



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

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COMMITTEE AGAINST TORTURE
Thirty-first session
10 – 21 November 2003

DECISION

Communication No. 210/2002

Submitted by : Mr. V. R.
Alleged victim: The complainant
State Party: Denmark
Date of complaint: 13 May 2002 (initial submission)
Date of present decision: 17 November 2003

[ANNEX]

* Made public by decision of the Committee against Torture..

ANNEX

DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22
OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN
OR DEGRADING TREATMENT OR PUNISHMENT

Thirty-first session

Concerning

Communication No. 210/2002**

Submitted by : Mr. V. R.
Alleged victim: The complainant
State Party: Denmark
Date of complaint: 13 May 2002 (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 17 November 2003,

Having concluded its consideration of complaint No. 210/2002, submitted to the Committee against Torture by Mr. V. R. 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 author of the complaint, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1. The complainant is Mr. V. R., a citizen of the Russian Federation residing in Denmark at the time of the submission of the complaint. He claims that his forcible return to the Russian Federation would constitute a violation of article 3 of the Convention against Torture by Denmark. He is not represented by counsel.

The facts as submitted:

** Pursuant to rule 104 of the Committee's rules of procedure, Mr. Yakovlev did not participate in the examination of this complaint.

2.1 On 6 November 1992, the complainant and his wife entered Denmark and immediately applied for asylum. On 5 November 1993, the Danish Refugee Board upheld a previous decision of the Directorate of Immigration according to which the complainant and his family had to leave Denmark by 20 November 1993. The complainant and his family left Denmark and returned to Russia.¹

2.2 On 26 July 1994, and upon returning to the Russian Federation from Denmark, the complainant alleges that he was arrested and charged with unlawfully crossing the border, participating in subversive offences and defaming persons representing authority. He alleges that he was detained by the authorities from 26 July 1994 to 20 January 1998 and was subjected to various forms of torture, including having gas passed up through his windpipe until he vomited and forcing him to swallow soup straight from a bowl with his hands tied behind his back. In January 1996, he alleges to have been sentenced to three and a half years imprisonment for having unlawfully crossed the border, and having participated in subversive offences. Upon release, he became a member of the Citizens' Union where he carried out activities on civil rights issues. As a result of these activities, he alleges to have come into conflict with the authorities, which again deprived him of his liberty and subjected him to torture.

2.3 On 15 July 1999, the complainant and his wife and child entered Denmark for the second time; the next day, they applied for asylum. On 19 December 2001, the Danish Immigration Service refused asylum. On 21 March 2002, the Refugee Board upheld this decision and the complainant and his family were asked to leave Denmark. The complainant requested the Refugee Board to reopen the case, as he claimed that an opinion of the Department of Forensic Medicine of 21 December 2000 ("opinion of 21 December 2000") was defective. He also stated that his wife had been subjected to torture and that she had had flashbacks during the Board hearing, as one of the Board members reminded her of a Russian police officer. On 27 June 2002, the Refugee Board considered his application but refused to reopen the asylum case.

The complaint:

3.1 The complainant claims that as there is a real risk that he will be subjected to torture on return to the Russian Federation, his forced return would constitute a violation of article 3 of the Convention. He supports his fear of torture with the allegation that he was previously tortured, was an active member of the Citizens' Union, and was convicted of a criminal offence.

3.2 According to the complainant, the opinion of 21 December 2000 on which the Refugee Board largely based its decision not to grant him asylum was not thorough and was open to interpretation. He claims that this opinion does not deny that he suffers from chronic post traumatic stress disorder caused by the effects of torture. He also contends that the opinion refers to scars on his body caused by previous acts of torture.

3.3 In addition, he states that even if he does suffer from paranoid psychosis (as stated in the same opinion) a return to the Russian Federation would involve detention in prison, where he claims it is the ordinary practice of the authorities to torture detainees, or detention in a closed psychiatric institution.

¹ The exact date of their return is not provided.

The State party's observations on admissibility and merits and the petitioners comments thereon

4.1 By note verbale, of 12 September 2002, the State party provided its submission on the admissibility and merits of the communication. It submits that the complainant has failed to establish a prima facie case, for purposes of admissibility. If the Committee does not dismiss the communication for that reason, the State party submits that no violation of the provisions of the Convention occurred in relation to the merits of the case.

4.2 The State party describes the organization and decision-making process of the Refugee Board in detail and submits, inter alia, that, as is normally the case, the complainant was assigned an attorney who had an opportunity as well as the complainant to study the files of the case and the background material before the meeting of the Board. The hearing was also attended by an interpreter and a representative of the Danish Immigration Service.

4.3 With respect to the application of article 3 of the Convention to the merits of the case, the State party underlines that the burden to present an arguable case is on the complainant, in accordance with paragraph 5 of the General Comment on the Implementation of article 3 adopted by the Committee on 21 November 1997. By reference to this General Comment, the State party points out that the Committee is not an appellate, quasi-judicial or administrative body but rather a monitoring body. The present communication does not contain any information that had not already been examined extensively by the Danish Immigration Service and the Refugee Board. The State party submits that, in its view, the complainant is attempting to use the Committee as an appellate body in order to obtain a new assessment of a claim already thoroughly considered by Danish immigration authorities.

4.4 As to whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to the Russian Federation, the State party refers to the decision of the Refugee Board in its entirety. In the decision of the Refugee Board of 21 March 2002, it was held that the complainant and his wife had "not rendered probable in a convincing and credible way that after their return to Russia in 1994 and until their departure in 1999 they had been subjected to asylum-relevant outrages, or that upon a return they would be at such risk thereof that there was a basis for granting them residence permits under section 7 of the Aliens Act."

4.5 The State party submits that the Refugee Board's assessment corresponds to the practice of the Committee in considering past torture as one of the elements to be taken into account when considering whether a complainant would risk being tortured if returned to his country of origin. In this regard, the Board attached decisive importance to the opinion of 21 December 2000, stating, inter alia, that no obvious physical or mental effects of torture as stated by the complainant were found at his examination. The Board therefore set aside the complainant's statement of having been subjected to torture.

4.6 A translation of the opinion of 21 December 2000 has not been provided but is interpreted by the State party². During the examination, the author claimed to have been subjected to various forms of torture. The examination concluded that there were no signs of fresh violence. As signs of older violence, were found a small non-specific scar on his back and on his left foot. Moreover, there were depressions on the outer side of his front teeth. It is stated that these changes might be due to corrosive burns, but were not otherwise specific. The author was found to suffer from a substantial personality change, which could be seen as a chronic development of a post-traumatic stress disorder, but most likely the disorder should be diagnosed as a paranoid psychosis (mental disorder with delusions of persecution). By way of conclusion, the Department of Forensic Medicine stated that no obvious physical or mental effects of torture as stated in the case had thus been found directly.

4.7 In setting aside the statement that the author had been subjected to torture, the Board found that this decisively weakened the author's case. It further noted that the statement of the author's wife was less convincing, and that despite repeated questioning - she had only been able to explain about the reason for the final decision on the departure in general terms. The Board concluded that it could not accept either the author's statement or his wife's statement about their asylum motive. Although it did not entirely reject their statement's to the effect that the author had carried out activities for the Citizens Union concerning civil rights issues, that he had certain conflicts with the authorities and that a search had been carried out of their home, upon an overall assessment of the information provided it found that the author and his wife had not rendered probable in a convincing and credible way that after their return in 1994 and until their departure in 1999 they were subjected to asylum-related outrages, or that upon their return they will be at such risk thereof.

4.8 The State party refers to the claim that the complainant's application for asylum was refused even though the opinion of 21 December 2000 does not exclude the possibility that the complainant suffers from post-traumatic stress disorder. The State party argues (as is set out in the preceding paragraph) that upon examination the complainant was found to suffer from a substantial personality change which could be the result of post-traumatic stress disorder, but is most likely diagnosed as paranoid psychosis. Thus, the State party maintains that there is no medical information proving that the complainant was subjected to torture.

4.9 According to the State party, in requesting the Refugee Board to reopen his case, the complainant stated, inter alia, that he disagreed with the opinion of 21 December 2000, as he claimed that his mental condition is attributable to the effects of torture, and that the examination made by doctors prior to preparing the opinion was not sufficiently thorough. The State party notes that in refusing to reopen his case on 27 June 2002, the Refugee Board found that no new information had come to light which would provide a basis for assuming that the opinion of 21 December 2000 was defective.³ In the State

² On 5 November 2003, the State party provided a copy of the decision in English for the Committees consideration.

³ It also notes the Board's reference to the fact that the complainant can complain of this opinion in accordance with existing rules and states that the complainant had previously complained of a psychiatric report procured from the Clinic of Forensic Psychiatry for the purpose of the opinion of the Department of Forensic Medicine. The clinic responded that it could not comply with the complainant's request to alter the opinion as the complainant and the clinic disagree on the conclusion.

party's view, the simple fact that the complainant disagrees with the conclusion of the opinion does not alter this.

4.10 In setting aside the complainant's allegations of having been previously tortured, the Refugee Board did not consider the complainant's statement credible or substantiated. The same is said to be true of the complainant's wife's statement, in respect of which the Board found that despite repeated questioning she was only able to explain about the reason for the final decision on the departure in general terms. The State party also refers to the fact that several instances concerning statements of the complainant and his wife were not very convincing. By way of example, the State party refers to a memorandum of 26 November 2001 from the Ministry of Foreign Affairs, which is mentioned in the Refugee Board decision. The Ministry had been requested to comment on the authenticity of the transcript of a judgment dated January 1996, allegedly against the complainant. Although it could not establish whether the judgment was authentic, it found that certain issues in the transcript were extraordinary. There was no reference to the underlying criminal provisions, the punishment imposed was meted out in parts of a year as opposed to whole years, which is unusual, and the punishment imposed was imprisonment and not work camp, which would have been normal in a case like this one. The State party also refers to the complainant's allegation, in the context of his request to the Board to reconsider his case, that his wife had been subjected to torture and that she had flashbacks during the Board hearing as one of the Board members reminded her of a Russian police officer. The Board noted that the complainant's wife did not appear to the board as a person "in shock" during the hearing and that this argument could not lead to a reversal of its decision.

4.11 The State party refers to the Refugee Board's statement that it would not entirely reject the complainant's statement to the effect that the complainant had carried out activities for the Citizens' Union, that he had certain conflicts with the authorities, and that his home had been searched. However, the State party argues that it follows from the practice of the Committee that "a risk of being detained as such is not sufficient to trigger the protection of article 3 of the Convention".⁴

4.12 In addition, the State party argues that the complainant has not substantiated that he is wanted by the authorities in his country of origin and risks being arrested if he were to return.⁵

4.13 In conclusion, the State party emphasizes that the Russian Federation ratified the Convention on 3 March 1987 and recognized the competence of the Committee against Torture to receive and process individual communications under article 22 of the Convention. Thus, it argues, the complainant does not risk return to a state which is not a State party to the Convention and where the complainant does not have the possibility of applying to the Committee for protection.⁶

⁴ The State party refers *I.O.A. v. Sweden*, Complaint No. 65/1997, Views of 19 May 1998.

⁵ It refers to *K.N. v. Switzerland*, Complaint No. 94/1997, Views of 19 May 1998.

⁶ *Tahir Hussain Khan v. Canada*, Complaint No. 15/1994, Views of 18 November 1994. *Balabou Mutombo v. Switzerland*, Complaint No. 13/1993, Views of 27 April 1994 and *S.C. v. Denmark*, Complaint No. 143/1999, Views of 3 September 2000.

5.1 In November 2002, the complainant commented on the State party's submission. He reiterated his previous claims and contested the findings of the Refugee Board. He provided detailed arguments to demonstrate the authenticity of the January 1996 judgment against him and transmitted medical opinions to demonstrate that his wife is unstable. He claimed that the Refugee Board ignored her allegation that she was raped while in police detention in 1995.

5.2 The complainant does not provide details of his wife's case. His wife gave details of events after their return to the Russian Federation in 1994 in her asylum application of 16 September 1999 and 20 September 1999, and in a further interview of 9 November 1999. She alleged that after their return, she had been detained for four days during which she was separated from her child. After returning to her home she was interrogated again and given a blow to the head. She was subsequently charged with having left the Russian Federation without permission and was given a suspended sentence. In her interview on 9 November, she alleged that until 1995 she was summoned every week to the police station to be interrogated. At this interview in November 1999, she also alleged that in November 1995, she had been raped by more than one policeman. In January 1999, and during a search of their house, both her husband and son were beaten.

5.3 The complainant submits that if the State party does not entirely reject his statement that he carried out activities for the Citizens' Union, that he had certain conflicts with the authorities, and that his home had been searched, it must be aware that it is probable that he was subjected to torture. In this regard, he attaches information from various non-governmental organizations referring to the torture inflicted on human rights activists and detainees in the Russian Federation. He also claims that the techniques employed by the torturers often leave few or no physical traces. Finally, he forwards a copy of a medical opinion from a clinical psychologist in Norway, dated 25 November 2002, in which he is described as a "torture victim".

5.4 By letter of 12 August 2003, the complainant informed the Committee that although he and his family had spent some time in Norway since the registration of his complaint by the Committee, for fear of being deported by the Danish authorities, they have since returned to Denmark where they are staying with friends (no dates are provided). He also attaches another letter, dated 18 April 2000, from a psychologist stating that the complainant has "severe symptoms of P.T.S.D. (sleeping disorder, stress, psycho traumatic suffering) as a result of imprisonment and torture in his native country."

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 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. The Committee also notes that the exhaustion of domestic remedies is not contested by the State party. While the State party alleges that the complainant has failed to establish a prima facie case for the purpose of admissibility, the Committee notes that it has not clarified the reasons on which it makes this assessment. Indeed, the Committee cannot

find any reason under rule 107 of its rules of procedure to consider this communication inadmissible.

6.2 The Committee must decide whether the forced return of the petitioner to the Russian Federation would violate the State party's obligation, under article 3, paragraph 1 of the Convention, not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In order to reach its conclusion, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows 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 whether the particular person would be in danger of being subjected to torture upon his 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 gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.3 The Committee notes that the complainant's main argument relates to the way in which the Refugee Board reached its decision not to grant him asylum, in particular its interpretation of the medical opinion of 21 December 2000 addressing the question of whether the complainant had been subjected to torture. The Committee is not persuaded by the complainant's arguments that he faces a real and personal risk of torture if returned to the Russian Federation at the present time.

6.4 Consequently, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to the Russian Federation would not constitute a breach of article 3 of the Convention.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]