



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

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**Advance unedited version ANONYMISERET KOPI**

**Committee against Torture**

**Decision adopted by the Committee under article 22 of the  
Convention, concerning communication No. 693/2015\*\***

<i>Communication submitted by:</i>	S.A.M. (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Denmark
<i>Date of complaint:</i>	28 July 2015 (initial submission)
<i>Date of adoption of decision:</i>	3 August 2018
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Substantive issues:</i>	Risk of torture upon return to country of origin (non-refoulement)
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Articles of the Convention:</i>	3 and 16

\* Adopted by the Committee at its sixty-fourth session (23 July – 10 August 2018).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Jens Modvig did not participate in the consideration of the communication.



nor has he otherwise been politically active. It concluded that the complainant would not be at risk of persecution if returned to Afghanistan.

2.5 Subsequently, the complainant underwent a medical examination arranged with the assistance of the Danish Refugee Council. Being afraid of imminent deportation, the complainant did not wait for the results of the medical examination and left for Greece, where he stayed and worked for about nine months. He heard that S. had left for India, and he notified the Greek authorities of his intention to return voluntarily to Afghanistan. He further submits that he needed to return to Afghanistan in order to marry his girlfriend. In August 2014, accompanied by the Greek police, the complainant and several other Afghan nationals flew to Kabul. Upon arrival, the complainant went to his hometown and was issued a certificate of nationality there.<sup>6</sup>

2.6 The complainant claims that there was a terrible incident with a bomb blast near the petrol station in [REDACTED], as a result of which two persons were killed, whereas the complainant himself suffered a burn to his arm.<sup>7</sup> The complainant believes that this incident was targeted at him and masterminded by S.'s associates. In January 2015, the complainant fled to Iran and from there to Europe. In April-May 2015, he arrived in Sweden where he filed an application for asylum. On [REDACTED] June 2015, the complainant was transferred from Sweden to Denmark under the Dublin Regulations.

2.7 On [REDACTED] July 2015, the complainant's counsel requested the Danish Refugee Appeals Board to reopen the case on the grounds of failure of the authorities to undertake a medical examination of the complainant's burn scar on his hand. On [REDACTED] July 2015, the Board refused to reopen the asylum proceeding due to lack of substantial new information or views in the case beyond the information available at the initial hearing by the Board. It further observed that it will not request an examination for signs of torture since it could not accept the complainant's account as a fact.

2.8 On [REDACTED] August 2015, the Board decided to reopen the case with a view of reconsidering the credibility of the complainant's statement in light of the results of the medical examination. In this context, the Board referred to the report of [REDACTED] August 2013 from the Amnesty International Danish Medical Group on an examination of the complainant for signs of torture.<sup>8</sup> According to this medical report, the physical findings on the complainant corresponded to the complainant's statement of past ill treatment.

2.9 On [REDACTED] September 2015, the Board upheld the decision of the Danish Immigration Service not to grant refugee status to the complainant. The majority of the Board found that the complainant made numerous inconsistent and not credible statements with regard to his escape from S.'s associates in 2008 and the reasons for his return to Afghanistan and his marriage in 2014. The Board also argued that the contents of the certificate of nationality presented by the complainant in the initial asylum proceedings, including the complainant's date of birth and the spelling of his own and his father's and paternal grandfather's names, did not correspond to the contents of the document presented by the complainant after his re-entry into Denmark, and thus at least one of the documents must be deemed obtained illegally for the occasion. The majority of the Board found that this circumstance had contributed to weakening the complainant's credibility. It further noted that even if all documents were genuine and even if the complainant had been to Afghanistan after his departure from Denmark, he had failed to render it probable that he was persecuted there. The Board also argued that there was no basis for adjourning the case and instituting an examination for signs of torture.

2.10 On [REDACTED] and [REDACTED] October 2015, the District Court of Hillerod extended the detention period of the complainant prior to his removal.<sup>9</sup> The complainant appealed against this order to the High Court of Eastern Denmark, submitting that his continued deprivation of liberty

<sup>6</sup> According to this document, the complainant was born on [REDACTED] 1991.

<sup>7</sup> He already had the scars on his arm which were caused by the assault he suffered in 2008.

<sup>8</sup> The examination was arranged by the Danish Refugee Council following the Board's decision to reject complaint's asylum application in July 2012.

<sup>9</sup> The removal could not take place on [REDACTED] October as planned since the complainant physically obstructed attempts to have him board the plane.

torture and the asylum seeker's departure from his/her country of origin. A crucial point for a review of an asylum claim is the situation in the country of origin at the time of return.<sup>11</sup> The State party also notes that the Board takes into account information on whether systematic, gross, flagrant or mass human rights violations take place in the country of origin.

4.5 The fact that an asylum seeker has been subjected to torture or ill-treatment in his country of origin may be an essential point in the assessment made by the Board of whether the conditions required by the Aliens Act are met. However, according to the Board's case law, the conditions for granting asylum cannot be considered satisfied in all cases where an asylum seeker has been subjected to torture in his country of origin.<sup>12</sup> It further states that, even if it were assumed that the complainant was detained and tortured in his country of origin in the past, it does not automatically follow that he would still be at risk of being subjected to torture if returned to country of origin.<sup>13</sup>

4.6 Regarding the complainant's allegation related to the authorities' refusal to conduct a medical examination for signs of torture, the State party indicates that when torture is invoked as grounds for asylum, the Board may order such an examination, but that this decision is only taken during the Board's hearing, as the assessment of the need for a medical examination depends on the asylum seeker's statements, in particular his/her credibility. The Board generally does not order an examination for signs of torture when the asylum seeker has lacked credibility during the asylum proceedings. Even if the Board considers it proved that the asylum seeker has previously been subjected to torture, if it finds that there is no real risk of torture upon return at present, it does not order a medical examination.<sup>14</sup> The State party also refers to the judgment of the European Court of Human Rights in *Cruz Varas and others v. Sweden*,<sup>15</sup> in which the Court found that despite the medical evidence provided by the applicant, substantial grounds had not been shown for believing that the applicant's expulsion would expose him to a real risk of being subjected to inhuman or degrading treatment upon return to his country of origin, due to the inconsistencies of his statement during his asylum proceedings. The State party considers, therefore, that as decided by the Board, there was no need to conduct a medical examination in the present case, taking into account the lack of credibility of the complainant.

4.7 As regards the examination of the complainant for signs of torture by the Amnesty International Danish Medical Group, the State party indicates that it was taken into account by the Board in its determination of the appeal on 19 September 2015 and further observes that the results of the medical examination cannot lead to a different assessment of the credibility of the complainant's statement on his grounds for asylum.

4.8 The State party notes that complainant's assertion that after having left Denmark in 2013, he stayed in Greece and subsequently re-entered Afghanistan in order to take up residence in the area where S. used to live before his departure did not substantiate the

<sup>11</sup> The State party refers to *X, Y and Z v. Sweden*, in which the Committee noted that past torture is one of the elements to be taken into account by the Committee when examining a claim concerning article 3 of the Convention, but that the aim of the Committee's examination of the communication was to find whether the authors would risk being subjected to torture now, if returned to the Democratic Republic of the Congo. It also refers to *M.C.M.V.F v. Sweden*, in which the Committee took into account the change of situation in the country of origin of the complainant — El Salvador — where the armed conflict had ceased 10 years before the complaint was brought to the Committee. See e.g., *M.C.M.V.F et al. v. Sweden* (CAT/C/35/D/2372003), para. 6.4.

<sup>12</sup> The State party refers to *N.Z.S. v. Sweden*, in which the Committee considered that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk.

<sup>13</sup> See e.g., *N.Z.S. v. Sweden* (CAT/C/37/D/277/2005).

<sup>14</sup> In this connection, the State party refers to *M.O. v. Denmark*, where the Committee considered that there had not been a violation of the Convention due to the complainant's lack of credibility, despite his statement that he had been subjected to torture and medical evidence in support. See e.g., *Nicmeddin Alp v. Denmark* (CAT/C/52/D/466/2011).

<sup>15</sup> See e.g., European Court of Human Rights, *Cruz Varas and others v. Sweden* (application No. 15576/89), judgment of 20 March 1991, paras. 77-82.

therefore found that it had not been demonstrated that the authorities had failed to conduct a proper assessment of the risk of torture.

4.14 Concerning the complainant's reference to the UNHCR report of 6 August 2013 and the indication from the Afghan government in March 2015 that it wants to renegotiate its repatriation agreement with the Danish authorities, the State party observes that those references cannot lead to a revised legal assessment of the complainant's eligibility for asylum. The State party believes that the general situation in Afghanistan, including in Kabul, is not in itself of such nature that, for that reason alone, the complainant could be recognised as a refugee.

4.15 The State party reiterates that by returning the complainant to Afghanistan on 1 December 2015, it did not violate article 3 of the Convention.

#### **Complainant's comments on the State party's observations**

5.1 On 18 August 2016, the complainant commented on the State party's observations and maintained that Denmark violated article 3 of the Convention, in particular because his request to have a medical examination has been rejected by the State party's authorities.

5.2 The complainant asserted that in addition to a violation of article 3, the State party has also violated article 16 of the Convention, by keeping the complainant in detention for almost six months, prior to his return to Afghanistan on 1 December 2015.

5.3 The complainant recalls having appealed his detention to the High Court of Eastern Denmark. On 1 November 2015, the High Court upheld the earlier decision. On 1 November 2015, the complainant applied to the Appeals Permission Board for permission to appeal to the Supreme Court, without success.

5.4 The complainant further submits that neither the police, nor the courts, when reviewing his appeal for release have considered as facts the finding reflected in the Amnesty International medical examinations.

5.5 The complainant submits that after living abroad, he is risking to be perceived as a person who is opposed to the Islamic rules, as well as, due to his age, forced to fight for the Government of Afghanistan or Taliban, or subjected to a sexual assault. The complainant further claims that he has no protection since he has no family left in Afghanistan, and that he belongs to the Hazara minority group.<sup>20</sup>

5.6 The complainant claims to have exhausted all domestic remedies and considers that his communication should be declared admissible and reviewed together with the original claim.

#### **State party's further submission**

6.1 On 31 March 2017, the State party reiterated that the Board carefully considered all the elements of the case, including the findings of the Amnesty International Danish Medical Group but decided not to request a second opinion from the Department of Forensic Medicine for signs of torture as such examination could not be expected to contribute to bringing out further relevant facts of the case. With reference to its previous observations, State party notes that based on an overall assessment of the information on file, including the results of medical examination, the complainant has not rendered probable the grounds for asylum, including that he was detained and subjected to torture and other physical abuse by S. and his associates in 2008. The State party further indicates that although it appears from the medical examination that there is consistency between the alleged torture and the physical and mental symptoms and the objective findings of the examination, this is not tantamount to accepting as a fact that the complainant was detained in 2008 and subjected to torture and other physical abuse committed by S. and his group.

6.2 The State party further notes that the complainant has failed to establish a prima facie case for the purpose of admissibility of his complaint under article 16 of CAT, as per Rule 113 (b) of the Committee's Rules of Procedure, and that this part of the complaint should be

<sup>20</sup> See e.g., *F.K. v Denmark* (CAT/C/56/D/580/2014).

complainant could not remain in detention, nor was his health condition seen as a bar to his return to Afghanistan.

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

7.1 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.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint 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 complainant has exhausted all available domestic remedies.<sup>21</sup> The Committee therefore finds that the requirement under article 22 (5) (b) of the Convention has been met.

7.3 The Committee notes the complainant's claim that the State party violated article 16 of the Convention by detaining him for five months and twenty-eight days prior to his return to Afghanistan. The Committee observes that the High Court of Eastern Denmark, when rejecting the complainant's appeal, took into account the results of the medical examination made by Amnesty International. Furthermore, it submitted that no information was provided to indicate that the complainant could not remain in detention, nor was his health condition seen as a bar to his return to Afghanistan. In these circumstances, and in the absence of any further information or explanation on file, the Committee considers that the deprivation of liberty in itself is insufficient to substantiate the author's claim of a violation of article 16 of the Convention. Accordingly, this part of the communication is inadmissible as insufficiently substantiated for the purposes of admissibility.

7.4 The Committee further notes that the State party maintains that the complaint should be declared inadmissible pursuant to rule 113 (b) of the Committee's rules of procedure, as it is manifestly unfounded. The Committee, however, observes that the complainant has sufficiently detailed the facts and the basis of his claims of a violation of article 3 of the Convention. As the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

#### *Consideration of the merits*

8.1 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.

8.2 The issue before the Committee is whether the forced removal of the complainant to Afghanistan 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.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Afghanistan. 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 aim of the evaluation 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

<sup>21</sup> See e.g., *X.Q.L. v. Australia* (CAT/C/52/D/455/2011), para. 8.2.

8.8 The Committee refers to the fact that the complainant returned to Afghanistan voluntarily in 2014 and is of the opinion that this factor weakens further the complainant's argument for his asylum claim. The Committee also notes that the Board found the complainant's claims about this return to Afghanistan not credible as he has made numerous inconsistent statements. The Committee also notes that when considering this case, the Board also took into account complainant's numerous diverging and contradictory statements made during his asylum proceedings, including in Sweden, from where he was subsequently transferred to Denmark under the Dublin Regulations.

8.9 In light of the above considerations, and on the basis of all the information submitted by both parties, including on the general situation of human rights in Afghanistan, the Committee considers that the complainant has not adequately demonstrated the existence of substantial grounds for believing that his return to Afghanistan, at present, would expose him to a real, foreseeable and personal risk of torture, as required under article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Afghanistan by the State party would not constitute a violation of article 3 of the Convention.

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