**

6.1 On 26 May 2015, the State party provided further observations on admissibility. As to the facts of the case, it clarifies that it has never received an extradition request from the Russian Federation. Its migration authorities decided the expulsion of the complainant to his country of origin. As a measure of enforcing the expulsion order, he was detained –and not arrested– on 28 November 2014. Later on 3 December 2014, he was released from detention.

6.2 Nothing substantial has emerged after the ECtHR's decision as to the complainant's case. The State party maintains that his application before the ECtHR 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. Hence his complaint is to be declared inadmissible under article 22, paragraph 5 (a) of the Convention.

7. On 16 June 2015, the complainant confirmed that there was no extradition request against him; and that by mistake he used a wrong terminology. He also reiterated that the ECtHR was not able to rule on the inhuman distress suffered by him due to the imminent risk of being removed to the Russian Federation, where he would allegedly face risk to life and of torture.

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

##### *Consideration of admissibility*

8.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

8.2 The Committee takes note of the State party's objection that the complaint should be declared inadmissible under article 22, paragraph 5 (a) of the Convention since the same matter was already examined by the European Court of Human Rights. The Committee also takes note of the complainant's allegations that his application was not examined by the ECtHR since its inadmissibility decision only stated that his application "did not disclose any appearance of violation" and that its limited reasoning does not allow the Committee to conclude that it gave in fact sufficient consideration of the merits of the case. In addition, he also submits that his complaint before the Committee refers to his detention on 28 November 2014 by the State party's authorities for an imminent removal to his country of

origin, and that it would result in the separation from his wife and minor child, which was not considered by the ECtHR.

8.3 The Committee recalls<sup>3</sup> its consistent jurisprudence that it shall not consider any complaint from an individual under article 22, paragraph 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. The Committee considers that a complaint “has been”, and “is being examined” by another procedure of international investigation or settlement if the examination by the procedure relates/related to the “same matter” within the meaning of article 22, paragraph 5 (a), that must be understood as relating to the same parties, the same facts, and the same substantive rights.<sup>4</sup>

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 so as to conclude that his complaint before the Committee and his application before the ECtHR raise different matters. Accordingly, in light of the information contained in the case file, the Committee concludes that complainant’s application submitted to the ECtHR 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 ECtHR in the sense of article 22, paragraph 5 (a) of the Convention.

8.5 In the present case, the Committee observes that the ECtHR 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 this case, the Committee considers that the ECtHR’s decision was not solely based on mere procedural issues, but on reasons that indicate a sufficient consideration of the merits of the case.<sup>5</sup> 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, paragraph 5 (a) of the Convention.

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

9. The Committee therefore decides:

(a) That the complaint is inadmissible under article 22, paragraph 5 (a), of the Convention;

(b) That this decision shall be communicated to the complainant and to the State party.

<sup>3</sup> See, for example, complaint No. 305/2006, *A.R.A. v. Sweden*, Inadmissibility Decision adopted on 30 April 2007, para. 6.1.

<sup>4</sup> See, for example, complaint No. 247/2004, *A.A. v. Azerbaijan*, Inadmissibility Decision adopted on 25 November 2005, paras. 6.8 and complaint No. 479/2011, *E.E. v. Russian Federation*, Inadmissibility Decision adopted on 23 May 2013, para. 8.4.

<sup>5</sup> See, for example, complaint No. 479/2011, *E.E. v. Russian Federation*, para. 8.2-8.4.