



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. 653/2015^{*}, ^{**}

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| <i>Communication submitted by:</i> | A.M.D. et al. (represented by counsel, Jytte Lindgard) |
| <i>Alleged victim:</i> | The complainants |
| <i>State party:</i> | Denmark |
| <i>Date of complaint:</i> | 24 December 2014 (initial submission) |
| <i>Date of present decision:</i> | 12 May 2017 |
| <i>Subject matters:</i> | Deportation to the Russian Federation; risk of torture |
| <i>Procedural issue:</i> | Admissibility — manifestly ill-founded |
| <i>Substantive issue:</i> | Non-refoulement |
| <i>Articles of the Convention:</i> | 3 and 22 |

1.1 The complainants are A.M.D., born on 9 February 1966, in Chechnya, Russian Federation, and M.M.Y., born on 2 November 1977, also in Chechnya. They present their complaint on their own behalf and on behalf of their three minor children, K.D., born on 18 March 2000, M.D., born on 8 February 2002, and Z.D., born on 23 March 2006. All are nationals of the Russian Federation. The complainants claim that their deportation to Chechnya would expose them to a risk of torture and death. They are represented by counsel.¹

1.2 On 26 June 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the complainants while their case was being considered. On 1 July 2015, the Refugee Appeals Board of Denmark suspended the procedures leading to the complainants' departure from Denmark until further notice, in accordance with the Committee's request. On 5 October 2015, the Committee, acting through the same Rapporteur, denied the request of the State party dated 23 July 2015 to lift interim measures.

^{*} Adopted by the Committee at its sixtieth session (18 April-12 May 2017).

^{**} The following members of the Committee participated in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Claude Heller-Rouassant, Ana Racu, Sébastien Touzé and Kening Zhang. Pursuant to rule 109 of the Committee's rules of procedure, Jens Modvig, did not participate in the consideration of the communication.

¹ Denmark made a declaration under article 22 of the Convention on 27 May 1987.



The facts as presented by the complainants

2.1 Between 2010 and 2013, A.M.D. provided help on several occasions to his brother, who was a Chechen rebel. The brother visited A.M.D. numerous times, usually at night, seeking shelter; A.M.D. bought clothes and medicine for him. During the night between 29 and 30 June 2013, shortly after a visit from his brother, A.M.D. was detained by armed masked men who, he assumed, were from the pro-Russian Chechen authorities. A.M.D. was beaten; M.M.Y. was hit and lost consciousness.

2.2 A.M.D. was detained for nine days, during which time he was interrogated and tortured. He was starved, beaten with objects such as plastic bottles filled with water and subjected to very painful electric shocks. He was hit on his entire body, including his head and neck.² The authorities also threatened to kill him and his family and to rape his teenage daughter. A.M.D. was released after he promised to hand over his brother to the authorities the next time he visited.

2.3 The complainants arrived in Denmark with their three minor sons on 24 July 2013 and applied for asylum the same day.

2.4 In August 2013, the complainants' house in Chechnya was deliberately set on fire and burned by an unknown assailant.³ Neighbours with whom the complainants had remained in contact informed A.M.D. that the police had prevented them and the fire brigade from extinguishing the fire. According to the complainants, that indicated that police officers may have been accomplices in the arson.

2.5 The Danish Immigration Service interviewed the complainants on 9 August, 7 November and 11 November 2013 and on 18 July 2014. On 11 November 2013, A.M.D. signed a consent form stating that he had been subjected to torture and that he agreed to undergo a medical examination. The Service failed, however, to order the examination for the complainant and rejected his asylum claim on 9 December 2013. On 8 May 2014, the complainants' counsel made a submission to the Danish Refugee Appeals Board. The Board returned the case to the Service on 26 May 2014, annulling its first decision because new information had been submitted in relation to the complainants' application. On 4 August 2014, the Service again rejected the complainants' request for asylum.

2.6 At the beginning of December 2014, A.M.D. received from his daughter, who was still living in Chechnya, the copy of an order dated 26 July 2013 issued by an investigator of the Ministry of Internal Affairs. The order called for a criminal investigation to be opened against A.M.D. under articles 32 and 33 of the Criminal Code of the Russian Federation. On 8 December 2014, the complainants' counsel made a written submission to the Refugee Appeals Board requesting again that an investigation be carried out to verify whether A.M.D. had been tortured in the past. The Board rejected the asylum claim on 19 December 2014 without commenting on the request for a medical torture examination. The Board gave the complainants 15 days to leave the country voluntarily. At the time of submitting the communication to the Committee, no deportation date had been set but the complainants maintained that their deportation was imminent. The complainants submitted that they had exhausted all domestic remedies given that under the Danish Aliens Act the decisions of the Board could not be challenged before the courts.

² On 7 April 2015, A.M.D. submitted a medical certificate dated 27 March 2015 issued by the Amnesty International Danish Medical Group, stating that his psychological status was consistent with post-traumatic stress disorder and that the torture that he had described was consistent with the physical and psychological symptoms and the objective findings presented during the examination.

³ The complainants submitted a copy of the certificate issued by the fire brigade in Grozny stating that a property at a particular address had burned down completely as a result of arson. They also submitted the copy of a certificate dated 14 October 2013 from the investigative department of the Ministry of Internal Affairs stating that a case of arson, at the above-mentioned particular address, was being investigated and that it had been established that the fire had been started by an unknown armed man who subsequently prevented the neighbours and the fire brigade to extinguish the fire.

The complaint

3. The complainants claim that their deportation to Chechnya would expose A.M.D. to torture, which he has already suffered while in detention, and that the risk of this happening again is all the more likely given that a criminal investigation has reportedly been opened against him by the Chechen authorities. His family is also at risk, for being related to an individual who is sought by the authorities.

State party's observations on admissibility and the merits

4.1 On 23 July 2015, the State party submitted that the complaint should be considered inadmissible. Should the Committee find the complaint admissible, the State party submitted that article 3 of the Convention would not be violated if the complainants were returned to the Russian Federation.

4.2 The State party confirmed that, on 24 July 2013, the complainants entered Denmark without valid travel documents and applied for asylum the same day; that, on 18 December 2013, the Danish Immigration Service refused to grant them asylum; that, on 26 May 2014, the Refugee Appeals Board decided to return the cases back to the Service for reconsideration because of new information; that, on 4 August 2014, the Service again refused to grant the complainants asylum; and that, on 19 December 2014, the Board upheld the refusal by the Service to grant asylum.

4.3 Following the complainants' submission of a communication to the Committee, on 26 January 2015 the complainants requested the Refugee Appeals Board to reopen their application for asylum, enclosing a report of 27 March 2015 by the Amnesty International Danish Medical Group on A.M.D.'s examination for signs of torture. On 26 May 2015, the Board refused to reopen the asylum proceedings.

4.4 The State party submitted that, in its decision of 19 December 2014, the Refugee Appeals Board had stated, inter alia, that the majority of the members of the Board had not found the complainants' statements credible because they had failed to include, on their own initiative, information indicating that international passports had been issued to the complainants in April 2013 and that the complainants had applied for visas for Spain; when confronted with that information, they had stated that, around May 2013, they had taken steps to have visas issued for Spain. From the case file it appeared that there was an application dated 3 July 2013 signed by the applicants for visas for Spain. It also appeared from the case file that there were aeroplane tickets for flights from Moscow to Barcelona on 20 July 2013, while the complainants had stated at the asylum screening interviews that they had left their country of origin to go to Denmark precisely on 20 July 2013. The majority of Board members also found the complainants not to be credible because they responded vaguely and evasively to key questions, including on how often A.M.D.'s brother came to visit them between 2010 and 2013. The Board therefore found that the complainants had not substantiated that the conditions for residence under section 7 (1) or (2) of the Aliens Act had been met.

4.5 The State party provided a detailed description of the legal basis for the work of the Refugee Appeals Board and its methods of work.⁴

4.6 The State party maintained that the Convention relating to the Status of Refugees, the European Convention on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights were of special relevance to the activities of the Refugee Appeals Board and that protection against torture and similar treatment under those conventions had been incorporated into section 7 (2) of the Aliens Act. However, according to the case law of the Board, the conditions for granting asylum or protected status could not be considered satisfied in all cases where an asylum seeker had been subjected to torture in his or her country of origin. That approach also accorded with the practice of the Committee.⁵ Where

⁴ For a detailed description, see, for example, communication No. 580/2014, *F.K. v. Denmark*, decision adopted on 23 November 2015, paras. 4.9-4.11.

⁵ The State party referred, inter alia, to the Committee's decisions in communications No. 277/2005, *N.Z.S. v. Sweden*, adopted on 22 November 2006, and No. 466/2011, *Alp v. Denmark*, adopted on 14

the Board considered it a fact that an asylum seeker had been subjected to torture and risked being subjected to torture in connection with persecution for reasons falling within the scope of the Convention relating to the Status of Refugees in case of return to his or her country of origin, the Board would grant residence under section 7 (1) of the Aliens Act (“Convention status”), provided that the conditions for doing so had otherwise been met. Furthermore, following a specific assessment, a residence permit could be granted under section 7 (1) of the Aliens Act if an asylum seeker was found to have been subjected to torture before fleeing to Denmark and his or her substantial fear resulting from the abuse was therefore considered to be well founded, even though an objective assessment indicated that return would not entail any risk of further persecution.

4.7 Moreover, the Refugee Appeals Board would find that the conditions for granting residence under section 7 (2) of the Aliens Act (“protection status”) were met if specific and individual factors rendered it probable that the asylum seeker would be at a real risk of being subjected to torture in case of return to his or her country of origin. The fact that an asylum seeker had been subjected to torture might also have an impact on the assessment of evidence made by the Board because individuals who had previously been subjected to torture could not always be expected to give an account of the facts of the case in the same way as individuals who had not been subjected to torture. That approach reflects the approach described in the *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* of the Office of the United Nations High Commissioner for Refugees.⁶

4.8 Where torture was invoked as one of the grounds for applying for asylum, the Refugee Appeals Board might sometimes find it necessary to obtain additional details on such torture before making a determination on the case. It may, for example, order that the asylum seeker be examined for signs of torture. Any such decision would typically not be made before a hearing before the Board, as the Board often needed to hear the asylum seeker’s statement and assess his or her credibility. If the Board considered that the asylum seeker had been or might have been subjected to torture but found, upon assessing the asylum seeker’s situation, that there was no real risk of torture upon return at that time, it would normally not order an examination. The Board would not normally order an examination for signs of torture when the asylum seeker lacked credibility throughout the proceedings, in which case the Board would have to reject the asylum seeker’s statement about torture in its entirety.

4.9 Concerning the weight given to the asylum seeker’s credibility relative to that given to the medical information available, the State party referred to the Committee’s decision in communication No. 209/2002, *M.O. v. Denmark*,⁷ in which the complainant’s statements on torture and the relative medical information provided were set aside owing to the complainant’s general lack of credibility. In that decision, the Committee referred to paragraph 8 of its general comment No. 1 (1997) on the implementation of article 3, pursuant to which questions about the credibility of a complainant and the presence of relevant factual inconsistencies in the claim were pertinent to the Committee’s deliberations as to whether the complainant would be in danger of being tortured upon return. The State party also referred to the Committee’s decision in communication No. 466/2011, *Alp v. Denmark*,⁸ in which it found that the State party’s authorities had thoroughly evaluated all the evidence presented by the complainant, had found the complainant to lack credibility and did not consider it necessary to order a medical examination. It further referred to paragraphs 77-82 of the judgment delivered by the European Court of Human Rights on 20 March 1991 in *Cruz Varas and Others v. Sweden* (application No. 15576/89).

4.10 When torture was 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 might be accorded importance in the determination of the case. It was

May 2014.

⁶ The State party referred to paragraphs 207-212 of the handbook.

⁷ Decision adopted on 12 November 2003, paras. 6.4-6.6.

⁸ Decision adopted on 14 May 2014.

observed that the torture inflicted could constitute both gross psychological and gross physical abuse. Moreover, the timing of the abuse relative to the asylum seeker's departure and any changes in regime in the country of origin might be decisive factors in assessing whether residence should be granted. An asylum seeker's fear of abuse in case of return to his or her country of origin might result in asylum being granted if it was supported by an objectively founded assumption that the asylum seeker would be subjected to abuse upon return. In its assessment, the Refugee Appeals Board included information on whether systematic, gross, flagrant or mass violations of human rights occurred in the asylum seeker's country of origin.

4.11 The State party referred to the Views of the Committee in communication No. 61/1996, *X, Y and Z v. Sweden*⁹ and to the Committee's decision in communication No. 237/2003, *M.C.M.V.F. v. Sweden*,¹⁰ and maintained that the crucial point was the situation in the country of origin at the time of the potential return of the asylum seeker to that country.

4.12 The State party also explained that, once the Refugee Appeals Board had decided a case, the asylum seeker may request it to reopen the asylum proceedings. If the asylum seeker claimed that essential new information had come to light since the Board had made its original decision and that the new information might result in a different decision, the Board would assess whether that new information might justify a reopening of the proceedings and a reconsideration of the case. Under section 53 (10) and (11) of the Aliens Act and rule 48 of the Board's rules of procedure, the Chair of the panel (always a judge) that made the original decision in the case may determine whether there was any reason to assume that the Board would change its decision or whether the conditions for granting asylum must be deemed to have been evidently satisfied. The Chair may also decide to reopen the case and send it back to the Danish Immigration Service for reconsideration.

4.13 The Chair may further decide whether the panel that had previously decided the case should also make a decision on reopening the case, either through a hearing or written deliberations, and on holding a new oral hearing, with all parties to the case present. The Chair may also decide that the case should be reopened and considered at a hearing by a new panel, in line with rule 48, paragraph 2, of the rules of procedure.

4.14 Cases might be reopened and considered at a new oral hearing by the panel that had previously decided the case if the applicant provided essential new information of significance to the decision of the case and if it is assessed that he or she should be given the opportunity to make a statement in person in that respect.

4.15 Cases might be reopened and considered at an oral hearing before a new panel if a member of the former panel was unable to attend and if replacing that member with another member from the same authority or organization gave rise to due process concerns. If a basis was found for reopening a case, the deadline within which the applicant would have to leave the State party would be suspended pending a rehearing of the case. The Refugee Appeals Board would also assign counsel to represent the complainant.

4.16 In the present case, the State party has observed that the complainants have provided no new information on the circumstances in their country of origin beyond the information that was available when the Refugee Appeals Board made its decision on 19 December 2014. As regards the complainants' submission that the immigration authorities made a decision on their cases without examining A.M.D. for signs of torture, the State party observed that the Board did not initiate an examination for signs of torture in cases in which it did find an asylum seeker's statement credible. The decisions made by the Board on 19 December 2014 and 26 May 2015 indicate that most Board members did not accept as fact the complainants' statements on the circumstances in their country of origin prior to their departure and therefore found that there was no basis for initiating an examination of A.M.D. for signs of torture.

⁹ Adopted on 6 May 1998. See para. 11.2.

¹⁰ Adopted on 14 November 2005. See para. 6.4.

4.17 The State party reiterated that the complainants failed to mention that they had obtained visas and tickets to go to Spain and observed, in that respect, that it also seemed not credible, as stated by the complainants, that they were not aware that it appeared from their visa applications that they had previously been issued with Schengen visas for the period 8-21 August 2010 and that the visa agency had allegedly included that information without the complainants' knowledge. According to his statement, A.M.D. had had personal contact with the visa agency seven or eight times in May and June 2013. The State party maintained that it was not credible, as stated by the complainants, that they had merely signed blank visa application forms without knowing anything about the contents of those forms. It further observed that the complainants' incorrect statements on international passports and visas, which they maintained despite having had numerous opportunities to correct them, generally weakened their credibility. Those circumstances could not be explained by the abuse to which A.M.D. was subjected while detained, as he himself claimed.

4.18 With regard to the 27 March 2015 report of the Amnesty International Danish Medical Group on A.M.D.'s examination for signs of torture, the State party maintained that it was taken into consideration by the Refugee Appeals Board in its 26 May 2015 decision not to reopen the asylum proceedings. The Board found that the examination for signs of torture conducted by the Group could not lead to a different assessment of the credibility of the complainants' statements. It also found that the consistency between A.M.D.'s description of torture, his physical and psychological symptoms and the findings set out in the Group's report did not mean that the complainant had been subjected to the alleged physical or mental abuse. Accordingly, the Board maintained, based on an overall assessment of the information on file, including the Group's report, that the complainants had not rendered probable the grounds for asylum on which their applications were based, including that A.M.D. had been detained and subjected to torture and other physical abuse by persons supporting the Chechen authorities shortly before he and M.M.Y. left Chechnya in July 2013.

4.19 The State party referred, in that respect, to the above-mentioned observations on the credibility of the statements made by the complainants during the asylum proceedings, not least those on the circumstances preceding their departure in 2013, shortly after A.M.D. was allegedly detained. The State party observed that both A.M.D. and M.M.Y. had made incorrect statements on their passport and visa applications until they met with counsel, although they had been given several opportunities to correct their statements.

4.20 As regards the complainants' submission that their home in Chechnya had been burned down, the State party observed that the Refugee Appeals Board already had, at the initial hearing of the appeal, the relevant police statements. The State party found that the alleged arson of the complainants' home in Chechnya did not constitute proof that the complainants risked being subjected to abuse of the kind covered by the Convention upon return to their country of origin. It observed, in that respect, that no one but the complainants and a witness had assumed that the arson had been organized by the authorities and that the police statements indicated, as a matter of fact, that the authorities had initiated an investigation into the incident.

4.21 Finally, the State party found that the document produced on an alleged criminal case pending against A.M.D. could not lead to a different assessment of the complainants' credibility. The document, which was dated 26 July 2013 but was only received by the complainants on 7 October 2014 according to the information provided, appeared to have been fabricated for the occasion. In that respect, the Refugee Appeals Board noted the delay and that the background material indicated the following:

According to a Western embassy it is possible to buy any kind of documents in Russia. ...

When asked about the prevalence of false documents ordering people to report for questioning at the police station or in court in connection with a case of support to the insurgency, a human rights activist in Grozny (A) explained that such false documents are very common and easy to come by. They are common because

people who want to leave Chechnya for Europe believe they will be rejected asylum unless they are able to document that they are in risk of being persecuted.¹¹

4.22 The State party made reference to the findings of the European Court of Human Rights concerning assessments of credibility in asylum cases, including in the judgments delivered in *R.C. v. Sweden* (application No. 41827/07) and in *M.E. v. Sweden* (application No. 71398/12). The State party further refers to the judgment in *M.E. v. Denmark* (application No. 58363/10), wherein the Court expressed its opinion on the examination of a specific asylum case by the Danish Immigration Service and the Refugee Appeals Board, including the due process guarantees that characterized the examination. It also referred to the Views adopted on 22 October 2014 by the Human Rights Committee concerning communication No. 2186/2012, *Mr. X and Ms. X v. Denmark* (para. 7.5).

4.23 The Refugee Appeals Board, which is a collegial body of a quasi-judicial nature, made a thorough assessment of the complainants' credibility and specific circumstances and found that the complainants had failed to render probable that they would be at risk of a violation of article 3 of the Convention if returned to the Russian Federation. The State party agreed with that finding and reiterated that, in their communication to the Committee, the complainants had failed to provide any new, specific details about their situation. In essence, their complaint to the Committee merely reflected that they disagreed with the assessment reached of their credibility made by the Board. The State party added that the complainants had failed to identify any irregularity in the decision-making process or any risk factors that the Board had failed to take properly into account.

4.24 The State party submitted that the complainants were in fact trying to use the Committee as an appellate body to have the factual circumstances advocated in support of their claim for asylum reassessed by the Committee. However, as stated in paragraph 9 of its general comment No. 1, the Committee is not an appellate, quasi-judicial or administrative body but, rather, a monitoring body. Therefore, in exercising its jurisdiction pursuant to article 3, the Committee should give considerable weight to findings of fact made by the organs of the State party concerned. In that connection, reference is also made to the case law of the Committee, in which it is indicated that due weight must be accorded to findings of fact made by domestic, judicial or other competent government authorities, unless it can be demonstrated that such findings are arbitrary or unreasonable.¹²

4.25 Furthermore, the Committee has stated that it is for the courts of the States parties, not the Committee, to evaluate the facts and evidence in a particular case and that it is for the appellate courts of the States parties to examine the conduct of a case, unless it can be ascertained that the manner in which the evidence was evaluated was clearly arbitrary or amounted to a denial of justice, or that the officers had clearly violated their obligations of impartiality.¹³

Complainants' comments on the State party's observations

5.1 On 15 September 2016, the complainants submitted that, after the 19 December 2014 decision rejecting their asylum had been taken by the Refugee Appeals Board, a medical examination of A.M.D. was carried out by Amnesty International and that the results corroborated A.M.D.'s allegations of torture. Furthermore, A.M.D. had described the torture he had been subjected to in detail; his psychological condition was critical. The complainants applied for their case to be reopened but, on 26 May 2015, the Board refused to do so.

5.2 The complainants noted that, in its 19 December 2014 decision, the Refugee Appeals Board had found that the complainants lacked credibility. They also noted, however, that the subsequent medical examination of the complainant had confirmed that

¹¹ The State party referred to page 48 of "Security and human rights in Chechnya and the situation of Chechens in the Russian Federation — residence registration, racism and false accusations", a report published by the Danish Immigration Service in January 2015.

¹² See, inter alia, communication No. 148/1999, *A.K. v. Australia*, decision adopted on 5 May 2004, para. 6.4.

¹³ See communication No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006, para. 7.6.

A.M.D.'s symptoms were consistent with post-traumatic stress disorder. Despite that, the Board had found that there were no new facts that would justify reopening the case. The complainants maintained having established a prima facie case for the purpose of admissibility of the complaint under article 3.

5.3 The complainants noted that, in its submission, the State party had maintained that the majority of the members of the Refugee Appeals Board had found their statements to lack credibility, including the statement on torture; at the same time, the State party did not take into account A.M.D.'s physical and psychological situation. The complainants maintained that A.M.D. had been subjected to torture in the past and that he was therefore likely to experience serious difficulties if returned, as the risk of the authorities bringing him in for repeated interrogation, with accompanying torture, was very high.

5.4 As to the State party's submission regarding the issue of the complainants' passports, visas and tickets to Spain, the complainants submitted that they had indeed applied for visas for Spain in May 2013 but also that they did not go to Spain. The aeroplane tickets from Moscow to Barcelona for 20 July 2013 were not used and the complainants cannot be found on any list of passengers by the airline.

5.5 The complainants also submitted that, during the hearing before the Refugee Appeals Board on 19 December 2014, they were allowed to present a witness. The witness provided a long statement, testifying that their home had been burned down and that neither the neighbours nor the fire department had been allowed to help. The complainants maintained that in several reports about Chechnya it was mentioned that houses were burned to scare the owners. They also noted that the Board's decision did not mention the testimony of the witness and that it was difficult to see whether the statement had been taken into consideration by the Board. They maintained that their witness was, like them, seeking asylum in Denmark and that he would only give a truthful statement before the Board or risk jeopardizing his own asylum application.

5.6 The complainants stressed that, although the Committee may not be an appellate body, they had brought their case before the Committee because the Danish Immigration Service and the Refugee Appeals Board had both denied A.M.D. the opportunity to undergo a medical examination for signs of torture and, when an examination was conducted by the Amnesty International Danish Medical Group, the State party did not take the results of that examination into account.

State party's further observations

6.1 On 24 March 2017, the State party submitted that the complainants' additional observations of 15 September 2016 did not provide any new information on the circumstances in the complainants' country of origin. It referred to its observations of 23 July 2015. It noted the complainants' submission that an examination for signs that A.M.D. had been tortured was carried out by the Amnesty International Danish Medical Group on 19 December 2014 and that the results of that examination corroborated the allegations of torture and the claim that A.M.D.'s mental symptoms were consistent with post-traumatic stress disorder. The State party submitted that, in the case at hand, the Refugee Appeals Board could not accept as fact A.M.D.'s account of the alleged torture and had found that the inconsistencies in crucial elements of his statements were not attributable to the alleged torture in his country of origin.¹⁴

6.2 The State party pointed out that the case law of the Refugee Appeals Board included cases like the present one in which the asylum seeker submitted that he or she sustained physical or mental injury originating from the relevant torture according to his or her own statement. Sometimes, the information given by the asylum seeker on his or her injuries was wholly or partly substantiated by medical examinations, and it was rather common for it to appear, from the conclusion of a medical examination report, that the objective

¹⁴ The State party refers to communications No. 565/2013, *S.A.P. et al. v. Switzerland*, decision adopted on 25 November 2015, para. 7.4, and No. 209/2002, *M.O. v. Denmark*, decision adopted on 12 November 2003, paras. 6.4-6.6. It also refers to the judgment of the European Court of Human Rights of 20 March 1991 in *Cruz Varas and Others v. Sweden* (application No. 15576/89), paras. 77-82.

findings were consistent with the asylum seeker's statements on torture inflicted as a consequence of a conflict with the authorities. However, should the Board disregard the asylum seeker's account of the circumstances that allegedly gave rise to the torture described — for example, because it could not in any way be considered as fact that the asylum seeker had been involved in politics or because the authorities had not discovered any such political involvement — such a conclusion would not independently give rise to a different assessment of the individual's credibility or to an examination for signs of torture. The results of an examination for signs of torture merely indicated that the asylum seeker suffered from physical or mental injury, which may have been inflicted as described by the asylum seeker but may also have been inflicted in numerous other ways. In other words, an examination did not necessarily clarify whether the asylum seeker's injury had been caused by torture at all or whether the injury sustained was caused by an incident like a fight, an assault, an accident or an act of war. Moreover, an examination could not ascertain the truthfulness of an explanation for why and by whom the asylum seeker in question was subjected to abuse.

6.3 The State party submitted that, in its decision of 26 May 2015 refusing to reopen the asylum proceedings, the Refugee Appeals Board had found that the examination for signs of torture could not lead to a different assessment of the credibility of the complainants' statements on their grounds for asylum. The State party reiterated its submission regarding the inconsistencies in the complainants' statements. The State party noted the Committee's decision in communication No. 634/2014, *M.B., A.B., D.M.B. and D.B. v. Denmark*, adopted on 25 November 2016, in which it stated: "The Committee is of the view that the impartial and independent assessment of whether the reason for the inconsistencies in his statements might be that he had been subjected to torture could have been made by the Board only after having ordered the first complainant's examination for signs of torture." The State party submitted that it disagreed with the view expressed in that decision and found that the circumstances causing an asylum seeker to request an examination for signs of torture did not in itself lead to an absolute obligation on the part of the immigration authorities to initiate such an examination, not even in cases in which an asylum seeker had produced medical information indicating that he or she might have been subjected to torture. It maintained that the issue of whether to initiate an examination for signs of torture must be determined on the basis of an individual assessment, including an assessment of whether the outcome of the examination must be deemed to be of significance to the Board's decision.

6.4 With regard to the complainants' submission that the decision of the Refugee Appeals Board failed to mention the testimony of the witness who had testified in their favour on 19 December 2014 (see paragraph 5.5 above), the State party submitted that the testimony of the witness was reproduced in the Board decision and that Board decisions were made on the basis of all the material presented, including the statements and testimonies made before the Board, even when no specific reference was made to such material, statement or testimony in the reasoning of the decision. The State party contested the complainants' claim that the status of the witness as an asylum seeker affected his credibility.

Additional comments from the complainants

7.1 On 2 May 2017, the complainants referred to their previous submissions. They noted that in its latest observation the State party had failed to comment on the submission that A.M.D. had assisted Chechen rebels during the period 2010-2013 by helping his brother. They also noted that the 19 December 2014 refusal of the Refugee Appeals Board did not address that submission in detail either, although the situation in Chechnya was a central issue in the case. The Board only said, in its decision, that A.M.D.'s statements had been inaccurate and focused on the question of how often the complainant's brother had visited him. A.M.D. reiterated that not only had he been a sympathizer but had also cooperated with the rebels; he maintained that country background information clearly stated that previously suspected rebels were still in danger. That did not appear to have been taken into consideration by the Board. The relationship between A.M.D. and his brother, who was very active in the rebel movement, meant that the complainant was strongly exposed to the possibility of reprisal. The complainants did not know where the brother was or whether he

was even alive. They referred to information dated 4 October 2016 of the Ministry of Foreign Affairs of Norway indicating that it was primarily the families of active rebels who were exposed to reprisals by the authorities and that the risk of such reprisals may last even after the rebel has been killed by the authorities. The complainants reiterated that their home was intentionally burned.

7.2 The complainants referred to the State party's submission that the results of an examination for signs of torture merely reflected the fact that the asylum seeker suffered from physical or mental injury, which may have been inflicted in the way described by the asylum seeker but could also have been inflicted in numerous other ways. They maintained that the State party's position made it impossible to use the results of a medical examination as evidence because only the one who was present when the damage occurred could give a "100 per cent sure testimony". They noted that, despite the analysis of the Amnesty International Danish Medical Group and without providing specific reasons, the Refugee Appeals Board had concluded that the complainant lacked credibility and that the medical examination conducted by the Group could not lead to a different assessment of the credibility of the complainants' statements.

7.3 The complainants also submitted that the Refugee Appeals Board very rarely granted witnesses permission to provide oral testimony. They emphasized that although the Board's decision was a majority decision and although it was not known how many of the Board members disagreed with the decision, at least one Board member believed that the complainants were trustworthy and that the family should not be returned to Chechnya.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

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.

8.3 The Committee recalls that, for a claim to be admissible under article 22 of the Convention and rule 113 (b) of its rules of procedure, it must rise to the basic level of substantiation required for purposes of admissibility.¹⁵ The Committee notes the State party's argument that the communication is manifestly ill-founded owing to a lack of substantiation. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues under article 3 of the Convention and that those arguments should be dealt with on the merits. Accordingly, the Committee finds no obstacles to admissibility and proceeds 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, in accordance with article 22 (4) of the Convention.

9.2 The issue before the Committee is whether the expulsion of the complainants to Chechnya would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return 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.

¹⁵ See, inter alia, communication No. 308/2006, *K.A. v. Sweden*, decision adopted on 16 November 2007, para. 7.2.

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 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 individuals 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. Additional grounds must be adduced to show that the individual concerned would be personally at risk.¹⁶

9.4 The Committee recalls its general comment No. 1, according to which 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, it must be foreseeable, real and personal. The Committee recalls that, under the terms of general comment No. 1, considerable weight must be given to the findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention, to freely assess the facts based upon the full set of circumstances in every case.

9.5 In the present case, A.M.D. claimed that, because he was providing assistance to his brother, a rebel in Chechnya, in the night between 29 and 30 June 2013, he had been detained for nine days, interrogated and tortured while in detention. He alleged having been starved, beaten with objects such as plastic bottles filled with water and subjected to electric shocks. He also received threats that he and his family would be killed and his teenage daughter would be raped. A.M.D. also submitted that, should he be returned to the Russian Federation, he would be rearrested and face torture because of his perceived affiliation with the Chechen resistance. The Committee notes that the State party dismissed A.M.D.'s account of torture in Chechnya, stating that his entire account lacked credibility because the complainants had failed to state, on their own initiative, that international passports had been issued to them in April 2013 and that they had aeroplane tickets to take them from Moscow to Barcelona on 20 July 2013. The Committee also notes the State party's submission that its immigration authorities had found, based on an overall assessment of the information on file, including the report made by the Amnesty International Danish Medical Group on 27 March 2015, that the complainants had not rendered probable the grounds on which their applications for asylum were based, which included the claim that A.M.D. had been detained and subjected to torture and other physical abuse by persons supporting the Chechen authorities shortly before the complainants' departure in July 2013.

9.6 The Committee notes that A.M.D. provided a detailed description of the torture he had endured, both to the national authorities and in his submission to the Committee. The Committee takes note of the submission by the State party that the consistency between A.M.D.'s description of torture, his physical and psychological symptoms and the findings set out in the report of the Amnesty International Danish Medical Group did not mean that he had been subjected to the alleged physical or mental abuse. The Committee observes, however, that the medical certificate dated 27 March 2015 stated that A.M.D. suffered from post-traumatic stress disorder and probably had been subjected to torture in the past. The Committee also observes that the Refugee Appeals Board refused to reopen the complainant's asylum case even when faced with that evidence. The Committee considers that the State party, in the light of those doubts, could have reopened the proceedings and ordered an additional examination of the complainant in order to reach a fully informed conclusion on the matter.¹⁷

¹⁶ See communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

¹⁷ See communications No. 481/2011, *K.N., F.W. and S.N. v. Switzerland*, decision adopted on 19 May 2014; and Nos. 483/2011 and 485/2011, *Mr. X and Mr. Z v. Finland*, decision adopted on 12 May 2014, para. 7.5.

9.7 Concerning the State party's general argument that A.M.D.'s account was not credible, the Committee recalls its jurisprudence, according to which complete accuracy is seldom to be expected by victims of torture, and that any inconsistencies in the complainant's presentation of the facts are not material and do not raise doubts about the general veracity of his claims.¹⁸ In that context, the Committee finds that, in determining whether there were substantial grounds for believing that A.M.D. would face a foreseeable, real and personal risk of being subjected to torture if deported, the State party has failed to duly verify the complainant's allegations and evidence, as required by article 3 of the Convention.¹⁹

10. The Committee, acting under article 22 (7) of the Convention, therefore concludes that the deportation of A.M.D. to the Russian Federation would constitute a violation of article 3 of the Convention.

11. As the cases of M.M.Y. and the complainants' three children, who were minors at the time of the family's asylum application in Denmark, are largely dependent upon A.M.D.'s case, the Committee does not find it necessary to consider those cases individually.

12. The Committee is of the view that the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainants to the Russian Federation or any other country where they run a real risk of 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 of the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.

¹⁸ See communications No. 21/1995, *Alan v. Switzerland*, Views adopted on 8 May 1996, para. 11.3; No. 43/1996, *Tala v. Sweden*, Views adopted on 15 November 1996, para. 10.3; and No. 41/1996, *Kisoki v. Sweden*, Views adopted on 8 May 1996, para. 9.3.

¹⁹ See communications No. 416/2010, *Chun Rong v. Australia*, decision adopted on 5 November 2012, para. 7.5; and No. 558/2013, *R.D. et al. v. Switzerland*, decision adopted on 13 May 2016, para. 9.4.