



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. 1129/2022* **

<i>Communication submitted by:</i>	S.T. (represented by counsel, Florian Wick)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	15 April 2022 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 2 June 2022 (not issued in document form)
<i>Date of adoption of decision:</i>	1 November 2024
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies; substantiation of claims
<i>Substantive issue:</i>	Risk of torture or other cruel, inhuman or degrading treatment or punishment, if deported to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is S.T., a national of Sri Lanka born in 1997. He applied for asylum in Switzerland, but his application was rejected. He is facing deportation to Sri Lanka and submits that his deportation would constitute a violation by the State party of article 3 of the Convention. The State party has made the declaration under article 22 (1) of the Convention, effective from 2 December 1986. The complainant is represented by counsel.

1.2 On 2 June 2022, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant to Sri Lanka while the communication was being considered.

Factual background

2.1 The complainant is of Tamil ethnicity. Three of his maternal uncles, who had been active in the Liberation Tigers of Tamil Eelam (LTTE), died during the civil war, which

* Adopted by the Committee at its eighty-first session (28 October–22 November 2024).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Jorge Contesse, Claude Heller, Erdogan Iscan, Peter Vedel Kessing, Liu Huawen, Maeda Naoko, Ana Racu and Abderrazak Rouwane.



ended in 2009.¹ One of them had held a high-ranking position within the organization.² A friend of one of these uncles, K, was released from a rehabilitation centre in 2014 and moved in with the complainant's family. When he was still a minor, the complainant accompanied K on various trips. He was not always aware of the purpose of the trips. During one of the trips, while they were riding their motorcycles, they became aware that they were being pursued by members of the Criminal Investigation Department. As a result of being followed, they had an accident, at which point K was arrested by the officers, leaving the complainant at the scene of the accident. His father picked him up and took him home to tend to his injuries.

2.2 On 6 January 2015, the complainant was arrested at his home by members of the Criminal Investigation Department and taken to a detention camp nearby. He was detained for more than two weeks, in a dark room, which had no bed or toilet. While in detention, the complainant was beaten and frequently interrogated about K and LTTE, including with regard to whether he had knowledge of where any weapons were stored. Repeatedly, the complainant was stripped and severely beaten and kicked. On 21 January 2015, after the payment of money by his parents, the complainant was released.

2.3 On 8 March 2015, members of the Criminal Investigation Department again came to his home. At the time, the complainant was at his grandmother's house. His mother called to warn him about the search after the officers had left. An hour later, an uncle took the complainant to his home to collect some belongings. He has not returned since. Given that, on 8 March 2015, the officers had waited for him at his home for a long time, the complainant decided in April 2015 to leave the country. His father organized for a facilitator to help the complainant to leave the country on 14 July 2015.

2.4 The complainant arrived illegally in Switzerland on 24 November 2015 and filed his application for asylum the following day. The State Secretariat for Migration interviewed him on 30 November 2015 and 11 May 2017.

2.5 On 11 August 2017, the State Secretariat for Migration rejected the complainant's asylum application and ordered his return. It found the claims to be unsubstantiated because, even though he had repeatedly been asked to give detailed and extensive accounts of his arrest, detention and release, the complainant had consistently given only brief, repetitive statements. The State Secretariat deemed the complainant's submissions to be implausible because he had initially stated that officers had simply decided to end his detention, while, during the second interview, he had stated that he had found out after he had arrived in Switzerland that his father had actually paid money for his release. The State Secretariat doubted that his family had never discussed his release before his arrival in Switzerland. It also doubted that the complainant would not have decided to leave his country until April 2015, as the trigger event – a search of his house by members of the Criminal Investigation Department – had taken place on 8 March 2015. In addition, the complainant had not been able to provide any information about how the search had taken place, what his parents had been told or what he and his family had been asked to do. The complainant had also not been able to explain the fact that officers had not started looking for him again until about one and a half months after his release from detention.

2.6 The State Secretariat for Migration also identified some contradictions in the complainant's statements. For example, the complainant had initially said that he had been taken away "again and again", only to specify later that this had happened once. When asked where he had been during the search on 8 March 2015, the complainant had first responded that he had been with his mother's uncle, but, at the second hearing, he had stated that he had been with his grandmother, who had not been mentioned at any point in the first interview. In addition, at the first interview, the complainant had stated that he had lived in his parents' house until his departure on 14 July 2015, but, at the second hearing, he had mentioned that he had not returned home after the search of 8 March 2015 and had stayed with his mother's uncle. Lastly, the complainant had stated at the initial interview that he did not know the whereabouts of his brother, who had left in 2014, but, when asked at the second hearing why

¹ No evidence was provided.

² No further details were provided.

he had a passport issued in 2014, the complainant had replied that he intended to visit his brother in Thailand.

2.7 On 11 January 2019, the Federal Administrative Court dismissed the complainant's appeal for the lack of credibility of the alleged State persecution in Sri Lanka and of the alleged detention and ill-treatment. The Court noted that the complainant – who was represented by a lawyer who was experienced in asylum proceedings – had not explained the risk posed by the profile of his three uncles. Their death certificates, produced in the appeal proceedings, were deemed not to be capable of demonstrating their LTTE membership. In any event, the Court noted that the State Secretariat for Migration had not questioned the uncles' and K's LTTE membership but, rather, the claim that their LTTE membership had led to the complainant's persecution.

2.8 The Federal Administrative Court also considered that the complainant had not clarified the nature of his political involvement while in exile in Switzerland, namely, participation in demonstrations and taking photographs showing the flag of LTTE. The Court analysed three photographs produced by the complainant, finding that he could be seen standing several metres away from a group of people carrying two or three flags, which – barely visible – could be those of LTTE. However, it was not clear from the photographs where and when they had been taken. Moreover, in the photographs, contrary to his allegations, the complainant did not appear to be standing in front of a flag; rather, he gave the impression of only passing by.

2.9 On 14 June 2021, the complainant requested the State Secretariat for Migration to review its decision of 11 August 2017. He produced a psychotherapy report issued by the Family Help Association on 24 May 2021, which certified that he suffered from complex post-traumatic stress disorder,³ recurrent depressive disorder, a risk of intentional self-harm and a risk of developing an ongoing personality disorder. He also claimed that the Sri Lankan authorities were still looking for him and produced a photograph recently taken of his father with security officers. Lastly, he referred to the deteriorating political situation in Sri Lanka since the 2019 presidential election.

2.10 On 9 July 2021, the State Secretariat for Migration rejected the complainant's request for reconsideration because the report reflected only his existing psychological problems due to traumatic experiences, without determining the specific context of the trauma. The complainant's complex trauma was described in the report not as simple post-traumatic stress disorder but as a trauma-related developmental and bonding disorder that had started in childhood. Without denying the existence of his traumatic experiences and the psychological stress associated with them, the State Secretariat considered that there were no concrete indications to link the trauma to the complainant's allegations or to any State persecution. As for the photograph, insofar as it showed the complainant's father, the State Secretariat assumed that it simply showed him being questioned by the authorities. Lastly, the State Secretariat expressed surprise that, following the judgment of the Federal Administrative Court of 11 January 2019, the complainant had not sought medical help until 5 November 2020.

2.11 On 2 February 2023, the Federal Administrative Court rejected the complainant's appeal. The Court noted that the complainant had produced a new report, issued by the Family Help Association on 3 August 2021, but considered that it did not provide any new elements. In addition, the Court expressed doubt that his mental illnesses could be traced back to the alleged imprisonment, as it was mentioned in the report that his trauma-related developmental disorder had started in childhood. At the time of the alleged torture of 2015, however, the complainant had no longer been a child. Nor could he derive anything in support of his position from the undated photograph, which had been submitted with the request for reconsideration. The photograph had no probative value, especially since it had not been proven that the person depicted in it was actually the complainant's father or when and in what context the picture had been taken.

³ The diagnosis was of a post-traumatic stress reaction following sequential traumatization during sensitive developmental phases in childhood and adolescence (developmental trauma disorder) with dissociative symptoms.

Complaint

3.1 The complainant claims that his deportation to Sri Lanka would constitute a violation of his rights under article 3 of the Convention.

3.2 The complainant considers that important evidence was either not considered at all or not assessed correctly by the Swiss authorities, which in itself constitutes a violation of article 3 of the Convention. He declares that, due to his extreme suffering from torture, and thus as a consequence of torture, he was not in a psychological state to mention at his hearings every detail. Following a successful experience of therapy, he was able to provide this information in his request for reconsideration. However, the migration authorities did not reproduce in detail all his statements. The complainant therefore considers that the question of torture was not considered at all, which constitutes a serious omission.

3.3 The complainant disagrees with the conclusion of the State Secretariat for Migration that his trauma could have occurred during his childhood. He refers to a new report issued by the Family Help Association on 25 March 2022, in which it is mentioned that problems in childhood might have been relevant, but only in the sense that they could amplify the consequences of the torture inflicted. For the complainant, his post-traumatic stress disorder was clearly not triggered during his childhood but was a result of the torture inflicted.

3.4 In conclusion, the complainant submits that all the documents produced demonstrate that he runs a high risk of torture not only due to the enduring practice of gross, manifest and massive violations of human rights in Sri Lanka⁴ but also due to the involvement of his relatives in the internal conflict.

State party's observations on admissibility and the merits

4.1 On 15 December 2022, the State party submitted its observations. It noted that, as the appeal against the decision of 9 July 2021 of the State Secretariat for Migration was pending, the complainant had not exhausted domestic remedies.

4.2 On the merits, the State party reiterates the arguments made by the Swiss asylum authorities. It acknowledges that the human rights situation in Sri Lanka is worrying in many respects⁵ but points out that the Federal Administrative Court has already thoroughly examined that situation and the risk of torture in the event of return in two landmark judgments,⁶ according to which not all returnees with a real or supposed, present or past link to LTTE necessarily risk persecution. Only persons accused of rekindling ethnic conflict face such a risk. The same applies to Sri Lankan nationals who have engaged in political activities in exile. In the present case, the complainant has failed to plausibly argue that he attracted the attention of the Sri Lankan authorities.

4.3 The State party notes that it was only in his request for re-examination that the complainant raised the allegations of torture and ill-treatment, but the State Secretariat for Migration considered that the reports issued by the Family Help Association could not render credible the complainant's claim of persecution, which was found not to be credible in the ordinary asylum procedure. As to the complainant's trauma, the State party notes that it was not disputed that he had experienced traumatic events and suffered from stress-related mental disorders. However, it has not been credibly established that his disorders were a consequence of torture suffered in Sri Lanka. The State party also notes that the communication does not give any indication that the complainant would be considered a threat to the State of Sri Lanka in the eyes of the regime.

4.4 The State party lastly notes that the domestic authorities did take into account the allegations of torture and ill-treatment submitted by the complainant in the context of the re-examination procedure. They referred explicitly to these allegations but concluded that they were unsubstantiated.

⁴ See [CAT/C/LKA/CO/5](#). See also [A/HRC/49/9](#).

⁵ See [CAT/C/LKA/CO/5](#).

⁶ Federal Administrative Court, judgments E-1866/2015 of 15 July 2016 and D-3619/2016 of 16 October 2017.

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

5.1 In comments submitted on 29 March 2023, the complainant contests the State party's arguments. With regard to the State party's plea of inadmissibility for non-exhaustion of domestic remedies, the complainant submits that the State party referred to extraordinary remedies but that the ordinary remedies had been exhausted. In any event, the debate is purely theoretical because, in the meantime, the Federal Administrative Court has rejected his request for re-examination.

5.2 The complainant contests the State party's allegation that he did not raise the allegation of torture in the ordinary proceedings. He declares that the Swiss authorities simply did not examine his allegations of torture and that the word "torture" does not even appear in their decisions.

5.3 As to the reports produced by the Family Help Association, the complainant points out that, while it is stated in them that the sequential trauma started in childhood, it is also mentioned that it was exacerbated by the torture that he had suffered and resulted in severe health impairments. Moreover, it is explained in detail in those reports why the complainant was not able to give an in-depth account of his torture. The torture is thus sufficiently documented.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in its observations of 15 December 2022, the State party contested that the complainant had exhausted all available domestic remedies because his request for re-examination was pending. However, his request was dismissed by a final decision of 2 February 2023. In the light of this information, the Committee considers that the State party's plea of inadmissibility has become moot and that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

6.3 The Committee recalls that, for a claim to be admissible under article 22 of the Convention and rule 113 (b) of its rules of procedure, it must rise to the basic level of substantiation required for the purposes of admissibility.⁷ The Committee notes the State party's argument that the evidence produced has already been examined by the domestic authorities. The Committee recalls that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice.⁸ The Committee gives considerable weight to findings of fact made by organs of the State party concerned;⁹ however, it is not bound by such findings. It follows that the Committee will make a free assessment of the

⁷ See, inter alia, *Z v. Denmark* (CAT/C/55/D/555/2013), para. 6.3; and *K.A. et al. v. Sweden* (CAT/C/39/D/308/2006), para. 7.2.

⁸ *G.K. v. Switzerland* (CAT/C/30/D/219/2002), para. 6.12; *S.K. v. Australia* (CAT/C/73/D/968/2019), para. 12.5; and *Z.S. v. Georgia* (CAT/C/70/D/915/2019), para. 7.4.

⁹ For example, *T.D. v. Switzerland* (CAT/C/46/D/375/2009), para. 7.7; and *Alp v. Denmark* (CAT/C/52/D/466/2011), para. 8.3.

information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.¹⁰

6.4 In the present case, the Committee observes that the State party's immigration and judicial authorities thoroughly examined the facts and evidence presented by the complainant and considered that some aspects of his account were not credible, that he did not have a political profile of interest to the Sri Lankan authorities and that the level of harm resulting from his illegal departure from Sri Lanka would not amount to persecution. On that basis, the authorities concluded that the complainant had not established the existence of substantial grounds to show that he would face a foreseeable, real and personal risk of being tortured if returned to Sri Lanka. The Committee also notes that the complainant contests the assessment of his credibility made by the authorities of the State party. However, the Committee observes that the complainant provided no documentation or other evidence to substantiate his assertions and that the authorities of the State party found, after a thorough assessment of all the facts and evidence presented at different levels of jurisdiction, that the complainant had not provided sufficient evidence that he ran a foreseeable, real and personal risk of being tortured if returned to Sri Lanka. Therefore, the Committee finds that the complainant has not established that the domestic evaluation of the facts and evidence concerning his alleged risk of treatment contrary to the Convention upon return to Sri Lanka suffered from any defects.¹¹

6.5 The Committee recalls its earlier decisions, in which it found claims to be manifestly unfounded where the author of a communication failed to submit substantiated arguments showing that the danger of being subjected to torture was foreseeable, present, personal and real. The Committee also recalls that, for a claim to be admissible under article 22 of the Convention and rule 113 (b) of its rules of procedure, it must not be manifestly unfounded. In the light of the above, and in the absence of any further relevant information, the Committee concludes that the complainant has failed to substantiate his claims sufficiently for the purpose of admissibility.¹²

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22 (2) of the Convention;
 - (b) That the present decision shall be communicated to the complainant and to the State party.
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¹⁰ For example, *I.E. v. Switzerland* (CAT/C/62/D/683/2015), para. 7.4. See also Committee against Torture, general comment No. 4 (2017), para. 50.

¹¹ *S.K. v. Australia*, para. 12.5.

¹² *Ibid.*, para. 12.6.