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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. 634/2014*, **

Communication submitted by:	M.B., A.B., D.M.B. and D.B. (represented by counsel, Jytte Lindgard)
Alleged victims:	The complainants
State party:	Denmark
Date of complaint:	30 September 2014 (initial submission)
Date of present decision:	25 November 2016
Subject matter:	Deportation to the Russian Federation
Procedural issue:	Non-substantiation of claims
Substantive issue:	Non-refoulement
Article of the Convention:	3

1.1 The complainants are M.B. (the first complainant) and his wife, A.B. (the second complainant), Russian nationals born in 1966 and 1975, respectively. The complaint is also submitted on behalf of their children, D.M.B. (the third complainant) and D.B. (the fourth complainant), born in 2010 and 2014, respectively. At the time of submission, the complainants were residing in Denmark and awaiting their deportation to the Russian Federation, following the rejection of their asylum applications. They claim that their return to the Russian Federation would constitute a violation by Denmark of article 3 of the Convention. The complainants are represented by counsel, Jytte Lindgard.

1.2 On 15 October 2014, in application of rule 114, paragraph 1, of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from returning the complainants to the Russian Federation while their communication was being considered by the Committee. The State party acceded to this request. On 12 August and 5 November 2015, the Committee, acting through the same Rapporteur, denied the State party's request to lift interim measures.

* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Sébastien Touzé and Kening Zhang.

Factual background

2.1 The first complainant is an ethnic Ingush of the Muslim faith who was born in Kazakhstan, where he obtained a higher education degree as a mechanical engineer. He had lived in Grozny, Chechnya, Russian Federation, since 1992, working in the oil industry. He fled for Ingushetia, Russian Federation, with his parents and three sisters in 1995 because of the military operation in Chechnya. After living in a refugee camp in Karabulak, Ingushetia, until 2001, the first complainant moved to Nasyr-Kort, a suburb of Nazran, with his parents and two sisters. He gradually started a small business repairing cars and then opened a grocery shop in Nazran in 2008. On 21 June 2009, he married the second complainant, also an ethnic Ingush of the Muslim faith, who was born in the Russian Federation.

2.2 The first complainant submits that, on 15 September 2013, while he was in the grocery shop with his youngest sister, two men of North Caucasian appearance entered. One of the men spoke Ingush to the first complainant. The two men spoke Russian to each other. They bought large quantities of food[1] and subsequently asked the first complainant to transport them and the goods to the village of Galashki, which he agreed to do. On the way, he was asked to stop his car on the edge of a forest, and one of the two men made a telephone call in Ingush;[2] a few minutes later, three other men came out of the forest. The men, who wore camouflage, were bearded and armed, turned out to be insurgents. The first complainant was told by one of the two men whom he was transporting in his car to forget what he had seen. He was also told that the men knew where he and his spouse lived and that their current conversation was being videotaped on a mobile phone by the second man in the car.

2.3 Shortly after midnight on 18 November 2013, the first complainant received a call from his elder sister, who told him that armed men wearing camouflage and balaclavas were at their parents' house, where the complainants' family lived, and had arrested his youngest sister.[3] When he arrived at the house, he was struck in the neck and lost consciousness. The complainants submitted to the Committee two handwritten letters, in Russian, from their neighbours certifying that they had witnessed the incident on 18 November 2013 and saw the first complainant's motionless body being dragged to two unmarked vehicles standing next to his parents' house, while his youngest sister walked to the vehicles in the company of the armed men.

2.4 The first complainant woke up in prison, where he was detained for 14 days,[4] during which he was interrogated by the Federal Security Service of the Russian Federation[5] and

[1] At the asylum screening interview conducted by the Danish Immigration Service on 7 February 2014, at the substantive asylum interview conducted by the Danish Immigration Service on 24 March 2014 and at the hearing before the Refugee Appeals Board on 12 September 2014, the first complainant made inconsistent statements about the type and quantity of goods bought by the two men.

[2] At the substantive asylum interview conducted by the Danish Immigration Service, the first complainant stated that the phone conversation was very short and in Russian.

[3] There is no information on file as to why the first complainant's sister was arrested and under what circumstances she was reportedly released three days later.

[4] At the asylum screening interview conducted by the Danish Immigration Service, the first complainant stated that he had been detained for 1 1/2 months before his departure from the Russian Federation. At the substantive asylum interview conducted by the Danish Immigration Service and at the hearing before the Refugee Appeals Board, the first complainant made inconsistent statements about the circumstances when he awoke in prison, including whether he was alone in the cell, whether he was doused in water and whether he was handcuffed.

[5] According to the first complainant's asylum application of 6 January 2014, completed by him in Russian, he left the country and fled with his family because his life was in real danger, since the

tortured on a number of occasions.[6] He was shown the video filmed on 15 September 2013, which was apparently found during a special operation on the house of one of the insurgents, who had been killed. The first complainant then told the authorities about the incident of 15 September 2013. To secure his release, the first complainant had to sign a statement that he would cooperate with the authorities. His domestic passport was taken away. On 30 November 2013,[7] he was dropped off on wasteland at the border between Ingushetia and North Ossetia-Alania. He was told that he had been lucky because normally, he would have been shot. He went to a friend's house and stayed there until he fled the Russian Federation on 1 January 2014 with his pregnant wife and their child.[8]

2.5 The first, second and third complainants arrived in Denmark on 5 January 2014 and applied for asylum on the same day. The first and second complainants were interviewed by the Danish Immigration Service on 7 February and 24 March 2014. On 27 March 2014, the Danish Immigration Service rejected the first complainant's asylum application on the ground that, on central points, he had made inconsistent statements about the incident that gave rise to the authorities' interest in him. Furthermore, he and the second complainant had provided contradictory information regarding the dates and circumstances of the seizure of their identity documents by the Federal Security Bureau during one of the searches of their parents' house after the complainants' departure from the Russian Federation. The Danish Immigration Service therefore found that the complainants would not risk persecution or torture upon their return to the Russian Federation.

2.6 On 16 July 2014, the second complainant gave birth to her and the first complainant's second child, D.B. On 5 September 2014, the Danish Immigration Service upheld its decision of 27 March 2014, thereby extending the refusal to grant asylum to comprise the fourth complainant. That decision was appealed to the Refugee Appeals Board on 5 September 2014.

2.7 On 12 September 2014, at the beginning of the hearing before the Refugee Appeals Board, the complainants' counsel requested the Board to order an examination of the first complainant for signs of torture. On the same day, the Board upheld the rejection by the Danish Immigration Service of the first complainant's asylum application without summoning him for the aforementioned examination. It found that he had failed to substantiate the grounds for asylum relied upon and did not accept his statement provided in support of the asylum application to be factual. In that respect, the Board emphasized that the first complainant had made inconsistent statements about the incident that gave rise to the authorities' interest in him, namely about the goods that he had delivered, the language used by one of the two men in the telephone conversation on 15 September 2013 and the place to which he had delivered goods. The Board further emphasized that the first complainant had also made inconsistent statements about the circumstances when he woke up in prison, including whether he was alone in the cell, whether he was doused in water

Russian special services demanded that he admit that he was an accomplice of terrorists and insurgents.

[6] According to the first complainant's statements made at different stages of the asylum proceedings, a plastic bag was put over his head, and he was punched and hit with sticks in the abdomen, liver and kidneys. He was also verbally abused, kicked in the hollows of his knees, burned with cigarette butts and subjected to other humiliating forms of torture and ill-treatment.

[7] At the asylum screening interview conducted by the Danish Immigration Service, the first complainant initially stated that he had been released on 30 November or 1 December 2013 and then, having checked his calendar, clarified that he had been released on 3 December.

[8] The first complainant's driving licence, the second complainant's domestic passport and the third complainant's birth certificate were taken away by the two men who transported the complainants in a minibus from the Russian Federation to a "safe place", which turned out to be Denmark, and never given back to them. The complainants never had international passports that would allow them to leave the Russian Federation legally.

and whether he was handcuffed. The Board also observed that his statement contained many small inconsistencies, which, however, could not in themselves be accorded crucial importance. In that respect, the Board assessed whether the reason for the inconsistencies as a whole might be that the first complainant had been subjected to abuse, as he had claimed. However, on the basis of an overall assessment, the Board found that that could not be the case. Accordingly, the Board found that the first complainant would not risk persecution as set out in section 7 (1) of the Aliens Act or be in need of protection status as set out in section 7 (2) of the Act should he return to the Russian Federation. For the same reasons, the Board found no basis for adjourning the case pending an examination for signs of torture.

2.8 In a separate decision, also dated 12 September 2014, the Refugee Appeals Board assessed the second complainant's ground for asylum, i.e., her husband's fear of being killed by the authorities, including the Federal Security Bureau, if returned to Ingushetia in the Russian Federation. The Board did not accept the statement made by the second complainant in support of the asylum application as fact, because it contained many inconsistencies. Accordingly, and since she had no independent grounds for asylum, the Board found that the second complainant would not risk persecution as set out in section 7 (1) of the Aliens Act or be in need of protection status as set out in section 7 (2) of the Act should she return to the Russian Federation.

2.9 The complainants were informed by the first complainant's elder sister that the Federal Security Bureau had continued to look for him after he and his family fled the Russian Federation and that Bureau officials had come to the family's house several times, including in December 2013, February 2014 and March 2014. During one of those visits, the authorities searched the house and seized documents, including the first complainant's birth certificate, school diploma and business documents. The authorities last went to their house in mid-September 2014.

The complaint

3.1 The complainants submit that the first complainant was subjected to torture in the Russian Federation and that the Danish immigration authorities rejected their asylum applications without summoning the first complainant for an examination for signs of torture. With reference to the Committee's jurisprudence,[9] the complainants argue that, in its credibility assessment, the Refugee Appeals Board did not take into account that persons who have been subjected to torture have difficulties in giving an account of facts, including dates.

3.2 The complainants claim that the first complainant's deportation to Ingushetia in the Russian Federation would expose him to the risk of being tortured or killed by the Federal Security Bureau, which believes that he is an insurgent. He also fears being tortured by the insurgents because he signed an agreement to cooperate with the authorities in their search for the insurgents. In addition, the first complainant claims that the authorities in the Russian Federation will not protect him against the insurgents, because of his imputed cooperation with the latter. For these reasons, the first complainant submits that the State party will be in breach of its obligations under article 3 of the Convention if they return him and his family to the Russian Federation.

State party's observations on admissibility and the merits

4.1 The State party submitted its observations on admissibility and the merits on 14 April 2015. As to the facts on which the present communication is based, it refers to the

[9] Reference is made to communication No. 416/2010, *Ke Chun Rong v. Australia*, decision adopted on 5 November 2012, para. 7.5.

complainants' statements during the asylum proceedings and recalls that neither the first nor the second complainant was a member of any political or religious associations or organizations, or was politically active in any other way.

4.2 The State party describes the structure and jurisdiction of the Refugee Appeals Board and indicates that it is an independent, quasi-judicial body. The Board is considered a court within the meaning of article 39 of European Union Council Directive 2005/85/EC on minimum standards on procedures in member States for granting and withdrawing refugee status. Pursuant to section 53 (6) of the Aliens Act, cases before the Board are heard by five members: one judge (the Chair or the Deputy Chair of the Board), an attorney, a member appointed by the Danish Refugee Council, a member serving with the Ministry of Justice and a member serving with the Ministry of Foreign Affairs. After two terms of four years, Board members may not be reappointed. Under section 53 (1) of the Aliens Act, Board members are independent and cannot accept or seek direction from the appointing or nominating authority or organization. The Board issues a written decision, which may not be appealed; however, under the Danish Constitution, aliens may bring an appeal before the ordinary courts, which have the authority to adjudicate any matter concerning the limits to the competence of a public authority. As established by the Supreme Court, the review by ordinary courts of decisions made by the Board is limited to a review on points of law, including any inadequacy in the basis for the relevant decision and the unlawful exercise of discretion, whereas the Board's assessment of evidence is not subject to review.

4.3 The State party indicates that, pursuant to section 7 (1) of the Aliens Act, a residence permit will be issued to an alien if he or she falls within the provisions of the Convention relating to the Status of Refugees (Convention status). Article 1 (A) of that Convention has therefore been incorporated into Danish law. Although the article does not mention torture as one of the grounds warranting asylum, it may be considered as an element of persecution on the grounds of, for example, political views. The fact that an asylum seeker has been subjected to torture or similar treatment in his or her country of origin may therefore be of essential importance to the assessment of whether the conditions for granting the asylum seeker residence under section 7 (1) of the Aliens Act are met. Likewise, pursuant to section 7 (2) of the Aliens Act, a residence permit will be issued to an alien upon application if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his or her country of origin (protection status). In practice, the Refugee Appeals Board considers that those conditions are met if there are specific and individual factors substantiating that the asylum seeker will be exposed to a real risk of the death penalty or of being subjected to torture or to inhuman or degrading treatment or punishment in case of return to the country of origin.

4.4 However, according to the case law of the Refugee Appeals Board, the conditions for granting asylum or protection status cannot be considered satisfied in all cases where an asylum seeker has been subjected to torture in his or her country of origin. Where the Board considers it a fact that an asylum seeker has been subjected to torture and risks being subjected to torture in connection with persecution for reasons falling within the Convention relating to the Status of Refugees in case of return to his or her country of origin, the Board will grant residence under section 7 (1) of the Aliens Act, provided that the conditions for this are otherwise met. Furthermore, following a specific assessment, a residence permit can be granted under section 7 (1) of the Act where it is found that an asylum seeker has been subjected to torture before he or she fled to Denmark and where his or her substantial fear resulting from the abuse is therefore considered well founded although, according to an objective assessment, return is not considered to entail any risk of further persecution. Moreover, the Board will find that the conditions for granting residence under section 7 (2) of the Act are met if specific and individual factors render it probable that the asylum seeker would be at real risk of being subjected to torture in case of return to his or her country of origin.

4.5 The State party observes that decisions of the Refugee Appeals Board are based on an individual and specific assessment of the case. The assessment of evidence performed by the Board is based on an overall assessment of the asylum seeker's statements and demeanour during the Board hearing in combination with the other information in the case, including the Board's background information on the conditions in the country of origin. The Board may also examine witnesses. In its adjudication of the case, the Board will seek to determine what findings of fact it should make on the basis of the evidence. If the asylum seeker's statements appear coherent and consistent, the Board will normally find them to be factual. In cases in which the asylum seeker's statements throughout the proceedings are characterized by inconsistencies, changing statements, expansions or omissions, the Board will seek to clarify the reasons. In many cases, the asylum seeker's statements will become more detailed and accurate in the course of the proceedings. There may be various reasons for this, such as the course of the proceedings and the asylum seeker's particular situation, which the Board will include in its assessment of the asylum seeker's credibility. However, inconsistent statements by the asylum seeker about crucial parts of his or her grounds for seeking asylum may weaken the asylum seeker's credibility. In its assessment of inconsistencies, the Board will take into account, inter alia, the asylum seeker's explanation of the reason for the inconsistencies and the asylum seeker's particular situation, such as cultural differences, age and health. For example, individuals who have previously been subjected to torture cannot always be expected to give an account of the facts of the case in the same way as individuals who have not been subjected to torture. Finally, the Board, if in doubt about the asylum seeker's credibility, will always assess to what extent the principle of the benefit of the doubt should be applied.

4.6 The Board is responsible not only for examining information on the specific facts of the case, but also for providing the necessary background information, including information on the situation in the asylum seeker's country of origin, e.g., whether there is a consistent pattern of gross, flagrant or mass violations of human rights in the country in question. Background material is obtained from various sources, including country reports prepared by other Governments as well as information available from the Office of the United Nations High Commissioner for Refugees and reputable non-governmental organizations. The Board is also legally obliged to take the international obligations of Denmark into account when exercising its powers under the Aliens Act. To that end, the Board and the Danish Immigration Service have jointly drafted several memorandums describing in detail the international legal protection accorded to asylum seekers under, inter alia, the Convention relating to the Status of Refugees, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) and the International Covenant on Civil and Political Rights. These memorandums form part of the basis for the decisions made by the Board, and are regularly updated.

4.7 In cases where torture is invoked as one of the grounds for asylum, the Refugee Appeals Board may sometimes find it necessary to obtain further details on such torture before determining the case. As part of the appeals procedure, the Board may, for example, order an examination of the asylum seeker for signs of torture. Any such decision will typically not be made until the Board hearing, as the Board's assessment of the necessity for such an examination often depends on the asylum seeker's statement, including the asylum seeker's credibility; it depends entirely on the circumstances of the specific case whether such an examination is ordered. If the Board considers it proved or possible that the asylum seeker has previously been subjected to torture but finds, upon a specific assessment of the asylum seeker's situation, that there is no real risk of torture upon return at the present time, the Board will normally not order an examination. The Board normally does not order an examination for signs of torture where the asylum seeker has lacked

credibility throughout the proceedings,[10] and the Board therefore has to reject the asylum seeker's statement on torture in its entirety.

4.8 Where the Refugee Appeals Board considers an asylum seeker to fall within section 7 of the Aliens Act, provided that his or her statements, including those relating to torture, are true, but finds that the correctness of the statements is subject to some uncertainty, it may decide to adjourn the proceedings pending an examination of the asylum seeker for signs of torture that may be able to support the asylum seeker's statements. When torture is invoked as a ground for claiming asylum, factors like the nature of the torture, including the extent, grossness and frequency of the abuse, and the asylum seeker's age may be accorded importance in the determination of the case. Moreover, the time of the abuse relative to the asylum seeker's departure and any changes in the regime in his or her country of origin may be decisive in deciding whether residence is granted. An asylum seeker's fear of abuse in case of return to his or her country of origin may result in asylum being granted if it is supported by an objectively founded assumption that the asylum seeker will be subjected to abuse upon return.

4.9 With reference to rule 113 of the Committee's rules of procedure, the State party submits that the complainants have failed to establish a prima facie case for the purpose of admissibility of their complaint under article 3 of the Convention. Thus, it has not been sufficiently substantiated that there are substantial grounds for believing that they are in danger of being subjected to torture if returned to the Russian Federation. The complaint is therefore inadmissible as manifestly unfounded.

4.10 Should the Committee find the complaint admissible, the State party submits that the complainants have not sufficiently established that it would constitute a violation of article 3 of the Convention to return them to the Russian Federation. In this connection, it observes that the complainants have not provided to the Committee any new information on their conflicts in the Russian Federation beyond the information already available to the Refugee Appeals Board when it made its decisions on 12 September 2014.

4.11 As to the complainants' argument that the Danish immigration authorities rejected their asylum applications without summoning the first complainant for an examination for signs of torture, the State party submits that the Refugee Appeals Board does not initiate an examination for signs of torture in cases in which the Board cannot accept as a fact the asylum seeker's statement on his or her grounds for asylum (see also para. 4.7). The State party recalls that, in its decision of 12 September 2014, the Board did not consider to be fact the first complainant's statement on his grounds for seeking asylum because, on central points, he had made inconsistent statements, including on the incident that gave rise to the authorities' interest in him. The Board emphasized, inter alia, that the first complainant had made inconsistent statements[11] on the type and quantity of goods bought by the two men in his grocery shop on 15 September 2013, on the language used in the telephone conversation by one of the two men who bought goods, on the place of delivery of the goods and on whether he had been instructed where to stop the car, and on the circumstances after waking up in prison (see also para. 2.7). The first complainant's statement also contained many small inconsistencies, which, however, could not in themselves be accorded crucial importance.

[10] Reference is made, inter alia, to communications No. 209/2002, *M.O. v. Denmark*, decision adopted on 12 November 2003, paras. 6.4-6.6; and No. 466/2011, *Alp v. Denmark*, decision adopted on 14 May 2014, para. 8.4.

[11] The State party makes a detailed comparison of the statements made by the first complainant at the asylum screening interview conducted by the Danish Immigration Service, at the substantive asylum interview conducted by the Danish Immigration Service and at the hearing before the Refugee Appeals Board.

4.12 The Refugee Appeals Board thus found that the first complainant had failed to substantiate that he had been detained and subjected to torture. As emphasized in the reasoning of its decision, the Board considered whether the reason for the inconsistencies described above and the other inconsistencies in the first complainant's statements on the case could be that he had been subjected to torture; however, the Board found that that could not be the case. It is observed in this respect that the inconsistencies concerned one isolated incident that took place shortly before the complainants' departure in early January 2014. Accordingly, on the basis of its credibility assessment, the Board also could not accept as fact that the authorities had gone to the complainants' home after their departure. In this context, the State party refers to the view expressed by the European Court of Human Rights on several occasions: "It [the Court] accepts that, as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned."[12]

4.13 As to the complainants' argument that, in its credibility assessment, the Refugee Appeals Board did not take into account that persons who have been subjected to torture have difficulties in giving an account of facts, the State party submits that the case of *Ke Chun Rong v. Australia* referred to by the complainants differs considerably from the present case. Both the first and the second complainants were interviewed several times by the Danish Immigration Service and made oral statements in person before the Refugee Appeals Board, and were therefore allowed the opportunity to account for any inconsistencies. Upon an overall assessment of the information provided by the first complainant in support of his asylum application and the other details stated in the case, including the information provided by the second complainant, the Board could not find the first complainant's statements on his conflicts in the Russian Federation prior to his departure to be factual. The State party observes in this respect that no information is given in the complaint to the Committee that could result in a different assessment of the credibility of the first complainant's information on his grounds for seeking asylum.

4.14 The State party further submits that the letters from the complainants' neighbours submitted to the Committee (see para. 2.3) cannot lead to a different assessment of their credibility. The State party finds it peculiar that the first complainant produced these letters only when the complaint was brought before the Committee and not at the hearing before the Refugee Appeals Board about a month earlier. It is further observed that, during the asylum proceedings, the first complainant stated that, after his entry into Denmark, he had been in contact with one of his sisters and that they had discussed his conflicts in the Russian Federation, including the three occasions on which the authorities had gone to the complainants' house after they had left the country. The complainants, however, have given no detailed reason why the letters could not have been produced earlier, nor described the circumstances of the emergence of the letters. The State party therefore finds that the letters appear to be pleadings in support of the complainants' case and cannot be given any independent evidential value.

4.15 Accordingly, the State party considers that the complainants will not risk persecution or abuse justifying asylum in Denmark upon their return to the Russian Federation and that their return will not constitute a violation of article 3 of Convention.

[12] Application No. 41827/07, *R.C. v. Sweden*, judgment of 9 March 2010, para. 52. In application No. 71398/12, *M.E. v. Sweden*, judgment of 26 June 2014, the Court mentions "the credibility of the applicant".

Complainants' comments on the State party's observations

5.1 In their submissions of 11 October 2015, the complainants provided a copy of the first complainant's medical record for the period from 7 January 2014 to 12 June 2015, stating that he most likely suffers from a severe case of post-traumatic stress disorder. They state that his psychological situation is critical: he suffers from depression, anxiety and loss of appetite, has difficulties sleeping because of nightmares and has suicidal thoughts. The complainants also submit a copy of the medical report issued by the Amnesty International Danish Medical Group on 29 September 2015, in which the first complainant's current physical and psychological symptoms are described and his score of 3.6 on the Harvard Trauma Questionnaire given, a score of above 2.5 being consistent with post-traumatic stress disorder. It is also confirmed in the report that physical injuries identified on the first complainant's body during medical examination are compatible with the description of beatings to which he had been subjected in detention and that he reacts strongly to mention of the abuse he suffered. The complainants submit that, contrary to what is claimed by the State party (see para. 4.13), the aforementioned medical documentation represents new information.

5.2 With reference to the report on the security situation in Ingushetia issued by the Norwegian Country of Origin Information Centre (Landinfo) on 3 November 2014, the complainants submit that the security situation remains very serious. Mistreatment of detainees, described as torture by sources, is still taking place on a regular basis. The insurgents in Ingushetia are still active, owing to the spillover effect of the ongoing insurgency in neighbouring Chechnya.[13] Although the leader of Ingushetia claimed in an interview on 27 May 2015 that the North Caucasian insurgency in Ingushetia had been "defeated", he also stated that "there [was] a long way to go" before it could be said to be completely destroyed.[14]

5.3 The complainants reiterate that they have a double motive for seeking asylum, as the first complainant fears persecution from both the insurgents and the authorities, and the authorities will not protect him from retaliation or reprisals by the insurgents (see para. 3.2).

5.4 In response to the State party's argument as summarized in paragraph 4.14, the complainants submit that the letters in question had been mailed by the first complainant's sister on 28 August 2014 and were received by them before the meeting of the Refugee Appeals Board on 12 September 2014. They refer to the text of the Board's decision in relation to the first complainant as proof that the letters were mentioned during the hearing, but the Board did not comment on them in the decision. The complainants state, therefore, that the State party's argument that the letters were presented only in their complaint to the Committee is factually incorrect.

5.5 The complainants argue that inconsistencies in the first complainant's statements are explained by his poor psychological state and the torture to which he was subjected. They find it surprising, therefore, that the Danish immigration authorities expect him to give a precise explanation of details of lesser importance, such as what exactly he transported on 15 September 2013, the place to which he delivered goods or the circumstances when he woke up in prison. They state that there seem to be no significant differences in the first complainant's statements and that small discrepancies could be due to the fact that his explanations have been translated.

[13] Reference is made to an article published on the Caucasian Knot website on 21 September 2015, according to which several hideouts with weapons belonging to Chechen insurgents were discovered on the border between Ingushetia and Chechnya.

[14] Reference is made to the article entitled "Yevkurov says insurgency 'defeated' in Ingushetia" published on the Radio Free Europe/Radio Liberty website on 8 October 2015.

5.6 As to the State party's argument as summarized in paragraph 4.13, the complainants submit that the case of *Ke Chun Rong v. Australia* does not differ from theirs on the point concerning the perception of torture victims, i.e., that complete accuracy is seldom to be expected from victims of torture.[15] Furthermore, similar to what has happened in their case, the Australian authorities had dismissed the case of the complainant — who had been tortured — as lacking credibility.

5.7 The complainants further submit that it transpires from the State party's submissions (see paras. 4.7 and 4.11) that the Board may sometimes order an examination of an asylum seeker for signs of torture if it finds him or her credible. They find this argumentation unconvincing, as the torture examination is necessary precisely to verify the asylum seeker's credibility. The complainants recall that the first complainant mentioned to both the Danish Immigration Service and the Refugee Appeals Board that he had been subjected to torture; nonetheless, the Danish immigration authorities did not consider ordering that he be examined for signs of torture.

5.8 The complainants argue, therefore, that they continue to face a real, personal and foreseeable risk of torture upon return to the Russian Federation, as the first complainant is viewed by the authorities as an accomplice of insurgents. They reiterate that the security situation in Ingushetia and in the North Caucasus in general is very serious; that the first complainant suffered severe torture in detention in the past and there is medical evidence to support his claims; and that the authorities in the Russian Federation are still searching for him.

5.9 On 2 November 2015, the complainants submitted copies of articles published in the Russian language on the Caucasian Knot website on 29 October 2013,[16] explaining that they only recently became aware of the existence of these articles though Chechen acquaintances residing in Denmark. The articles in question describe events that occurred on 27 October 2013 in a forest area near the village of Galashki, i.e., the place to which the first complainant was requested to drive the two men with their goods on 15 September 2013. The articles specifically mention that officers of the Ministry of Defence were attacked by two insurgents during an operation aimed at the identification and detention of members of illegal armed groups. In the course of the operation, one of the insurgents, R.B., was killed, while the second one managed to escape. In this context, the complainants submit that, during the first complainant's detention in November 2013, he was confronted several times with, inter alia, the name of the insurgent mentioned in the articles as having been killed. They conclude, therefore, that the articles support the credibility of the statements made by the first complainant during the asylum proceedings.[17]

Additional submissions by the parties

By the State party

6.1 On 8 April 2016, the State party submitted that, on 24 October 2014, the complainants had requested the Refugee Appeals Board to reopen the asylum proceedings with a view to granting asylum to the complainants or, in the alternative, initiating an examination of the first complainant for signs of torture. On 11 August 2015, they

[15] *Ke Chun Rong v. Australia*, para. 7.5.

[16] The following articles are available on file: "One person killed in crossfire in Ingushetia", "Law enforcement officers are looking for the second participant in an attack on military personnel" and "Fighting ended in the Sunzhen region of Ingushetia, law enforcement officers comb a forest". The English translation of these articles was provided by the complainants on 12 April 2016.

[17] Reference is made to the statements made by the first complainant at the asylum screening interview conducted by the Danish Immigration Service, at the substantive asylum interview conducted by the Danish Immigration Service and at the hearing before the Refugee Appeals Board.

submitted the first complainant's medical records to the Board, from which it appears that the first complainant suffers from serious mental problems and that he has been receiving psychotherapy for a long time.

6.2 On 2 October 2015, the Refugee Appeals Board refused to reopen the asylum proceedings. In justification for its repeated decision not to initiate the first complainant's examination for signs of torture, the Board referred to its reasoning in the decision rendered on 12 September 2014 (see paras. 4.11 and 4.12). The Board emphasized that no substantial new information that could lead to a different assessment of the credibility of the complainants' information on their grounds for seeking asylum had been given either in the complainants' request for reopening or in their complaint to the Committee.

6.3 As to the complainants' comments of 11 October 2015, the State party submits that it refers generally to its observations of 14 April 2015. Regarding the letters from neighbours referred to by the complainants (see para. 5.4), the State party submits that the Board received copies of the letters only on 16 October 2014, and maintains that the letters cannot be accorded any evidential value as they appear to be pleadings in support of the complainants' case.

6.4 As regards the report made on the examination of the first complainant for signs of torture by the Amnesty International Danish Medical Group, the State party submits that the report cannot lead to a different assessment of the credibility of the complainants' statements. The State party determines that although the findings of the examination for signs of torture, establishing that the first complainant suffers from bone thickening of both tibiae resulting from traumas to the periosteum, are consistent with the first complainant's description of torture, that does not mean that he was subjected to the physical and/or mental abuse that he has relied upon in his asylum claim.

6.5 Based on the overall assessment of the information on file, including the medical records submitted by the complainants and the report made by Amnesty International, the State party maintains that the complainants have not rendered probable the grounds for asylum relied upon by them, including that the first complainant was detained by the authorities for 14 days in November 2013 and was subjected to torture during his detention. The State party adds that the most recent information provided by the complainants, including the report from Amnesty International, cannot explain the "inconsistent and elaborative elements" of the complainants' statements.

6.6 The State party observes that it is aware of the Committee's recent decision in *F.K. v. Denmark*.[18] It submits that the reasoning given in that complaint is very specific and does not imply, in its opinion, a general obligation to perform an examination for signs of torture in cases where an asylum seeker's statement on his grounds for asylum cannot be considered as fact because the statement is deemed to lack credibility.

6.7 The State party further observes that despite whether it may be considered a fact that a consistent pattern of gross, flagrant or mass violations of human rights exists in Ingushetia, it finds that the complainants would not be at a specific and individual risk of abuse falling within article 3 of the Convention on their return.[19] With reference to rule 113 of the Committee's rules of procedure, the State party maintains that the complainants have failed to establish a prima facie case for the purpose of admissibility of their complaint under article 3 of the Convention. Therefore, the complaint is inadmissible as manifestly unfounded. Should the Committee find the complaint admissible, the State party further maintains that it has not been established that there are substantial grounds for believing

[18] Communication No. 580/2014, decision adopted on 23 November 2015, para. 7.6.

[19] Reference is made to communications No. 555/2013, *Z. v. Denmark*, decision adopted on 10 August 2015, para. 7.2; and No. 571/2013, *M.S. v. Denmark*, decision adopted on 10 August 2015, para. 7.3.

that it would constitute a violation of article 3 of the Convention to return the complainants to the Russian Federation. In conclusion, the State party submits statistical information on the recognition rates for asylum claims of the 10 largest national groups of asylum seekers that were decided by the Danish Immigration Service and the Refugee Appeals Board between 2013 and 2015.

6.8 On 15 April 2016, the State party further observed that the complainants did not argue at any time that they had been politically active, nor did they account for any connection that they may have to the persons mentioned in the articles published on the Caucasian Knot website on 29 October 2013 (see para. 5.9), or any other connection between the articles and the complaint.

6.9 The State party observes that the Refugee Appeals Board was familiar with the background information on conditions in Ingushetia when it made its decisions on 12 September 2014 and 2 October 2015. Since no new information has been provided on conditions in Ingushetia that was not available at the time of the Board's decisions, the articles in question do not give rise to any further additional observations.

By the complainants

7.1 On 15 April 2016, the complainants reiterated their arguments summarized in paragraph 5.1. They add that the medical report issued by the Amnesty International Danish Medical Group after the first decision of the Refugee Appeals Board corroborates the first complainant's allegations of torture and confirms that his mental symptoms are consistent with a diagnosis of post-traumatic stress disorder according to the Harvard Trauma Questionnaire. The complainants recall that their request for the reopening of the asylum proceedings was based, inter alia, on the aforementioned medical report, although the Board found in its decision of 2 October 2015 that there were neither changes nor new facts that would justify reopening the proceedings.

7.2 The complainants also reiterate their earlier argument that a person who has been exposed to as much torture as the first complainant will experience serious difficulties if returned to Ingushetia, as the risk of the authorities persecuting him and bringing him in for repeated interrogation with accompanying torture is very high. They add that the situation in Ingushetia has even deteriorated in recent months.[20] The complainants maintain, therefore, that they have established a prima facie case for the purpose of admissibility of their complaint under article 3 of the Convention.

7.3 The complainants further submit that, in its additional observations of 8 April 2016, the State party did not refute their statement on the situation in Ingushetia, which clearly demonstrates the existence of a consistent pattern of gross, flagrant or mass violations of human rights (see para. 5.2). With reference to the Committee's general comment No. 1 (1997) on the implementation of article 3, they add that, in the present complaint, the risk of arrest and new torture upon the first complainant's return to Ingushetia after having applied for asylum in Denmark is evident and imminent. The complainants argue that this claim is supported by both information on the grave situation in Ingushetia and in the North Caucasus in general, and especially by the fact that the first complainant has already suffered severe torture and the fact that authorities are still searching for him.

7.4 The complainants also argue that the first complainant has "engaged in political or other activity within or outside the State concerned",[21] which would appear to make him particularly vulnerable to the risk of being placed in danger of torture should he be expelled,

[20] The complainants submit a copy of the article entitled "Journalists and activists beaten and bus torched on Chechnya tour" published in *The Guardian* on 10 March 2016.

[21] The complainants do not provide any further details on this issue.

returned or extradited to Ingushetia. They add that there are no factual inconsistencies in the first complainant's explanations, only minor differences, which are due to the torture he was subjected to and his suffering from post-traumatic stress disorder. The complainants submit that the aforementioned factors further emphasize, even more strongly than in *F.K. v. Denmark* referred to by the State party (see para. 6.6), that the complainant's examination for signs of torture should have been conducted at the Forensic Clinic at Rigshospitalet, which is the official clinic for torture investigations. With reference to the State party's argument that the Refugee Appeals Board sometimes may order an examination of an asylum seeker for signs of torture if the Board finds the asylum seeker credible, the complainants submit that the first complainant's examination for signs of torture is in fact necessary to prove his credibility.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim 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.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it 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 the present case, the State party has not contested that the complainants have 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.

8.3 The State party submits that the communication is inadmissible as manifestly unfounded. The Committee considers, however, that the arguments put forward by the complainants raise substantive issues, which should be dealt with on the merits. Accordingly, the Committee finds no obstacles to admissibility, and declares the communication admissible. Since both the State party and the complainants have provided submissions on the merits of the case, the Committee proceeds immediately with its consideration of the merits.

Consideration of the merits

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

9.2 In the present case, the issue before the Committee is whether the return of the complainants to the Russian Federation 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.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture upon return to the Russian Federation. In assessing this 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.[22]

9.4 The Committee recalls its general comment No. 1, in which it is stated that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk. Although, under the terms of general comment No. 1, the Committee is free to assess the facts on the basis of the full set of circumstances in every case, considerable weight is given to the findings of fact that are made by organs of the State party concerned (para. 9).

9.5 The Committee notes the State party's submission that, in the present case, the complainants have failed to substantiate that there are substantial grounds for believing that they are in danger of being subjected to torture if returned to the Russian Federation, that their claims have been reviewed by the Danish immigration authorities and that the latter found that the complainants would not risk persecution as set out in section 7 (1) of the Aliens Act or be in need of protection status as set out in section 7 (2) of the Act in case of their return to the Russian Federation. The Committee also notes that the complainants have submitted evidentiary documentation supporting the first complainant's claims on the grounds for seeking protection, such as medical evidence corroborating his account of having experienced different forms of torture, including humiliating ones, on a number of occasions while in detention in the Russian Federation, as well as independent articles supporting his statements about the events that had triggered the authorities' interest in him in November 2013.

9.6 The Committee further notes that the Danish immigration authorities based their decisions to reject the complainants' asylum applications solely on the assessment of their credibility. As a consequence, the Committee considers that the aforementioned claims and evidentiary documentation have not been examined by them on the merits. In this context, the Committee observes that the complainants' credibility was questioned primarily on the basis of a number of factual inconsistences in the first complainant's statements made during the asylum proceedings, and recalls that complete accuracy is seldom to be expected from victims of torture.[23] Given the fact that the complainants' counsel specifically requested the Refugee Appeals Board at the beginning of the hearing of their appeals against the decisions of the Danish Immigration Service to order an examination of the first complainant for signs of torture in order to prove his credibility, the Committee is of the view that an impartial and independent assessment of whether the reason for the inconsistences in his statements might be that he had been subjected to torture could have been made by the Board only after it had ordered the first complainant to be examined for signs of torture. Accordingly, the Committee considers that, while the State party has raised serious credibility concerns, it drew an adverse conclusion concerning credibility without adequately exploring a fundamental aspect of the first complainant's claim.[24]

[22] See, inter alia, communication No. 519/2012, *T.M. v. Republic of Korea*, decision adopted on 21 November 2014, para. 9.3.

[23] See *Ke Chun Rong v. Australia*, para. 7.5.

[24] See, inter alia, *F.K. v. Denmark*, para. 7.6.

9.7 The Committee further recalls that, although it is for the complainants to establish a prima facie case for their asylum requests, the State party is not exempt from making substantial efforts to determine whether there are grounds for believing that the complainants would be in danger of being subjected to torture if returned to their country of origin.[25] As to the risk of torture presently faced by the complainants upon their return to the Russian Federation, the Committee observes that the State party does not dispute that persons suspected by the authorities of being accomplices of insurgents in Ingushetia and in the North Caucasus in general have been subjected to torture or that, in the present case, the complainants would be able to rely, upon their return to the Russian Federation, on the authorities' protection from possible retaliation or reprisals by the insurgents. The State party also did not contest that the authorities in the Russian Federation might suspect the first complainant of having joined the insurgents after his release from detention in November 2013 because his whereabouts have been unknown to them ever since. In this context, the Committee also notes that, at present, several aspects of the human rights situation in the Russian Federation, in particular in the North Caucasus, remain matters of concern. It recalls that it expressed its concerns in its concluding observations following the examination of the fifth periodic report of the Russian Federation in 2012, citing numerous, ongoing and consistent reports of serious human rights abuses inflicted by or at the instigation or with the consent or acquiescence of public officials or other persons acting in official capacities in the North Caucasus, including torture and ill-treatment, abductions, enforced disappearances and extrajudicial killings. The Committee also expressed its concern about the failure of the authorities in the Russian Federation to investigate and punish perpetrators of such abuses.[26]

9.8 Under the circumstances, the Committee finds that in determining whether there are substantial grounds for believing that the complainants would face a foreseeable, real and personal risk of being subjected to torture if deported to their country of origin, the State party has failed to duly verify the complainants' claims and evidentiary documentation, including the medical report issued by the Amnesty International Danish Medical Group and the first complainant's other medical records, through proceedings meeting the State party's procedural obligation to provide for effective, independent and impartial review as required by article 3 of the Convention. Therefore, the Committee considers that, as a result of rejecting the first complainant's credibility without ordering his medical examination for signs of torture, the State party effectively failed to sufficiently investigate whether there are substantial grounds for believing that he and his family would be in danger of being subjected to torture if returned to their country of origin at present.[27]

10. In the light of the foregoing, the Committee, acting under article 22 (7) of the Convention, concludes that the complainants' deportation to the Russian Federation would constitute a breach of article 3 of the Convention.

11. The Committee is of the view that, in accordance with article 3 of the Convention, the State party has an obligation to refrain from forcibly returning the complainants to the Russian Federation or to any other country where there is a real risk of them being expelled or returned to the Russian Federation. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.

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[25] See, inter alia, communication No. 464/2011, *K.H. v. Denmark*, decision adopted on 23 November 2012, para. 8.8.

[26] See CAT/C/RUS/CO/5, para. 13.

[27] See, inter alia, *F.K. v. Denmark*, para. 7.6.