



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. 1076/2021^{*}, ^{**}

<i>Communication submitted by:</i>	B.S. (represented by counsel, Rami Söderberg)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	28 May 2021 (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 31 May 2021 (not issued in document form)
<i>Date of adoption of decision:</i>	3 November 2023
<i>Subject matter:</i>	Deportation to Tunisia of a person claiming to be at risk of torture
<i>Procedural issues:</i>	Admissibility; level of substantiation of claims
<i>Substantive issue:</i>	Non-refoulement
<i>Article of the Convention:</i>	3

1.1 The complainant is B.S., a national of Tunisia born in July 1989. He claims that the State party would violate his rights under article 3 of the Convention if it removed him to Tunisia. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 8 January 1986. The complainant is represented by counsel, Rami Söderberg.

1.2 On 31 May 2021, pursuant to rule 114 (1) of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to expel the complainant while the communication was being considered. On the same day, the Swedish Migration Agency decided to stay the enforcement of the complainant's expulsion order until further notice, pursuant to chapter 12, section 2, of the Aliens Act. On 27 January 2022, the State party requested the Committee to lift the interim measures. On 21 July 2023, the Committee, acting through the same Rapporteur, denied the request of the State party to lift the interim measures.

Facts as submitted by the complainant

2.1 The complainant was accused of being part of the Islamic militant group Ansar al-Sharia and, on 3 November 2013, the Tunisian authorities identified him as a terrorist and

* Adopted by the Committee at its seventy-eighth session (30 October–24 November 2023).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



added him to their “S17 list”. They reasoned that, because he held an engineering degree, he would be able to create a bomb. On the same day, at approximately 3 a.m., the Tunisian security police broke down the door to and entered his home, which he shared with other people. The security officers arrested him and confiscated his laptop and mobile phone, which were never returned to him.

2.2 Following the arrest, the security police held him for five days while transferring him to and from the police station for interrogation.¹ He was held with approximately 100 other persons in a small prison cell with nowhere to sleep, no access to water other than from the toilet and limited access to food. He was harassed by the guards, who forced him to run in the courtyard at 6 a.m. under threat that a dog would be set on him if he refused. He was constantly threatened with more violence, deprived of sleep and exposed to noise. In addition, he was threatened with torture if he failed to report that all was well when he was visited by a “human rights person”.² When transferred to the police station for questioning, to induce him to answer questions, the police officers beat him, deprived him of food and water and subjected him to electric shocks if he failed to say what they wanted him to say.

2.3 The police and security services at the Ministry of the Interior continued to monitor him and subject him to restrictions after his release on 8 November 2013.

2.4 On 24 April 2014, the complainant received a report from the Court regarding the preliminary investigation against him, which contained several inaccuracies but in which he was cleared of all charges.³ Nevertheless, the harassment by the security services continued and worsened, and they constantly monitored his activities, including his phone calls and social media accounts. He encountered serious difficulties in obtaining official documents, his application for a new passport was rejected, and he was informed that an exit ban had been imposed on him. In addition, the authorities denied him the documents and approvals that he needed to work as an engineer in the private and public sectors, making it impossible for him to find employment as an engineer or start his own business.

2.5 The authorities hindered his efforts to find alternative employment by constantly bringing him in for interrogation, making it impossible for him to comply with a work schedule. During most of the interrogations, the police would lock the complainant in a cell measuring 1 m², without any access to water, food or sanitation and without any explanation of the charges against him. During those short-term periods of detention, the complainant was subjected to the same treatment as before, including mental and physical abuse, severe beatings and electric shocks.

2.6 The complainant lists 13 specific incidents of such detention between March 2015 and August 2018, describing for each the date on which the police arrested him and the number of days – ranging between one and five – for which he was detained.⁴ One arrest, on 27 April 2017, followed a mass protest for human rights and democracy in Tataouine, which he was accused of having planned and led. During that protest, the police killed his cousin and told the complainant that the same might happen to him if he were not careful. Another arrest, on 12 July 2018, is said to have followed a claim made by an imprisoned person during interrogation by the security police to the effect that the complainant was planning a terrorist attack. In September 2018, shortly after the last of the 13 arrests, following which he was detained from 9 to 12 August 2018, the complainant fled to Sweden and applied for asylum.

¹ The author does not provide any further information about the name or location of the prison in which he was detained or about the police station at which he was interrogated.

² The author does not provide any information about the authority, agency or organization to which this “human rights person” belonged.

³ The complainant does not provide a copy of the decision, nor does he specify which Court took the decision or what charges were brought against him.

⁴ According to the complainant, he was detained on 11 March 2015 for four days; on 13 June 2015 for three days; on 5 February 2016 for two days; on 2 April 2016 for two days; on 25 July 2016 for two days; on 16 December 2016 for four days; on 27 April 2017 for two days; on 3 May 2017 for one day; on 5 May 2017 for one day; on 7 May 2017 for one day; on 7 April 2018 for two days; on 12 July 2018 for five days; and on 9 August 2018 for three days. The complainant does not provide any official documents to support these claims.

2.7 Efforts to harass the complainant continued after his departure from Tunisia. On 31 January 2021, the complainant was accused of a crime against a government official and summoned to attend an interrogation at the Ministry of the Interior on 13 February 2021. The complainant was summoned a second time, to attend an interrogation at the Ministry of the Interior on 1 February 2021. On 18 March 2021, he received a third summons, to attend an interrogation at the Ministry of the Interior on 24 March 2021. On 18 May 2021, the complainant was summoned for interrogation a fourth time, and he was subsequently summoned to attend a court hearing on 1 June 2021. The complainant appends copies of the four summonses for interrogation. Meanwhile, on 26 May 2021, members of the Tunisian police entered the house of the complainant's parents, saying that they wanted to know their son's whereabouts, threatening the complainant's family members and searching the entire house, leaving it in total chaos.

2.8 On 17 April 2019, the Swedish Migration Agency organized its first asylum interview with the complainant. On 23 August 2019, the Agency rejected the complainant's claim for asylum. The complainant's appeal was rejected by the Migration Court in Malmö, which, on 23 December 2020, upheld the Agency's decision. Another appeal to the Migration Court of Appeal in Stockholm was denied on 26 February 2021. On 14 April 2021, the complainant requested the Agency to stay his deportation in the light of new circumstances. The complainant attached to his request documents attesting that he had been summoned by the Ministry of the Interior and judiciary of Tunisia and documents from international human rights organizations about the treatment by the Government and security forces of Tunisia of people included in the "S17 list". In addition, the complainant submitted documents from human rights organizations in Tunisia, in which they deemed the allegations against the complainant to be politically motivated, and a medical report attesting that his health was deteriorating. On 15 April 2021, the Agency denied the complainant's request to stay the enforcement of his expulsion, stating that the part of the decision being challenged was not open to appeal.

Complaint

3.1 The complainant claims that his forcible return to Tunisia would constitute a violation by the State party of article 3 of the Convention because of the risk that he would be subjected to torture or other ill-treatment.

3.2 The complainant notes that the main reason for the rejection of his asylum application by the Swedish authorities is that it had not been proved that the Tunisian security services had an interest in him and that he would therefore not be at risk of torture or other ill-treatment upon return to Tunisia. The complainant contends that the different summonses for interrogation at the Ministry of the Interior, the court summons and the raid on his parents' home prove that he continues to face harassment and suspicion.

3.3 The complainant refers to documents and opinions provided by two Tunisian organizations,⁵ which testify to his belief that the alleged harassment by the Tunisian authorities is politically motivated. He adds that the documents demonstrate that there is a serious risk that he would be arbitrarily deprived of his liberty upon return to Tunisia and would face a serious risk of being subjected to the same treatment that he has previously suffered, including torture. The complainant adds that he would be forced to face criminal charges without the guarantee of a fair trial.

3.4 The complainant highlights that the treatment that he faced in Tunisia includes arbitrary deprivation of liberty, torture and denial of his fundamental rights, which resulted in constant emotional and psychological torture that seriously aggravated his mental health and resulted in anxiety, delusions and a sleeping disorder. The complainant adds that he has a profound fear of losing his life if returned to Tunisia. He contends that the treatment that he previously faced in Tunisia and the treatment to which he would risk being exposed upon return qualify as torture under article 1 of the Convention.

⁵ The complainant submits two documents in Arabic, which were purportedly drafted by these organizations, accompanied by an English translation.

3.5 The complainant holds that, in spite of the information that he has provided to the Swedish authorities, the State party has not properly investigated the information that he presented, including new information regarding his continued harassment following his departure from the country that did not exist at the time of the earlier decisions of the Swedish Migration Agency and the Migration Court. He adds that Sweden has never officially requested guarantees from Tunisia regarding how he would be treated upon return. Consequently, the complainant argues that the State party would violate its obligations under the non-refoulement principle if he were returned to Tunisia.

State party's observations on admissibility and the merits

4.1 On 27 January 2022, the State party submitted observations on the admissibility and merits of the communication. Regarding the facts of the case, the State party refers to the decisions and judgments of the Swedish migration authorities.⁶ It states that the complainant applied for asylum in Sweden on 8 April 2019 and that the Swedish Migration Agency rejected that application, deciding on 23 August 2019 to expel him to Tunisia. The Migration Court then rejected an appeal of that decision on 23 December 2020 and rejected a request for leave to appeal on 26 February 2021, which made the decision to expel the complainant final and non-appealable. Thereafter, the complainant submitted an application to the Swedish Migration Agency, arguing that there were impediments to the enforcement of his expulsion order. The Agency decided on 15 April 2021 not to grant the complainant a residence permit. According to the text of the decision, a translation of which was annexed to the State party's observations, the Agency acknowledged that the complainant had presented information about the fact that he had been summoned for questioning at the Ministry of the Interior of Tunisia and for a court hearing and medical statements confirming that he had been diagnosed with post-traumatic stress disorder and depression as a result of the treatment to which he had been subjected in Tunisia. The Agency held, however, that those circumstances were to be considered not as new but rather as repetitions of and additions to a threat that had already been examined. It added that the documents provided did not have the necessary probative value, as they were simple in nature and easy to forge. An appeal against that decision was rejected by the Migration Court on 13 July 2021, and leave to appeal to the same court was refused on 19 August 2021. The State party adds that, on 23 June 2021, the complainant applied to the Swedish Migration Agency a second time, claiming that there were impediments to the enforcement of his expulsion order, but his appeal was refused on 20 July 2021.

4.2 Regarding the admissibility, the State party indicates that it is not aware of the present matter having been examined under any other procedure of international investigation or settlement and notes that it does not contest the fact that all available domestic remedies have been exhausted in the present case. The State party argues that the complainant's claim fails to rise to the minimum level of substantiation required for the purposes of admissibility, as it is manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure.⁷ In support of that argument, the State party simply makes a general reference to its subsequent statements regarding the merits.

4.3 Regarding the merits, the State party recalls that, when determining whether there are substantial grounds for believing that the forcible return of a person to another State would entail a violation of article 3 of the Convention, the aim of such determination is to establish whether the individual concerned would personally be at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It notes that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture.⁸ The State party adds that the Committee's jurisprudence has shown that the burden of proof in such cases rests with the complainant, who must present an arguable case, adding that the assessment must be based on grounds that

⁶ The State party submits translations of the decisions of the Swedish Migration Agency of 23 August 2019 and 15 April 2021 and of the judgment of the Migration Court of 23 December 2020.

⁷ The State party refers to *H.I.A. v. Sweden* (CAT/C/30/D/216/2002), para. 6.2.

⁸ The State party refers to *E.J.V.M. v. Sweden* (CAT/C/31/D/213/2002), para 8.3; and *A.B. v. Sweden* (CAT/C/54/D/539/2013), para. 7.3.

go beyond mere theory or suspicion, although the risk does not have to meet the test of being highly probable.⁹

4.4 The State party notes that Tunisia is a party to the Convention and adds that it assumes that the Committee is well aware of the general human rights situation in the country. It states that it does not wish to underestimate the concerns that may legitimately be expressed regarding the human rights situation in Tunisia but that, in itself, that situation does not suffice to establish that the expulsion of the complainant would be contrary to article 3 of the Convention. It states that the Committee must thus focus on the foreseeable consequences of the complainant's expulsion to Tunisia in the light of his personal circumstances, as the Swedish migration authorities did in their assessment of the present case.

4.5 The State party recalls that the Committee is not an appellate, quasi-judicial or administrative body and notes that the Committee has found that considerable weight is to be given to findings of fact made by organs of the State party concerned.¹⁰ The State party notes that the Committee has held that it is generally for the organs of States parties, 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.¹¹ The State party adds that the national authorities are in a very good position to assess the information submitted by asylum-seekers and to appraise the credibility of their statements and claims. It underlines that both the Swedish Migration Agency and the Migration Court conducted thorough examinations of the complainant's case. The State party adds that the Agency had the benefit of seeing, hearing and questioning the complainant in person and that the Migration Court held an oral hearing. It notes that the complainant was represented by a public defender in the initial proceedings, upon appeal before the Swedish Migration Agency and upon appeal before the Migration Court. The State party thus contends that the complainant had ample opportunities to explain the facts and circumstances in support of his claims and to argue his case, orally and in writing, before the Swedish Migration Agency and the Migration Court and that the Agency and the Court had sufficient information to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the complainant's need for protection in Sweden. It argues that, after the expulsion order had become final and non-appealable, the Swedish Migration Agency examined on three different occasions whether there were impediments to its enforcement and that, on that basis, there is no reason to conclude that the domestic rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. It states that, accordingly, considerable weight must be attached to the opinion of the Swedish migration authorities, as expressed in their rulings ordering the expulsion of the complainant to Tunisia, and refers to the decisions of the Swedish Migration Agency and the judgment of the Migration Court in support of its contention that the return of the complainant would not entail a violation of article 3 of the Convention.

4.6 The State party states that the migration authorities made an overall assessment to determine whether the complainant had plausibly demonstrated that he faced a personal threat and demonstrated that he had not. It clarifies that the migration authorities did not question that the complainant had been detained by the Tunisian authorities in 2013 and that he may have been subjected to ill-treatment in that connection. The State party argues that, according to the complainant's own account, he was acquitted of the charges against him in 2014, and notes that the Swedish authorities did not consider that his submissions supported the claim that he was currently of interest to the Tunisian authorities. The State party argues that the migration authorities found that considerable parts of the complainant's account lacked credibility, as he had provided inconsistent information regarding several aspects of the

⁹ The State party refers to *H.O. v. Sweden*, communication No. 178/2001, para. 13; *A.R. v. the Netherlands* (CAT/C/31/D/203/2002), para. 7.3; *Kalonzo v. Canada* (CAT/C/48/D/343/2008), para. 9.3; *X. v. Denmark* (CAT/C/53/D/458/2011), para. 9.3; and *B.N.T.K. v. Sweden* (CAT/C/64/D/641/2014), paras. 8.7 and 8.8.

¹⁰ The State party refers to *N.Z.S. v. Sweden* (CAT/C/37/D/277/2005), para. 8.6; *N.S. v. Switzerland* (CAT/C/44/D/356/2008), para. 7.3; and *S.K. et al. v. Sweden* (CAT/C/54/D/550/2013), para. 7.4.

¹¹ The State party refers to *G.K. v. Switzerland* (CAT/C/30/D/219/2002), para. 6.12; and *A.N.M. v. Sweden* (CAT/C/60/D/677/2015), para. 7.6.

treatment to which he alleged that he had been subjected, including the claim that he was subject to an exit ban but had obtained a new Tunisian passport and a visa for Germany shortly before leaving Tunisia.

4.7 The State party contends that, as a general principle, the domestic authorities are best placed to assess not only the facts but also, more specifically, the credibility of witnesses, as they are the ones who have the opportunity to see, hear and assess the demeanour of the individual concerned.¹² The State party reiterates that both the Swedish Migration Agency and the Migration Court have had the benefit of seeing, hearing and questioning the complainant in person, directly assessing the information and documents submitted by him and examining the veracity of the claims made. The State party contends that there is no reason to conclude that the rulings by the domestic authorities were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. The State party submits that the complainant's account and the facts on which he relied in his complaint are insufficient to support the conclusion that the alleged risk of ill-treatment in the event of his return to Tunisia meets the requirements of being foreseeable, real and personal. It argues that, consequently, the return of the complainant to Tunisia would not entail a violation of article 3 of the Convention.

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

5.1 On 8 May 2023, the complainant submitted comments on the State party's observations, reiterating that there are substantial grounds for believing that he would be in danger of being subjected to torture if returned to Tunisia. He contends that the summonses repeatedly issued by the Ministry of the Interior of Tunisia calling him in for questioning demonstrate that the Government of Tunisia has an ongoing interest in him. He adds that the authorities have also visited and interrogated his father and other family members on several occasions, enquiring as to his whereabouts and leaving official documents summoning him for interrogation. The complainant attaches to his submission a video that purportedly shows his father explaining how he and his family were harassed by State agents who came to his house asking for his son, shouting at the family members present in the house and destroying his property. In the video, the father explains that he has been called to the police station several times for interrogations related to his son, who, he says, is wanted by the authorities, and shows copies of documents that purportedly are summonses addressed to his son. The complainant reiterates that, given the seriousness of the harassment and torture to which he was exposed during previous interrogations, he is convinced that he would risk the same treatment if the Ministry of the Interior had the opportunity to arrest or interrogate him again, which would be likely if he returned to Tunisia.

5.2 The complainant notes that, while the State party attached translations of the decision of the Swedish Migration Agency and the judgment of the Migration Court, it decided not to submit an English translation of his initial interview with the Agency. He adds that he requested the Agency to hold a second interview so that he could add information to support his case, but his request was rejected. The complainant contends that there were serious deficiencies in the Agency's initial examination of the reasons that he had invoked to support his request for asylum, which were not examined by the State official in charge of the interview. In this regard, the complainant mentioned that he was in a very vulnerable mental state and asked to see a psychiatrist, but his request was denied. The complainant argues that he had difficulties understanding what the interviewer was asking for and explains that the interviewer did not ask sufficient questions to clarify some of the details related to the risk that he would face upon return to Tunisia. The complainant holds that, as a result, he was at a severe disadvantage in the context of the evaluation of his reasons for asylum.

5.3 The complainant holds that the Government of Sweden failed to investigate his request for asylum in a thorough manner and did not comply with the standards required by international law and the Convention. The complainant requests the Committee to examine

¹² The State party refers to jurisprudence of the European Court of Human Rights, namely *R.C. v. Sweden* (application No. 41827/07), judgment of 9 March 2010, para. 52; and *F.G. v. Sweden* (application No. 43611/11), judgment of 23 March 2016, para. 118.

not only the statements and claims that he made before and that were accepted by the domestic authorities but also his full statements and the entire context as presented to the Committee. The complainant contends that the authorities did not give him the benefit of the doubt during the proceedings and argues that the migration authorities did not have sufficient information to make a well-informed and reasonable risk assessment regarding his need for protection. In this regard, the complainant points out that the authorities question his reliability but did not take sufficient measures to ensure that they were able to collect the necessary information and evidence. The complainant adds that the authorities wrongly questioned his reliability and the authenticity of several documents that he presented owing to their simple nature. In addition, he notes that, although the authorities questioned his credibility on the basis that he could not explain the motive for his persecution by the Tunisian authorities, it is not for a persecuted person to explain the reasons for harassment by an oppressing State. He argues that, in line with its international obligations, the Government of Sweden should have asked for explanations and assurances from the Government of Tunisia before deciding to deport him.

5.4 The complainant highlights that, according to the medical documents that he provided to the authorities and to the Committee, he is suffering from post-traumatic stress disorder, is currently being treated with antidepressants and is receiving therapy.¹³ He adds that, according to a medical analysis provided by a doctor in Tunisia who monitored the complainant's situation for six months in 2018 before he fled the country, he was experiencing an episode of major depression and was experiencing high levels of stress, in particular in situations of exposure to noise and harassment and in confined spaces.¹⁴ The complainant points out that his medical condition and symptoms are likely to have been caused by years of harassment and persecution in Tunisia. The complainant adds that physical injuries were also discovered and are likely to be the traces of torture or other ill-treatment.¹⁵ The author argues that it is not unusual for a victim suffering from post-traumatic stress disorder to have both vivid memories of the ill-treatment and difficulties in accurately recalling the experience. The complainant recalls that, for victims of ill-treatment, it is often very stressful to provide statements about what happened, and he clarifies that any inconsistency in the description of the treatment that he experienced in Tunisia can be traced to his diagnosis of post-traumatic stress disorder and to the stressful situation and pressure that he had faced. The complainant stresses that, despite the above-mentioned difficulties, during the proceedings before the Swedish authorities, he described in detail the reasons for his asylum request, was consistent and straightforward with the information that he provided and answered all the questions directly and honestly. The complainant contends that he should be held to be very reliable and argues that the fact that the Swedish authorities questioned his credibility is not in line with the benefit of the doubt, does not take into account the state of his health and is not in line with the responsibilities of the State to thoroughly examine his asylum claim.

¹³ In his comments on the State party's observations on admissibility and the merits, the complainant explicitly refers – for the first time in the body of the text of his communication to the Committee – to the fact that he suffers from post-traumatic stress disorder. Information regarding that claim had been annexed to the initial submission, which had included a document issued on 25 May 2021 by a psychiatrist, Dr. Signe Rommel. According to the translation of that document, the psychiatrist concluded that the complainant had been diagnosed with post-traumatic stress disorder in Tunisia. The psychiatrist noted that the complainant had told her about recurrent, intrusive and painful memories of traumatic events, recurring nightmares, dissociative reactions and flashbacks, that he displayed painful psychological reactions upon exposure to internal and external signals that reminded him of the trauma that he had experienced and that he was constantly scared and easily frightened. According to the translation, the psychiatrist suspected post-traumatic stress disorder but noted that the complainant's condition needed to be thoroughly examined in Sweden to confirm the diagnosis. The psychiatrist stated that the symptoms had been present for a long time and caused clinically significant suffering and added that the complainant had been diagnosed with depression and had a prescription to treat a sleeping disorder.

¹⁴ The complainant provides a document purportedly issued by Dr. Ahmed Chammakhi on 15 March 2023, in which the doctor confirmed that the complainant had been his patient in 2018 and in which he mentioned the symptoms reported by the complainant.

¹⁵ The complainant does not provide further details or documents to support this claim.

5.5 Referring to the State party's argument that he was able to obtain a passport and leave Tunisia despite allegedly being subject to an exit ban, the complainant explains that he tried for several years to obtain a passport and had to keep his whereabouts and his plans to leave the country secret. He insists that he tried to find out why he had been persecuted by the Government of Tunisia, including by requesting official documents and hiring a Tunisian lawyer. The complainant contends that a refugee should not be expected to explain the reasoning, logic and behaviour of an oppressing State.

5.6 The complainant highlights that the State party focuses its analysis on the initial investigations and detention to which he was subjected in 2013 in connection with offences for which he was absolved in 2014. The complainant notes, however, that those events marked only the beginning of the harassment against him and recalls that he was subsequently detained several times. The complainant notes that he provided that information to the migration authorities and stressed that, even in the six months prior to his departure from Tunisia, he was subjected to surveillance, harassment and detention by the authorities. In addition, the complainant reiterates that he was arrested after participating in public protests in 2017, during which his cousin was killed, and was threatened with death. The complainant notes that the Swedish authorities briefly touched upon that issue but failed to enter into an in-depth analysis thereof. The complainant argues that each of the individual arrests to which he was subjected¹⁶ was a violation of his rights and demonstrates the repeated pattern of persecution that he faced in the country, which constitutes a violation of the Convention. The complainant notes that the Swedish authorities did not question that the Tunisian authorities had detained him and that he could have been subjected to ill-treatment in connection with those periods of detention. The complainant states that he finds that recognition difficult to reconcile with the decision to expel him without any assurances or guarantees from the Government of Tunisia that such treatment should not be repeated. The complainant contends that the domestic authorities have not assessed his claim correctly.

5.7 The complainant refers to the existence of a consistent pattern of gross, flagrant and mass violations of human rights against political opponents in Tunisia. He recognizes that such a pattern is not in itself sufficient to determine that he would be at risk of being subjected to torture upon his return but stresses that it sheds light on the circumstances of his departure from Tunisia and the risks that he might face in the event of a forcible return to the country. The complainant contends that it has been demonstrated that there is a personal, foreseeable and real risk that he would be subjected to torture if forced to return to Tunisia.

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 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. It notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

6.3 The State party submits that the communication is inadmissible on the basis that it is manifestly unfounded. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues, which should be dealt with on the merits. Accordingly, the Committee declares the communication admissible and proceeds with its consideration of the merits.

¹⁶ See paras. 2.5 and 2.6 and footnote 4 above.

Consideration of the merits

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

7.2 The issue before the Committee is whether the forcible removal of the complainant to Tunisia would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) 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.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Tunisia. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.¹⁷

7.4 The Committee recalls its general comment No. 4 (2017), in particular paragraph 45 thereof, according to which the Committee will assess "substantial grounds" and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in the case of the complainant's deportation. Indications of personal risk may include, but are not limited to: (a) the political affiliation or political activities of the complainant or his or her family members; (b) arrest or detention without guarantee of fair treatment and trial; (c) previous torture; and (d) incommunicado detention or other form of arbitrary and illegal detention in the country of origin. With respect to the application of article 3 of the Convention to the merits of a communication submitted under article 22, the burden of proof is upon the author of the communication, who must 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 cannot elaborate on their case, such as when they have demonstrated that they have no possibility of obtaining documentation relating to their allegation of torture or have been deprived of their liberty, 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.¹⁸ The Committee recalls that it gives considerable weight to findings of fact made by organs of the State party concerned. However, it is not bound by such findings, and it follows that the Committee 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.¹⁹

7.5 The Committee recalls that it has previously expressed concern about consistent reports that torture and ill-treatment continue to be practised in the security sector in Tunisia, in particular against terrorism suspects,²⁰ and notes the complainant's claim that, upon return to Tunisia, he would face a foreseeable, real and personal risk of being subjected to torture or other ill-treatment and to arbitrary detention, without the necessary guarantees of a fair trial. The Committee also notes the complainant's contention that he has been subjected to

¹⁷ See, for example, *E.J.V.M. v. Sweden* (CAT/C/31/D/213/2002), para. 8.3; *R.S.M. v. Canada* (CAT/C/50/D/392/2009), para. 7.3; and *Y.B.F., S.A.Q. and Y.Y. v. Switzerland* (CAT/C/50/D/467/2011).

¹⁸ General comment No. 4 (2017), para. 38.

¹⁹ *Ibid.*, para. 50.

²⁰ CAT/C/TUN/CO/3, para. 15. See also CCPR/C/TUN/CO/6, para. 31.

torture, repeated arbitrary detentions and harassment and was informed that he had been subjected to an exit ban owing to his perceived affiliation with a terrorist organization called Ansar al-Sharia. The Committee further notes the information provided by the complainant that he was summoned by the Tunisian authorities for further interrogations and a court hearing after the Swedish Migration Agency had rejected his application and the Migration Court had rejected his appeal. The Committee notes the complainant's contention that he has been diagnosed with post-traumatic stress disorder and depression and that it is not unusual for a victim suffering from post-traumatic stress disorder to have both vivid memories of the ill-treatment and difficulties in accurately recalling the experience. The Committee also notes the complainant's argument that the authorities did not give him the benefit of the doubt during the proceedings and that they wrongly questioned his reliability and the authenticity of several documents. The Committee further notes the complainant's argument that the Swedish authorities did not assess his claim correctly, did not take into account important information and did not accept that the information that he had presented following the initial decision to deport him to Tunisia qualified as new circumstances. The Committee notes the complainant's submission that there is a personal, foreseeable and real risk of his being subjected to torture if he is forced to return to Tunisia, owing in part to the existence of a consistent pattern of gross, flagrant and mass violations of human rights against political opponents in the country. The Committee also notes the complainant's argument that a refugee should not be expected to explain the reasoning, logic and behaviour of an oppressing State.

7.6 The Committee notes the State party's argument that the national authorities are in a good position to assess the information submitted by asylum-seekers and to appraise the credibility of their statements. It also notes that the State party does not wish to underestimate the concerns that may legitimately be expressed with respect to the current human rights situation in Tunisia but adds that, in themselves, those concerns do not suffice to establish that the expulsion of the complainant would be contrary to article 3 of the Convention. The Committee further notes that the State party contends that the migration authorities found that there was a lack of credibility in considerable parts of the complainant's account, as he had provided inconsistent information regarding several aspects of his alleged treatment. Similarly, the Committee notes that the State party's authorities did not question that the complainant had been detained in 2013 and that he may have been subjected to ill-treatment in that connection but did not consider that his submissions supported his claim that he was currently of interest to the Tunisian authorities.

7.7 Having taken account of the arguments presented by the parties, the Committee agrees with the State party that, while the fact that a person has previously been subjected to torture or been detained or imprisoned in the State of origin in conditions amounting to torture or ill-treatment is an important factor that the State party needs to consider,²¹ the question of whether the removal of a person to another State would violate article 3 of the Convention ultimately depends on the risk faced by that person in the future. The Committee notes in this connection the State party's claim that the record does not support the contention that the complainant was currently of interest to the Tunisian authorities. The Committee considers, however, that the complainant has presented to the authorities of the State party and to the Committee four summonses for interrogation that appear to have been issued by the Tunisian authorities after the Swedish Migration Agency had rejected his application and the Migration Court had rejected his appeal and that those summonses would appear to strongly support his claim that the Tunisian authorities remained interested in his activities.

7.8 The Committee recalls that the complainant submitted those documents to the Swedish Migration Agency when he petitioned it to stay his planned deportation owing to impediments to enforcement based on new circumstances. For its part, the Agency asserted simply that the documents were easy to forge and thus could not be accorded any real probative value. The Committee considers, however, that simple assertions that documents are easy to forge cannot, without further elaboration, form a proper basis for rejecting them

²¹ General comment No. 4 (2017), para. 29 (a) and (e). See also Council of the European Union Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, art. 4 (4).

and that the State party does not point to anything about the documents – and has made no effort to look further into questions about their authenticity – that would support a reasoned conclusion that they were inauthentic. The Committee notes that the State party submits that the information provided by the complainant regarding the alleged interest of the Tunisian authorities in him is not to be considered as new but, rather, is merely a repetition of and addition to a threat that has already been examined and, for that reason, declined to consider it under its procedures. The Committee considers, however, that the documents appear to bear directly on the central issue of whether the complainant remains of interest to the Tunisian authorities and speak directly to facts that did not exist at the time of the earlier decisions of the Swedish Migration Agency and the Migration Court.

7.9 Given the detailed account and information provided by the complainant, including supporting documents, in combination with the seriousness of the treatment to which the complainant was allegedly subjected, including arbitrary detention and torture, and which the State party has not contested, the Committee considers that the State party should have taken steps to assess the information provided by the complainant rather than summarily dismissing it.²² The Committee also considers it worth noting that the fact that the complainant was eventually able to leave Tunisia in 2018 – four years after being informed, in 2014, that he had been made subject to an exit ban – does not present an obvious inconsistency in his account and appears to be consistent with reports regarding the capricious manner in which exit bans have reportedly been imposed. In this regard, it takes note in particular of the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his visit to Tunisia,²³ in which it is noted that persons subject to “S17 orders” are informed that they have been made subject to an exit ban but do not receive any written order or explanation, and reports that “S17” measures are not explicit travel bans but sometimes amount to being *de facto*.²⁴ In any event, the Committee recalls paragraph 42 of its general comment No. 4 (2017), in which it noted that victims of torture and other vulnerable persons frequently suffer from post-traumatic stress disorder, which can result in a broad range of symptoms, including involuntary avoidance and dissociation, that States parties should therefore refrain from following a standardized credibility assessment process to determine the validity of a non-refoulement claim and that, with respect to potential factual contradictions and inconsistencies in the author’s allegations, States parties should appreciate that complete accuracy can seldom be expected of victims of torture.

8. Accordingly, having considered all the information submitted to it, the Committee, acting under article 22 (7) of the Convention, considers that the return of the complainant to Tunisia on the basis of a conclusion that he is no longer of interest to the Tunisian authorities would constitute a breach by the State party of article 3, read in conjunction with article 1, of the Convention.

9. The Committee is of the view that the State party is required by article 3 of the Convention to reconsider the complainant’s application in the light of its obligations under the Convention and the present findings. The State party is requested to refrain from expelling the complainant while his asylum application is being reconsidered.

10. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days of the date of transmittal of the present decision, of the steps it has taken to respond to the above observations.

²² See *M.G. v. Switzerland* (CAT/C/65/D/811/2017), para. 7.4. See also the European Court of Human Rights, *M.A. v. Switzerland* (application No. 52589/13), judgment of 18 November 2014, paras. 62–69; and, *mutatis mutandis*, *M.T. v. Spain* (CRC/C/82/D/17/2017), paras. 13.4, 13.6 and 14.

²³ A/HRC/40/52/Add.1, para. 45.

²⁴ Amnesty International, “‘They never tell me why’: arbitrary restrictions on movement in Tunisia” (London, 2018), p. 13.