United Nations CAT/C/63/D/703/2015

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

Advance unedited version

Distr.: General
12 June 2018

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 703/2015*, **

Communication submitted by:	I.U.K. et al. (represented by counsel, Jytte Lindgård)
Alleged victims:	The complainants
State party:	Denmark
Date of complaint:	6 October 2015 (initial submission)
Date of adoption of decision:	17 May 2018
Subject matter:	Deportation to the Russian Federation
Procedural issue:	Admissibility – manifestly unfounded
Substantive issues:	Risk of torture upon return to country of origin; non-refoulement
Article of the Convention:	3

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

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

1.1 The complainants are I.U.K. and his wife, R.R.K., born in 1980 and 1981, respectively. The complaint is also submitted on behalf of their three minor children, Bi.I.K., M.I.K. and Bu.I.K., born in 2001, 2004 and 2011, respectively. The complainants are ethnic Chechens of the Muslim faith holding the citizenship of the Russian Federation. At the time of submission, they 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.

1.2 On 13 October 2015, in application of rule 114 (1) of its rules of procedure (CAT/C/3/Rev.6), 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 complaint was being considered by the Committee. In accordance with the Committee's request, on 16 October 2015, the Refugee Appeals Board suspended the time limit for the complainants' departure from Denmark until further notice. On 25 October 2016 and 7 March 2018, the Committee, acting through the same Rapporteur, denied the requests of the State party dated 13 April 2016 and 5 May 2017, respectively, to lift interim measures.

Factual background[1]

2.1 The complainants are from ——— Dagestan. Starting from 2007, I.U.K. worked as a forester, cutting trees in the forest. He maintains that he has never sympathized with the insurgents in Dagestan. R.R.K. had worked as a primary school teacher in ——— from 2002 to 2011.

2.2 At the end of August 2013 while working in the forest, I.U.K. was approached by three armed insurgents wearing green camouflage uniforms who threatened him into helping them buy food and medication. The insurgents said that they had information about where I.U.K. lived, about his spouse and his children. They also said that they saw I.U.K. in the forest several times and knew that he worked alone. I.U.K. was then told by the insurgents that he and his family members could be killed "just like that" if he refused to buy food and medication for them. One of the insurgents stood next to I.U.K. while one of the others took a photo of I.U.K. with the insurgent, reportedly to document that I.U.K. had contacts with the insurgents. Ultimately, I.U.K. accepted to help them because he was scared. The insurgents gave him 10,000 roubles and two days later he left two bags with the requested items in the previously agreed location. He had not told his spouse about the incident.

2.3 In late September 2013, while working in the forest, I.U.K heard shots being fired around one to two kilometres away from his location. He became scared and decided to leave the area but shortly thereafter his car was stopped by a group of 10 to 12 armed persons in balaclavas wearing special military uniforms, which made I.U.K. believe that they were representatives of the authorities from the special police force (OMON). They dragged him out of his car at gunpoint, threw him to the ground and started beating him. A plastic bag was then placed over I.U.K.'s head, he was forced into another car and driven away. Inside the car, I.U.K. was kicked and beaten with fists and police batons.

2.4 When I.U.K. was allowed to leave the car and the bag was removed from his head, he realized that he was in town and that he was taken inside the police station through an "extra station entrance" and not through the main entrance. I.U.K. was placed in a dark cell in the basement that was cold and did not have any windows. He was kicked in the legs, so that he could not stand up. At some point, three persons entered the room and started asking I.U.K. questions about the whereabouts of the insurgents. He was beaten on the head and in the legs during the interrogations and had difficulty recalling for how long he was detained but he did not tell the interrogators anything about his encounter with the insurgents. I.U.K. was placed

[1] The factual background has been reconstructed on the basis of the complainants' own incomplete account, reports on their asylum screening interviews of — January 2014 and their asylum interviews of — June 2014, with the Danish Immigration Service, decision of the Immigration Service of — June 2014, decisions of the Refugee Appeals Board of — October 2014 and — August 2015, as well as other supporting documents available on file.

on a chair during the interrogation. One of the persons told I.U.K. in Russian that they would take a police baton, shove it up his rectum, record it and show it to everybody. I.U.K. has then stood up and tried to escape. He ran towards the wall, hit his head against it and lost consciousness. When I.U.K. came around he realized that he was splashed with water, his entire body was in pain and he was bleeding. The interrogators also reportedly tried to make I.U.K. to regain consciousness with the help of sponge with ether. I.U.K. was detained for a total of 24 hours and interrogated around five times during that period, each time with the use of force against him. He was released on bail of 500,000 roubles paid by his male cousin and driven home by his male cousins and uncles. Although I.U.K. was covered in bruises and it was obvious that he had been beaten, he did not tell his spouse any details of what had happened to him, because in his culture it was unusual to tell women about "such things" in detail. I.U.K. did not dare to go to the hospital, because the hospital and the police "worked together", but his neighbour was a nurse and helped in treating him. He received treatment at home for a long time and was unable to walk on his own and work.

2.5 On [redacted] November 2013, I.U.K. went on a fishing trip with his friend and two more persons to celebrate his friend's birthday. The next day, R.R.K. called that friend to say that a group of 5 to 6 men in black uniforms with OMON's insignia, some wearing balaclavas, had been at I.U.K.'s house early in the morning looking for him. They had searched the house for approximately two hours, scaring the complainants' children and behaving inappropriately towards R.R.K. In particular, they had verbally humiliated her, had slapped her bottom and had touched her breasts. The men had left when the complainants' neighbours had come over because of the noise and had shouted at them to leave R.R.K. alone. I.U.K. had then decided to hide with his brother-in-law and R.R.K.'s sister where he stayed until his family's departure from the Russian Federation on [redacted] November 2013. I.U.K. has subsequently been informed by his brother that the authorities came to I.U.K.'s house to ask for him and arrested his other brother. I.U.K. does not know for how long his brother was arrested but, apparently, he was also beaten during his interrogation. I.U.K. was informed by his brother that summonses were received in I.U.K.'s name and R.R.K. was informed by her mother that the authorities had contacted I.U.K.'s family.

2.6 The complainants entered Denmark on [redacted] November 2013 without valid travel documents and applied for asylum the same day. As his grounds for asylum, I.U.K. has referred to his fear of being killed by the authorities or the insurgents in case of his return to Dagestan, Russian Federation. R.R.K. has referred to her spouse's grounds for asylum. On [redacted] January 2014, the Danish Immigration Service conducted the asylum screening interviews of I.U.K. and R.R.K. Their asylum interviews were conducted by the Immigration Service on [redacted] June 2014. I.U.K. gave his consent to undergoing an examination for signs of torture, should the Immigration Service deem it necessary.

2.7 On [redacted] June 2014, the Immigration Service refused asylum to the complainants. On [redacted] October 2014, the Board upheld the refusal by the Immigration Service of the complainants' asylum application. On [redacted] October 2014, the complainants requested the Board to reopen the asylum proceedings and to extend the time limit for their departure from Denmark. As a reason for their request, the complainants referred, inter alia, to the fact that they had requested the Amnesty International Danish Medical Group to conduct an examination of I.U.K. for signs of torture. By letter of [redacted] April 2015, the complainants transmitted to the Board a report on the examination of I.U.K. for signs of torture conducted by the Amnesty International Danish Medical Group. On [redacted] August 2015, the Board refused to reopen the complainants' asylum proceedings.

2.8 Since, according to the Danish Aliens Act, the decision of the Board cannot be appealed before the Danish courts, the complainants submit that they have exhausted all available and effective domestic remedies.

The complaint

3.1 The complainants submit that Denmark would breach its obligations under article 3 of the Convention by returning them to the Russian Federation. They argue, in particular, that I.U.K. risks being detained and subjected to torture by the authorities or the insurgents in case of his return to Dagestan, Russian Federation. In support of their claim, the complainants state that I.U.K. was detained and subjected to torture by police in Dagestan after having been threatened by insurgents into helping buy food and medication for them. They add that the

authorities suspected I.U.K. of collaborating with the insurgents and that, therefore, he was unable to seek the authorities' protection against the insurgents.

3.2 The complainants further submit that the abuse against I.U.K. was described in detail on several occasions during the proceedings and that the information in this respect was not taken into account by the Board in its assessment of the matter. They specifically argue that the Immigration Service and the Board should have initiated I.U.K.'s examination for signs of torture. In this respect, the complainants refer to a report made by the Amnesty International Danish Medical Group in April 2015 on I.U.K's examination for signs of torture and observe that, irrespective of the findings of the report, the Board decided to refuse the complainants' request for reopening of the asylum proceedings.

3.3 The complainants also submit that the Board based its decision on the view that the complainants' statements were mutually inconsistent. However, according to the complainants, it is common practice in northern Caucasus for a female spouse not to know much about the doings of her male spouse. Prior to their arrival in Denmark, I.U.K. had not mentioned the abuse to which he had been subjected, and he had at no point mentioned the sexual abuse.[2] They submit in that respect that the inconsistences of their statements were of minor importance. With reference to the Committee's jurisprudence, the complainants further observe that it is difficult for victims of torture to explain precisely what happened in a very stressful situation.[3] Further, the complainants submit that the Board emphasised the complainants' inconsistent statements about R.R.K.'s phone call to I.U.K. on which occasion she informed him that he shoukd not come home because the authorities had been to their home. The complainants observe in this respect that they had been in a very tense situation and that they should not be blamed for not recalling the exact sequence of events, also because I.U.K. had been very drunk in that situation.

3.4 Moreover, the complainants submit that the Board emphasised their inconsistent statements about their visas. They observe in this respect that R.R.K. had given a very credible statement without any inconsistencies on the circumstance that she had applied for visa for Poland in 2012 as a surprise for her spouse, but that she had never informed her spouse of this because she now feared his reaction. Furthermore, the complainants insist on the fact that they did not know about the visa application for Greece (see, paras. 4.4 and 4.5 below).

3.5 Finally, with reference to the Committee's jurisprudence,[4] the complainants observe that in the assessment of whether a person risks torture in case of a return to his or her country of origin, all matters must be taken into account, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the relevant state. In this respect, the complainants refer to the background information[5] available on the situation in Dagestan and argue that such "pattern of gross, flagrant or mass violations of human rights" without doubt exists in Dagestan, Russian Federation.

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[2] The complainants do not provide further information on this claim.

[3] Reference is made to *Rong v. Australia* (CAT/C/49/D/416/2010), para. 7.5.

[4] Reference is made to *M.O. v. Denmark* (CAT/C/31/D/209/2002), para. 6.2.

[5] Reference is made to the article entitled "Dagestan: New Epicentre of Muslim Terrorism in Russia" published by Gatestone Institute International Policy Council on 14 February 2014, which states that Dagestan is the most violent place in the Russian Federation, and that the administrative bureaucracy is corrupt. It is also stated in that article that Dagestan is the new epicentre of Muslim terrorism in Russia and that anti-state activities occur on a daily basis in the territory. Reference is also made to the article entitled "Formation of Khasavyurt Jammat Reflects Influx of New Funds and Recruits" published by Jamestown Foundation publication on 17 January 2014, which states that Khasavjurt is one of the most active jamaats (Islamist Jihadist groups) in Dagestan. Militant attacks or law enforcement operations in the Khasavjurt area occur almost every week, thus increasing the authorities' presence and actions in the area. The complainants also refer to a report "Invisible War / Russia's Abusive Response to the Dagestan Insurgency" by the Human Rights Watch dated 18 June 2015, which indicates that the organization has registered abuse in several counterinsurgency operations in Dagestan. According to the report, there have been abuses related to the detention of suspects by the security forces. Those targeted are typically young men who are suspected of having links to the insurgency. In some cases, the suspects are initially forcibly disappeared but then, they appear in a detention facility, tortured or threatened. It further documents police use of torture and ill-treatment in extracting confessions and testimonies in Dagestan.

State party's observations on admissibility and the merits

4.1 On 13 April 2016, the State party submitted its observations on admissibility and the merits of the complaint. As to the facts on which the present complaint is based, it refers to the complainants' statements during the asylum proceedings and recalls that they have not been members of any political or religious associations or organizations, nor have they been politically active in any other way.

4.2 With reference to rule 113 (b) 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, in so far as it has not been established that there are substantial grounds for believing that I.U.K. is in danger of being subjected to torture upon his return to the Russian Federation. The complaint is therefore inadmissible as manifestly unfounded. 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 their country of origin beyond the information already available to the Board when it made its decisions on — October 2014 and — August 2015.

4.3 The State party provides a detailed description of the asylum proceedings under the Aliens Act and decision-making processes and functioning of the Board.[6] It observes that the Board made an assessment in the complainants' case – as it does in all other asylum cases – as to whether their statements appeared credible and convincing, including their probability, coherence and consistence. In its decisions of — October 2014 and — August 2015, the Board found that it could not, upon an overall assessment of the statements made by the complainants in conjunction with the other information in the case, consider as established facts the complainants' statements on their conflicts in their country of origin prior to their departure. The Board thus found that the complainants' statements appeared to be fabricated for the occasion, inconsistent and elaborating. It therefore found no basis for initiating I.U.K.'s examination for signs of torture.

4.4 In its decision of — October 2014, the Board emphasised, inter alia, that it appeared from the case file that the complainants had applied for visa for both Poland and Greece although this was initially disputed by both complainants, after which R.R.K. stated that she did have knowledge about the application for Poland for which she had paid a considerable amount without the knowledge of her spouse.[7] The State party observes in this respect that it appears from the replies from the Polish and Greek authorities to visa inquiries that the complainants have been issued with visas valid for both Poland and Greece. Against that background, the State party agrees with the Board that the complainants' statements on their visas appear non-credible. It does therefore not seem credible that the Greek authorities would issue visas to the complainants without the complainants knowing how or why this had taken place. Nor does it seem credible as stated by R.R.K. at the hearing before the Board that she had paid EUR 2,500 for visas for Poland without the knowledge of her spouse.

4.5 The State party also observes that the complainants had been issued with visas for Poland valid from — December 2012 to — January 2013, which was before their problems with the authorities started. It also observes that the complainants had obtained visas for Greece valid for periods of ten days commencing on — November 2013 and — November 2013, respectively, which is precisely around the period when they departed from Russia, according to their own statement. In this connection, the State party does not find it credible that, as stated by the complainants to the Immigration Service, they had never been issued with international passports, whereas at the hearing before the Board, R.R.K. stated that she had had international passports issued for both complainants in connection with a visa

[6] See, *M.B. et al. v. Denmark* (CAT/C/59/D/634/2014), paras. 4.2 to 4.8.

[7] In particular, at the asylum screening interviews conducted by the Immigration Service on — January 2014, the complainants concurred that they had not previously applied for any visas or residence permits. Even though they were confronted with the information from the Polish and Greek authorities at the asylum interviews conducted by the Immigration Service on — June 2014, the complainants maintained their statements at that interview. Only at the meeting with counsel prior to the Board hearing on — May 2014 did R.R.K. state that she had applied for visas for Poland in 2012 for herself and her spouse without his knowledge, whereas both complainants continued to maintain that they knew nothing about the visas for Greece.

application for Poland and that the passports had been delivered to them in November. The State party observes in this respect that it weakens the credibility of the complainants in general that they maintained their incorrect statements on the visas despite numerous opportunities to correct their statements and that the assessment of their statements should be seen in light of those circumstances.

4.6 The State party further submits that, in its decision of — October 2014, the Board also emphasised that the complainants had made mutually inconsistent statements, which also changed from time to time, including about R.R.K.'s phone call in connection with I.U.K.'s fishing trip.[8] I.U.K. also made inconsistent statements about why he ended up staying with his brother-in-law.[9]

4.7 The State party also submits that, as appears from the Board's decision of — October 2014, I.U.K. made a statement at the hearing before the Board on the abuse allegedly committed against him. His statement in this respect has therefore been taken into account in the decision made by the Board on an equal footing with the other information in the case. In its decision of — August 2015, the Board stated that it had considered whether the reason for the inconsistent and elaborating elements of the complainants' statements could be that I.U.K. had been subjected to torture as claimed by him, but found that this could not be the case. The State party observes in this respect that both complainants have made inconsistent statements, including about their visas, and that R.R.K. changed her statements on this matter during the proceedings. It therefore agrees with the Board's assessment that the inconsistent elements of the complainants' statements cannot be explained by the abuse to which I.U.K. was allegedly subjected while detained as stated by him. Thus, the statements are not only mutually inconsistent, but both complainants also changed from time to time. The State party observes in this respect that the inconsistencies of the complainants' statements mentioned above on crucial parts of their grounds for asylum, including in particular about their visas, cannot be explained by the circumstance that the complainants were in a highly stressful situation prior to their departure. In this connection, reference is made to the circumstance that the complainants applied for and were issued with visas for Poland before the alleged conflicts took place. The State party argues that the circumstances referred to cannot be explained by the fact that the complainants normally do not talk about their individual doings.

[8] In particular, it appears from the reports of the interviews with the complainants conducted by the Immigration Service that I.U.K. stated at the asylum screening interview on — January 2014 that, while on a fishing trip on — November 2013, he received a call from his spouse who told him not to come home because the police were looking for him. At the asylum interview on — June 2014, he first stated that, in the early morning of — November 2013, he was in contact with a friend who had talked to his spouse who had said that the police had been at their home. Later at that interview, I.U.K. stated that his friend had called him in the morning on the day after the fishing trip telling him that he had talked to R.R.K. who had said that I.U.K. should not come home because the authorities had been at their home. I.U.K. further stated at the same interview that his spouse had called the friend who had passed on the message to him. I.U.K. stated that he had not brought a phone on the trip because his mobile phone was out of order. When informed that his spouse had stated that she had called I.U.K., he replied that his spouse must have forgotten to whom she had talked. Finally, at the hearing before the Board, I.U.K. provided entirely new information stating that he woke up at the place of his spouse's brother the day after the fishing trip and was told that representatives of the authorities had been at his home. He did not recall whether he had talked to his spouse. He had brought his phone with him on the fishing trip, but the connection had been poor. By contrast, R.R.K. first stated at the asylum screening interview on — January 2014 and later at the asylum interview conducted by the Immigration Service on — June 2014 that she had called her spouse to tell him not to come back. When asked directly at the asylum interview, she stated that she did not understand her spouse's statement and that she maintained that she had contacted her spouse on the phone and told him about the incident. However, at the hearing before the Board, she stated that she had tried to call her spouse numerous times, but had failed to get through. At some point, she had heard that the phone was picked up, but no one had answered. She had said on the phone that her spouse should not come home and had then hung up. In its decision of — October 2014, the Board observed that this seemed highly unlikely.

[9] In particular, during the asylum interview, I.U.K. stated that he had urged his friend to take him there but to the Board he stated that his friend had just taken him there while he was drunk and did not know what happened.

It is observed in this respect that the complainants also made inconsistent statements about the reason given by I.U.K. to his spouse for their departure.[10]

4.8 As to the complainants' claim that the Board should have initiated I.U.K.'s examination for signs of torture, the State party submits that there was no need in the present case to conduct such examination, because the Board did not consider the complainants' statements on their conflicts in the Russian Federation prior to their departure to be established facts. The State party recalls in this respect that the Board does not initiate an examination for signs of torture in cases in which it has been unable to find as established facts the complainant's grounds for asylum. The Board therefore found no basis for initiating I.U.K.'s examination for signs of torture. The State party agrees with the Board's assessment that there was no need for initiating such examination and additionally observes that the complaint to the Committee includes no information that can lead to a different assessment of the case, nor of the need for initiating an examination for signs of torture for use in this case.

4.9 As regards I.U.K.'s examination for signs of torture conducted by the Amnesty International Danish Medical Group in April 2015, which was also taken into account by the Board in its decision of — August 2015, the State party observes that the following appears from the report about the objective findings: "The examination found, inter alia, abnormal alterations on the root of the nose and skin alterations on the nose, a small scar on the left upper lip and on the right shoulder as well as missing upper and lower teeth. According to the person examined, all the injuries stemmed from the torture. Further, a number of scars were found on both legs and below the right rib case as well as skin alterations and an abnormality equivalent to the left jawbone. According to the information provided, these changes did not relate to the torture. [I.U.K.] scored 2.75/4 on psychological symptoms. Scores above 2.5/4 indicate post-traumatic stress disorder (PTSD), which is typically seen in persons exposed to severe stress, including acts of war and torture. Overall, [I.U.K.]'s physical and psychological symptoms and the objective findings made are fully consistent with consequences of the alleged torture".

4.10 The State party submits that, in its decision of — August 2015 refusing reopening of the asylum proceedings, the Board stated, inter alia, that the examination for signs of torture conducted by the Amnesty International Danish Medical Group could not lead to a different assessment of the credibility of the complainants' statements. In this respect, the Board found that the circumstance that it appeared from the examination for signs of torture available that the physical and psychological symptoms and objective findings in connection with the examination were consistent with the torture described by I.U.K. did not imply that he had been subjected to the physical and/or psychological abuse relied on by him. Accordingly, based on an overall assessment of the information on file, including the report made by the Amnesty International Danish Medical Group, the Board still found that the complainants had failed to render probable the grounds for asylum relied on by them, including that I.U.K. was detained and subjected to torture at the end of September 2013 by persons in balaclavas wearing military uniforms as stated by him. The State party agrees with the Board that the examination for signs of torture conducted by the Amnesty International Danish Medical Group cannot lead to a different assessment of the credibility of the complainants' statements on their grounds for asylum.[11]

4.11 The State party refers to the Committee's jurisprudence[12] relating to cases in which the Board could not accept an asylum-seeker's statement on his grounds for asylum as an established fact and submits that it is aware of the Committee's decision in *F.K. v Denmark*,[13]

[10] In particular, it appears from the reports of the complainants' asylum interviews that R.R.K. stated to the Immigration Service that she did not know why they had left Dagestan and that I.U.K. had not told her about the insurgents and about delivering food to them. However, I.U.K. stated that he did not know why his spouse stated so because he had told her about it.

[11] Reference is made to the European Court of Human Rights, *Varas and others v. Sweden* (application No. 15576/89), judgment of 20 March 1991, paras. 77 to 82, and *M.O. v. Denmark*, paras. 6.4 to 6.6.

[12] Reference is made to *Z. v. Denmark* (CAT/C/55/D/555/2013), para. 7.5; and *M.S. v. Denmark* (CAT/C/55/D/571/2013), para. 7.6.

[13] See, *F.K. v. Denmark* (CAT/C/56/D/580/2014), para. 7.6.

in which the Committee considered that, by rejecting the complainant's asylum application without ordering a medical examination, the State party failed to sufficiently investigate whether there were substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to his country of origin. The State party further submits that the above-mentioned decision does not imply a general obligation to conduct an examination for signs of torture in case an asylum-seeker's statement on his or her grounds for asylum cannot be considered an established fact because his or her statement is deemed to lack credibility. Accordingly, the reasoning given in *F.K. v. Denmark* is very specific. The State party observes in this respect that *F.K. v. Denmark* differs from the case at hand in that the Board explicitly took into account the report made by the Amnesty International Danish Medical Group in its decision of — August 2015 refusing reopening of the asylum proceedings, whereas the report made by the Amnesty International Danish Medical Group concerning *F.K.* had not been available at the time when *F.K.*'s appeal was heard by the Board on — August 2013, and consequently it was not included in the basis of the decision of the Board refusing asylum to *F.K.*

4.12 The State party observes that in the present case, as in all other cases, the Board made an overall assessment of the complainants' situation compared with the background information on the Russian Federation, including Dagestan,[14] available to it. The Board found that, despite the background information available, the complainants would not be at a specific and individual risk of abuse falling within article 3 of the Convention.[15] The State party agrees with the Board's assessment.

4.13 Furthermore, the State party maintains that the Board has taken into account all relevant information in its decisions and that the complainants have not presented any new information to the Committee. The State party refers to the judgment of the European Court of Human Rights in *R.C. v. Sweden*, in which the Court considered 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".[16] The State party considers that the complainants are trying to use the Committee as an appellate body and that their complaint merely reflects the fact that they disagrees with the assessment of their credibility made by the Board. It also indicates that the complainants failed to identify any irregularity in the decision-making process or any risk factors that the Board had failed to take properly into account. The State party refers to the Committee's jurisprudence according to which it is for the State parties to examine the facts and evidence in a particular 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.[17] Thus, in the State party's view there is no basis for doubting, let alone setting aside, the Board's assessment, according to which the complainants have failed to establish that there are substantial grounds for believing that I.U.K. would risk abuse contrary to article 3 of the Convention upon the complainants' return to the Russian Federation.

4.14 Lastly, the State party wishes to draw attention to the statistics on the case law of the Danish immigration authorities, which show, among other things, the recognition rates for asylum claims from the 10 largest national groups of asylum seekers decided by the Board between 2013 and 2015.

Complainants' comments on the State party's observations

5.1 On — September 2016, the complainants submitted their comments on the State party's observations, arguing that they did establish a prima facie case for the purpose of admissibility of their complaint under article 3 of the Covenant. They refer in particular to

[14] Reference is made to a report "Invisible War" by the Human Rights Watch.

[15] Reference is made to *Z. v. Denmark*, para. 7.2; and *M.S. v. Denmark*, para. 7.3.

[16] See, European Court of Human Rights, *R.C. v. Sweden* (application No. 41827/07), judgment of 9 March 2010, para. 52. The State party also refers to the European Court of Human Rights, *M.E. v. Denmark* (application No. 58363/10), judgment of 8 July 2014, para. 63; and *M.E. v. Sweden* (application No. 71398/12), judgment of 26 June 2014, para. 78.

[17] See, *A.K. v. Australia* (CAT/C/32/D/148/1999), para. 6.4; and *S.P.A. v. Canada* (CAT/C/32/D/282/2005), para. 7.6.

I.U.K.'s detailed description of torture to which he was subjected to in Dagestan, which was presented by the complainants to the Board, as well as to the findings of the Amnesty International Danish Medical Group's report, confirming that I.U.K.'s physical and psychological symptoms were fully consistent with consequences of the alleged torture. They add that a person who has been exposed to the degree of persecution similar to that of I.U.K., will experience serious difficulties if returned to Dagestan, Russian Federation, since there is a high risk that the authorities will subject him to repeated interrogation, accompanied by torture.

5.2 The complainants refer to the Committee's decision in *F.K. v Denmark*,[18] according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, but that the risk does not have to meet the test of being highly probable. They submit that, in the present case, the risk of new torture upon return of I.U.K. to Dagestan, Russian Federation, is evident and imminent. For them, it is not merely a theoretical chance of torture but a very real possibility that I.U.K.'s arrest and torture will occur should he be returned to his country of origin after having applied for asylum in Denmark. This assertion is supported by the reports on the serious general situation in Dagestan and in the North Caucasus,[19] as well as by the fact that I.U.K. has already suffered severe torture and sexual abuse[20] from the authorities, due to his association with suspected insurgents.

5.3 The complainants reiterate their position that there is medical evidence, i.e. the report of the Amnesty International Danish Medical Group, to support I.U.K.'s claim that he has been tortured or ill-treated by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity in the past; that the torture has had after-effects; that the situation in Dagestan has not changed for the better, and that I.U.K. has engaged, although unwillingly, in political or other activity, which would appear to make him particularly vulnerable to the risk of new torture in case of his return to Dagestan, Russian Federation.

5.4 The complainants also contend that there are no factual inconsistencies in their explanations, only minor differences, which are due to either I.U.K.'s mental state after the severe abuse he had suffered from the authorities in Dagestan, including PTSD and memory problems; or the fact that he and R.R.K. live in a traditional North Caucasian marriage, where it is customary that the spouses do not share every piece of information with each other. The complainants maintain that the key points of I.U.K.'s explanations have been consistent throughout his interviews, meetings and medical examination by the Amnesty International Danish Medical Group. In this context, the complainants submit that in it decision in *F.K. v Denmark*,[21] the Committee considered that, despite the State party's serious credibility concerns in that complaint, it drew an adverse credibility conclusion without adequately exploring a fundamental aspect of the complainant's claim.

5.5 The complainants submit that I.U.K.'s examination for signs of torture should have been conducted at the Department of Forensic Medicine of the Copenhagen University Hospital (Rigshospitalet), which is the official medical establishment for torture investigations. As to the State party's argument that the Board may initiate an examination for signs of torture if it finds an asylum-seeker credible, the complainants submit that such an examination is in fact necessary to prove the asylum-seeker's credibility.

State party's additional observations

6.1 On 5 May 2017, the State party submitted that the complainants' comments of 30 September 2016 did not provide any new information on their case. It therefore refers to its observations of 13 April 2016 and reiterates its arguments summarized in paragraphs 4.4 – 4.7 and 4.11 above).

6.2 As regards the complainants' submission that the Board ought to have initiated I.U.K.'s examination for signs of torture by the Department of Forensic Medicine at

[18] See, *F.K. v. Denmark*, para. 7.3.

[19] See, fn. 5. Reference is also made to the ACCORD compilation entitled "General Security Situation and Events in Dagestan" (last updated on 1 August 2016).

[20] The complainants do not provide further information on this claim.

[21] See, *F.K. v. Denmark*, para. 7.6.

Rigshospitalet to substantiate his credibility, the State party observes that a new examination for signs of torture would not have contributed to bringing out the facts of the case. Even if a new examination were to provide the same findings as those set out in the report made by the Amnesty International Danish Medical Group, it would not necessarily clarify whether I.U.K.'s injuries originate from torture or whether they were caused by, for example, fights, assaults, accidents or acts of war. Moreover, a new examination for signs of torture could not ascertain the truthfulness of an explanation why and by whom I.U.K. was subjected to abuse. The State party refers in this respect to the Committee's decision in *S.A.P. et al. v. Switzerland*.[22]

6.3 The State party noted the Committee's decision in *M.B., A.B., D.M.B. and D.B. v. Denmark*,[23] in which it stated inter alia that "[…] the impartial and independent assessment of whether the reason for the inconsistences in [the first complainant's] 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 submits that it disagrees with the view expressed by the Committee in that decision and finds that the circumstances that an asylum-seeker may request an examination for signs of torture does not in itself lead to an absolute obligation on the part of the immigration authorities to initiate such examination, not even in cases in which an asylum-seeker has produced medical information indicating that he or she might have been subjected to torture. It maintains 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. Finally, the State party observes that the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention does not imply either that there is an obligation to initiate an examination for signs of torture for the mere reason that an asylum-seeker claims to have been subjected to torture. The State party also recalls that, when exercising its jurisdiction pursuant to article 3 of the Convention, the Committee should give considerable weight to the findings of fact made by the organs of the State party concerned.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim submitted in a complaint, 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.[24] The Committee therefore finds that the requirement under article 22 (5) (b) of the Convention has been met.

7.3 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.[25] The Committee notes the State party's argument that the complaint is manifestly unfounded owing to a lack of substantiation. The Committee considers, however, that the arguments put forward by the complainants 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 further obstacles to admissibility, declares the complaint admissible and proceeds with its consideration of the merits.

[22] See, *S.A.P. et al. v. Switzerland* (CAT/C/56/D/565/2013), para. 7.4.
[23] See, *M.B., A.B., D.M.B. and D.B. v. Denmark* (CAT/C/59/D/634/2014), para. 9.6.
[24] See, e.g., *X.Q.L. v. Australia* (CAT/C/52/D/455/2011), para. 8.2.
[25] See, e.g., *K.A. v. Sweden* (CAT/C/39/D/308/2006), para. 7.2.

Consideration of the merits

8.1 The Committee has considered the complaint 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 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 (1) 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 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.[26]

8.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or a member of a group which may be at risk of being tortured in the State of destination. The Committee's practice in this context has been to determine that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".[27] Indications of personal risk may include, but they are not limited to: the complainant's ethnic background; previous torture; incommunicado detention or other form of arbitrary and illegal detention in the country of origin; and clandestine escape from the country of origin for threats of torture.[28] The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.[29]

8.5 In assessing the risk of torture in the present complaint, the Committee notes I.U.K.'s contention that he fears being detained and subjected to torture by the authorities or the insurgents in case of his return to Dagestan, Russian Federation. The Committee also notes the complainants' allegations that, prior to their arrival in Denmark, I.U.K. was detained and subjected to torture by police in Dagestan after having been threatened by insurgents into helping buy food and medication for them on one occasion. The Committee further notes the complainants' assertion that the authorities suspected I.U.K. of collaborating with the insurgents and that, therefore, he was unable to seek the authorities' protection against the insurgents.

8.6 The Committee also notes the State party's observation that its domestic authorities found that the complainants lacked credibility because their statements on crucial parts of their grounds for asylum appeared to be fabricated for the occasion, inconsistent and elaborating. In particular, the complainants made inconsistent and/or mutually inconsistent statements about: (a) their visas for Greece and Poland (see, paras. 4.4 and 4.5 above); (b)

[26] See, *T.M. v. Republic of Korea* (CAT/C/53/D/519/2012), para. 9.3.

[27] General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 11.

[28] Ibid, para. 45.

[29] Ibid, para. 50.

R.R.K.'s phone call in connection with I.U.K.'s fishing trip (see, para. 4.6 above); (c) the reason why I.U.K. ended up staying with his brother-in-law and R.R.K.'s sister until his family's departure from the Russian Federation (see, para. 4.6 above); and (d) the reason given by I.U.K. to his spouse for their departure (see, para. 4.7). The Committee further notes the Board's conclusion that the complainants' inconsistent statements on crucial elements of their grounds for asylum cannot be explained by the fact that the complainants were in a highly stressful situation prior to their departure from the Russian Federation or by the fact the complainants have a traditional relationship in which they do not share information with each other. Against this background, the Board found that it could not, upon an overall assessment of the statements made by the complainants in conjunction with the other information in the case, consider as established facts the complainants' statements on their conflicts in their country of origin prior to their departure. In this regard, the Committee recalls that States parties should refrain from following a standardized credibility assessment process to determine the validity of non-refoulement claims with respect to persons alleging previous torture and other-ill treatment, and should appreciate that complete accuracy can seldom be expected from victims of torture.[30] It should be noted, however, that while these considerations should have mitigated the adverse conclusions drawn by the State party with regard to I.U.K.'s credibility, they are not applicable to the credibility concerns expressed with respect to statements made by R.R.K., I.U.K.'s spouse, who is not alleging to be a victim of torture.

8.7 The Committee also takes note of the complainant's claim that, although I.U.K. described in detail during the asylum proceedings the abuse to which he was subjected in Dagestan prior to his arrival in Denmark, and demanded that the Board request a specialized medical examination in order to verify whether those injuries were sustained as a result of torture, the Board rejected his request for asylum on two occasions without ordering such an examination and despite the report of the Amnesty International Danish Medical Group, attesting that "overall, [I.U.K.'s] physical and psychological symptoms and the objective findings made are fully consistent with consequences of the alleged torture". It also notes the State party's argument that a new examination for signs of torture would not have contributed to bringing out the facts of the case, and that even if a new examination were to provide the same findings as those set out in the report made by the Amnesty International Danish Medical Group, it would not necessarily clarify whether I.U.K.'s injuries originate from torture or whether they were caused by, for example, fights, assaults, accidents or acts of war. Moreover, the State party notes that a new examination for signs of torture could not ascertain the truthfulness of an explanation why and by whom I.U.K. was subjected to abuse.

8.8 In this regard, the Committee observes that, in principle and regardless of the asylum authorities' assessment of the credibility of a person alleging previous torture, he or she should be referred by the asylum authorities to an independent medical examination free of charge, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol),[31] so that the authorities deciding on a given case of forcible return are able to complete the assessment of the risk of torture objectively and without any reasonable doubt, on the basis of the results of that medical examination. The Committee observes, however, that, both in the present complaint and in their submissions to the Danish asylum authorities, the complainants have failed to explain how or why an examination of I.U.K. for signs of torture by the Department of Forensic Medicine at Rigshospitalet might have led to a different assessment of their asylum application. In these circumstances, the Committee does not consider the denial of an independent medical examination to have directly resulted in the State party's adverse conclusion concerning the complainants' credibility.[32]

8.9 The Committee also observes that, even if it were to set aside the inconsistencies in the complainants' account of their past experiences in the Russian Federation and accept their statements as true, the complainants have not provided any evidence that the authorities in Dagestan, Russian Federation, have been looking for I.U.K. in the recent past or were otherwise interested in him. The Committee recalls in this connection that ill-treatment suffered in the past is only one element to be taken into account, the relevant question before the Committee being whether the complainant in question currently runs a risk of torture if

[30] General Comment No. 4, para. 42.

[31] Ibid, paras. 18 (d) and 41.

[32] See, *M.B., A.B., D.M.B. and D.B. v. Denmark* (CAT/C/59/D/634/2014), para. 9.6.

returned to the Russian Federation.[33] The Committee notes that there are reports of serious human rights violations in Dagestan, Russian Federation. 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.[34] However, the Committee considers that, even if it were assumed that I.U.K. was tortured by or with the acquiescence of the authorities in Dagestan in the past, it does not automatically follow that he would still be at risk of being subjected to torture if presently returned to the Russian Federation.

8.10 The Committee recalls that the burden of proof is upon the complaints who have to present an arguable case – i.e. to submit circumstantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real, unless the complainants are in a situation where they cannot elaborate on their case.[35] In light of the above considerations, and on the basis of all the information submitted by the complainants and the State party, including on the general situation of human rights in Dagestan, Russian Federation, the Committee considers that the complainants have not adequately demonstrated the existence of substantial grounds for believing that I.U.K.'s return to the Russian Federation at present would expose him to a real, specific and personal risk of torture, as required under article 3 of the Convention.

9. Accordingly, the Committee, acting under article 22 (7) of the Convention, is of the view that the return of I.U.K. to the Russian Federation would not constitute a violation by the State party of article 3 (1) of the Convention.

10. As the cases of R.R.K. and the complainants' three minor children are largely dependent upon I.U.K.'s case, the Committee does not find it necessary to consider those cases individually.

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[33] See, e.g., *X, Y and Z v. Sweden* (CAT/C/20/D/61/1996), para. 11.2; *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7; and *S.S.B. v. Denmark* (CAT/C/60/D/602/2014), para. 8.7.

[34] See, *M.B., A.B., D.M.B. and D.B. v. Denmark* (CAT/C/59/D/634/2014), para. 9.7.

[35] General Comment No. 4, para. 38.