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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning Communication No. 743/2016*,**

Communication submitted by:	F.K (represented by counsel, Niels Erik Hansen)
Alleged victim:	The complainant
State party:	Denmark
Date of complaint:	15 April 2016 (initial submission)
Document references:	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 28 April 2016 (not issued in document form)
Date of present decision:	30 December 2020
Subject matter:	Deportation from Denmark to Turkey
Procedural issues:	Another procedure of international investigation or settlement; exhaustion of domestic remedies; substantiation of the complaint; admissibility *ratione matriae*
Substantive issue:	Risk of torture and ill-treatment
Article of the Convention:	3

* Adopted by the Committee at its 70th session (30th December 2020).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Liu Huawen, Ilvija Puce, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov. [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 and Erdogan Iscan did not participate in the examination of the communication.]

GE.20-03270(E)

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1.1 The complainant is Mr. F.K.,[1] a Turkish national born in 1990. His asylum application in Denmark was rejected, and at the time of the initial submission he was in immigration detention pending deportation to Turkey. He claimed that if it proceeds with his deportation, Denmark would breach its obligations under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention is into force for Denmark as of 26 June 1987, and article 22 of the Convention applies to it from that date.

1.2 On 28 April 2016, pursuant to rule 115 (3) of the Committee's rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant to Turkey while his communication was under consideration.

1.3 On 2 July 2014, the State party informed the Committee that in light with this request for interim measures, that the complainant has been released and ordered to report to the immigration authorities. Subsequently, on 28 June 2016, the State party informed the Committee that it has decided not to accommodate the Committee's interim measures request in this particular case. By note verbale of 30 June 2016, the Committee reiterated its interim measures request and informed the State party that in accordance with the Committee's long-standing jurisprudence, it will be in serious breach of its obligations under article 22 of the Convention by failing to respect the request for interim measures. On 14 November 2019, counsel confirmed that the complainant has been deported to Turkey.[2]

The facts as presented by the complainant

2.1 The complainant is a Turkish citizen of Kurdish origins. He was arrested in Turkey on several occasions in 2006-2009, due to his political activities. He claims having been subjected to torture in these occasions.

2.2 The complainant sought asylum in Denmark. He asked the Danish Immigration Service to order his medical examination in relation to his past tortures. The Danish immigration authorities conducted no such an examination and rejected his asylum claim. In a decision of [redacted] August 2013, the majority of the members of the Danish Refugee Appeals Board rejected the asylum application based in particular on the lack of credibility of the complainant, without conducting a medical examination regarding his torture claims.

2.3 The complainant's second motive for asylum, namely that he feared at risk of persecution by the PKK in Turkey as he had been active as PKK member before quitting it in 2010, was equally rejected by the Danish asylum authorities due to lack of credibility.

2.4 In addition, in 2008, the complainant was called to perform the compulsory military service but he absconded, fearing that he would be obliged to fight other Kurds and he would be mistreated in the army due to his Kurdish origins. The fact that he absconded and sought asylum abroad would expose him to further risks of imprisonment with a risk of inhumane treatment in prison. However, the asylum authorities decided that an imprisonment for absconding military service would not be disproportionate.

2.5 The asylum authorities further tried to force the complainant into the Turkish Embassy in Denmark on [redacted] December 2013. This, according to the complainant risks to put the focus on him even more. He resisted and cut himself in the arms and the torso. He was handed down by prison guards to the police to bring him to the Embassy, but the police changed their mind and he was returned to prison, without been brought to a hospital.

[1] It should be noted that the same complainant has submitted a communication under article 22 of the Convention against Denmark back in 2013. The case has been registered as communication No. 580/2014. The Committee adopted a decision on the merits on 23 November 2015. The Committee considered inter alia that, by rejecting the complainant's asylum application without 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 in Turkey. The Committee concluded that in the circumstances, the complainant's deportation Turkey would constitute a violation of article 3 of the Convention. In addition, the Committee concluded that article 12 and 16 have also been violated due to the manner the Danish police treated the complainant and the lack of investigation thereof. See, CAT/C/56/D/580/2014, 23 November 2015.

[2] See footnote 12 below.

2.6 Based on these facts, the complainant applied to the Committee on 19 December 2013. On 23 November 2015, (see, CAT/C/56/D/580/2014) the Committee considered that the complainant's deportation Turkey would constitute a violation of article 3 of the Convention. In addition, the Committee concluded that articles 12 and 16 have been violated due to the manner the police treated the complainant and the lack of investigation in this connection.

2.7 On — March 2016, the complainant was invited to a meeting with the Refugee Appeals Board, RAB. He explained to his counsel that he had informed the Danish Immigration Service about the past tortures suffered during his first interview but he was never been asked to sign a paper confirming his readiness to undergo medical examinations in this regard. During the meetings, no members of the RAB asked questions to the complainant. The medical report of the complainant's tortures as prepared by Amnesty International was also not discussed.

2.8 The RAB took a decision on the complainant's case on —March 2016, finding no reason to request a medical examination. On —March 2016, the complainant was informed by the police that he had to leave Denmark immediately.

2.9 The complainant claims having subsequently applied to the European Court of Human Rights but his case was never registered.[3]

2.10 The complainant claims that if it deports him, Denmark would violate article 3 of the Convention. In support, he notes that several reports, including a report of Amnesty International show that the human rights situation in Turkey violates article 3 of the Convention, with the authorities using excessive force, torture and ill-treatment. The complainant reiterates that:

- He has been tortured in the past, as documented by the report of Amnesty International of —September 2014 and no other medical reports have been produced despite his specific requests in this connection to the Danish immigration authorities;
- He has been politically active within the PKK but quit and will be punished by this organisation in Turkey;
- His credibility has been questioned by the Danish immigration authorities but they never questioned that he has been active with the Kurdish cause since 2006;
- The Danish authorities never questioned that he had refused to perform compulsory military service and that he fears not only imprisonment and ill-treatment in this connection, but also a forcible enrolment in the army.

2.11 The RAB has focused on the issue of credibility, and even if a majority of its members questioned the complainant's credibility, they were unable to agree on what issues they could not believe. Thus, such a decision could normally be appealed but in Denmark, decisions of eth RAB are not subject to court control. In this connection, the complainant notes that in its concluding observations on the 16th and 17th periodic reports of Denmark to CERD, the CERD Committee expressed concern that the RAB decisions are not subject to court appeal.[4]

2.12 The complainant claims that the evaluation of risks for forcible removal based on past torture rests with the State party. In his opinion, the RAB tried to avoid this obligation first refusing to reopen the asylum case on — September 2015, where it noted that the report of Amnesty International provides no such new relevant information so as to require the reopening of the case. Secondly, after the adoption of the CAT decision in November 2015, the RAB reopened the case but the proceedings resulted in no change. The complainant claims that all decisions of the RAB, in the past and in 2015 and 2016, were in violation of article 3 CAT.

[3] Few pages further, counsel contradicts himself by stating, without further clarifications, that the ECtHR has declared the case inadmissible. The Secretariat is trying to verify the status with the Court's registry.

[4] See, CERD/C/DEN/CO/17, para 13, 19 October 2006.

The complaint

3.1 The complainant claims that his initial communication remains valid. Even if the RAB reopened the case and invited the complainant to a hearing, no medical examination on his past torture was ever ordered by the State party, especially taking into account the Amnesty International Danish Medical Group's report concerning his past torture. In violation of article 3 CAT, the RAB has refused to take into consideration the conclusions of the Amnesty International's report.

3.2 The complainant believes that, alike in the *Oberschlick v. Austria* cases[5] with the ECtHR where the Court took a decision twice, the decision of the RAB in his case of — March 2016 constitutes a new decision, requiring a new decision by the Committee.

State party's observations on admissibility

4.1 The State party provided its observations on admissibility by note verbale of 28 June 2016. It notes preliminary that unlike in case 580/2014, in the present case, the complainant does not invoke articles 12 and 16 of the Convention. The State party believes that the communication should be declared inadmissible as the "same matter" has already been examined by the Committee.

4.2 The State party recalls the facts of the case. The complainant, a Turkish national, entered Denmark in November 2010 without valid travel documents. He was arrested by the police on —February 2012 for possession of controlled substances and surrendering incorrect information about his identity, and was given a suspended sentence of 40 days on — December 2012. His expelling from Denmark was ordered as a result, with a ban from re-entering for six years.

4.3 On —November 2012, the complainant applied for asylum. On — May 2013, the Danish Immigration Service, DIS, rejected his application. On — August 2013, the Refugee Appeals Board, RAB, upheld the refusal of the DIS to grant him asylum. On 19 December 2013, the complainant applied to the Committee (communication No 580/2014). On — September 2015, the RAB refused to reopen the case.

4.4 The Committee adopted its decision in case 580/2014 on 23 November 2015. On — December 2015, the complainant requested the RAB to reopen his case based on the Committee's decision. On — January 2016, the RAB decided to reopen the case for a review at an oral hearing and to maintain the suspension of the time-limit for the complainant's departure.

4.5 On — March 2016, the RAB upheld the refusal of the complainant's application of asylum.

4.6 On 1 April 2016, the complainant applied to the ECtHR claiming that his return to Turkey would amount to a breach of article 3 ECHR. On 5 April 2016, the ECtHR rejected the application for non-conformity with articles 34 and 35 of the Convention.

4.7 On 15 April 2016, the complainant presented the present case to the Committee, claiming that his forcible return to Turkey would amount to a breach of article 3 CAT.

4.8 On — May 2016, the RAB suspended the time-limit for the complainant's departure from Denmark pending the Board's consideration of the complaint of 15 April 2016. On — June 2016, the RAB considered that there was no basis for further suspension of the time-limit for the complainant's departure and it informed the complainant's counsel of the following: "The RAB has now had the opportunity to consider the admissibility and merits of the complaint. Consequently today the Board has forwarded to the Ministry of Justice its contribution to the Government's observations to the Committee from which it appears, inter alia, that, in the opinion of the Board, your client's new complaint to the Committee should be considered inadmissible as manifestly ill-founded. Accordingly, the Board finds no basis for continuing the suspension of the time-limit for your client's departure. Your client must therefore leave Denmark immediately upon service of the decision terminating the

[5] See, applications Nos 19255/92 et N° 21655/93, *Oberschlick v Austria*.

suspension of the time-limit for departure. As appears from the decision of the RAB of — March 2016, your client may be forcibly returned to Turkey if he does not leave voluntarily".

4.9 The State party notes that in his complaint to the Committee, the complainant claims that Denmark would breach article 3 CAT in case of his forcible removal. He had repeated his allegations regarding his past political activities in Turkey provided in his communication 580/2014, and the information that he had been subjected to torture there. He provided no new information in his communication of 15 April 2016 but relies on the same grounds as in case 580/2014.

4.10 In the context of communication 580/2014, the complainant produced a report prepared by Amnesty International Danish Medical Group on— September 2014. The complainant reiterates that he had never been subjected to a medical examination for signs of torture by the State party. He claims a violation of article 3 of the Convention, based on the RAB's rejection of the conclusions of the report of Amnesty International, its refusal to order a medical examination of the complainant and its rejection of the complainant's asylum application. According to the complainant, if it wanted to contest the findings of the Amnesty International's report, the RAB should have ordered his medical examination. He claims that the State party failed to fulfil its obligations to carry out a medical examination by simply summoning him to an oral hearing. The complainant further claimed that at the hearing before the RAB on – March 2016, members of the Board asked him only few questions, unrelated to the Amnesty International's report.

4.11 The State party notes that in its decision of 20 May 2005 in *Agiza v. Sweden*, communication No. 233/2003, the Committee considered whether a complaint submitted to the Committee was in fact a simple re-submission of a complaint already decided by the Committee thus constituting an abuse of the process under article 22(2) CAT and rule 113 (b) of the Committee's rules of procedures. Since the complaints related to two different persons, the Committee decided that they were not of an essential identical nature and therefore they did not constitute an abuse of the right of submission. In the present case, however, the complaint is of a nature essentially identical with the previous complaint. The case relates to the same party as in case 580/2014 and it relates also to the same substantive rights – article 3 CAT. Regarding the facts of the case, the State party notes that in both cases, the complainant has relied on the same information on his situation in Turkey in 2006 - 2010. No substantial new information has been provided in the present case beyond the information already available in the context of communication No. 580/2014. Thus, the communication should be declared inadmissible under article 22(2)(a) of the Convention and rule 113(b) of the Committee's rules of procedures.

4.12 Following the appearance of the complainant on two occasions when he made statements before it, the RAB dismissed the complainant's statements on the political activities relied upon and the resulting abuse and torture in their entirety. In this connection, the RAB took into consideration the Committee's decision of 23 November 2015.

4.13 The State party considers that the Committee is not better placed to assess evidence than the national migration authorities, who have heard the statements made by the complainant in person. The Committee should rely on the assessment of evidence by the RAB unless exceptional circumstances. In its decision of —March 2016, the RAB found as follows regarding a possible new medical examination: "The RAB observes in respect of the medical examination of the applicant conducted by the Amnesty International Danish Medical Group that, on several points, the findings mentioned in the report of —September 2014, do not accord with the information on physical abuse against the applicant stated by him in the asylum proceedings. Accordingly, he stated as follows in his asylum application form of —December 2012 to clarify how he had been subjected to torture or other physical abuse: "As a result of torture, my left arm is broken; in the middle of my eyebrow, in the middle of my forehead, under my chin and on my head there are still permanent signs of manipulation… There is a fracture and a twist of the left arm in two places as a consequence of torture".

4.14 The Board noted that the torture described by the complainant was seen as inconsistent with the report of —September 2014, including as concerns "Arms and legs" wherein the report simply states "Normal strength, sensitivity and mobility. Nothing abnormal detected".

By contrast, the report further mentions multiple times beating on the soles of the feet (falanga), which form torture, however, the complainant did not mention this in his asylum application form, or at the interviews conducted be the DIS or at the hearing before the RAB on — September 2013.

4.15 The RAB further noted that that the complainant's grounds for asylum, except of his fear of punishment for evasion of compulsory military service, relate to the termination of his membership of the PKK and the KCK and his escape from a training camp in 2010 and that, in any event, the conclusion of the medical examination is not seen to be directly linked to the assessment of the complainant's credibility. Moreover, the RAB found no basis for considering the complainant's statements on and recollection of the events included in this part of the asylum claim to have been affected in a crucial way by any physical abuse to which he has allegedly been subjected. The RAB further found that the conclusions of the Amnesty International's report do not independently add to the credibility of the complainant's grounds for asylum, including that he has already been subjected to torture as described by him, in the circumstances described by him.

4.16 Regarding the credibility assessment by the RAB, the State party refers to the decision of the Human Rights Committee in case *K. v. Denmark*, communication No. 2393/2014:

> " 7.4 The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.[6]
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> 7.5 The Committee notes that the Danish RAB thoroughly examined each of the author's claims, and particularly analysed the alleged threats allegedly received by the author in Afghanistan, and found them to be inconsistent and implausible on several grounds. The author challenges the assessment of evidence and the factual conclusions reached by the RAB, but he does not explain why that assessment would be arbitrary or otherwise amount to a denial of justice".[7]

4.17 The State party further notes that in *X and Y v Denmark*[8], the Human Rights Committee observed the following: " 7.5 The Committee observes that the authors' refugee claims were thoroughly assessed by the State party's authorities, which found that the authors' declarations about the motive for seeking asylum and their account of the events that caused their fear of torture or killing were not credible. The Committee observes that the authors have not identified any irregularity in the decision-making process, or any risk factor that the State party's authorities failed to take properly into account. In the light of the above, the Committee cannot conclude that the authors would face a real risk of treatment contrary to articles 6 or 7 of the Covenant if they were removed to the Russian Federation".

4.18 In *P.T. v. Denmark*, communication No. 2272/2013, the Human Rights Committee decided as follows: "7.3 The Committee recalls its jurisprudence that important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists"[9].

4.19 The State party further refers to *N. v. Denmark*, communication No. 2426/2014,[10] in which the Human Rights Committee observed the following: " 6.6 The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of a case, unless it can be established that such an assessment was arbitrary or amounted to a manifest error or denial of justice. The author has not explained why the decision by the Refugee Appeals Board would be contrary to this standard, nor has he provided substantial grounds

[6] See, among others, communications No. 2272/2013, *P.T. v. Denmark*, para. 7.3; No. 2053/2011, *B.L. v. Australia*, Views adopted on 16 October 2014, para. 7.3; No. 2049/2011, *Z. v. Australia*, Views adopted on 18 July 2014, para 9.3.

[7] CCPR/C/114/D/2393/2014, decision of 15 July 2015.

[8] CCPR/C/112/D/2186/2012, 22 October 2014.

[9] CCPR/C/113/D/2272/2013, 1 April 2015.

[10] CCPR/C/114/D/2426/2014, 23 July 2015.

to support his claim that his removal to the Islamic Republic of Iran would expose him to a real risk of irreparable harm in violation of article 7 of the Covenant. The Committee accordingly concludes that the author has failed to sufficiently substantiate his claim of violation of article 7 for purposes of admissibility and finds his communication inadmissible pursuant to article 2 of the Optional Protocol".

4.20 The State party observes that the same due process guarantees and careful consideration of the asylum application applied to the complainant in the present case.

4.21 Regarding the significance of medical information, the State party refers to the judgment of the European Court for Human Rights in *Cruz Varas and others v. Sweden*, application 15576/89, and the decision of the Committee of 12 November 2003 in *M.O. v. Denmark* (communication No. 209/2002). In both cases, the torture claims made by the complainant were dismissed as was the medical information presented in this regard, due to the general lack of credibility of the complainants.

4.22 The State party notes that the RAB's case law includes cases similar to the present one, whit asylum seekers have submitted sustaining physical or mental injury originating from torture. Sometimes, such information is wholly or partially substantiated by medical examinations, sometimes by the Amnesty International Danish Medical Group. It is rather common that it appears from the conclusions of the examinations that agreement has been found between the objective findings and the asylum seeker's statements on torture. If the RAB disregards the asylum seeker's torture claims, for example if it cannot be considered as a fact that the asylum seeker has been involved in politics and that the involvement has allegedly been discovered by the authorities, such conclusion does not independently give rise to the initiation of an examination. The RAB may ascertain in such cases that an asylum seeker suffers from physical or mental injury, but without establishing the reason for the infliction of the injury nor who it was inflicted by. No further clarifications could be obtained by requesting the Department of Forensic Medicine to perform an examination. Such an examination would merely show that the asylum seeker suffers from physical and mental injury, which may have been inflicted in the way claimed, or in another manner. Thus, such an examination cannot clarify whether the injury was caused by torture or otherwise (a fight, an assault, an accident, an act of war…).

4.23 If the asylum seeker's torture claim must be disregarded as not credible, and the asylum seeker still claims that he risks torture on the same reasons, it cannot be considered as a fact that, on the same grounds, the asylum seeker risks torture upon return. The RAB therefore finds that there is no need in such cases to initiate an examination for signs of torture because such an examination would not contribute to bringing out the facts of the case.

4.24 The State party notes that the RAB made a thorough assessment of the facts in the present case, including the findings of the medical examination report. The RAB considered that there was no need to obtain a second opinion by the Department of Forensic Medicine for signs of torture as such an examination could not be expected to contribute to bringing out further facts in the case.

4.25 The State party has found no reason to question the RAB's assessment of this issue, and the complainant has not identified any irregularity in the decision-making process or any risk factor that the State party's authorities have failed to take properly into account.

4.26 In light of these considerations, the State party believes that the Committee is not in a position to conclude that the complainant would be at real risk of torture if returned to Turkey and the case should be declared inadmissible as manifestly ill-founded.

4.27 Regarding the hearing before the RAB on ⊢ March 2016, the State party notes the complainant's contention that the Board only asked him few questions; he has not been asked any question about inconsistencies between his previous statements and the conclusions of the medical report; and no medical examination was discussed. The State party notes that under article 40 of the Aliens Act, an asylum seeker must provide such information as required for deciding whether he/she falls under section 7 of the Act. Thus, an asylum seeker must substantiate that the conditions for granting asylum are met. Asylum seekers are given an opportunity, at the hearing before the RAB, to make a statement. First, the asylum seeker's counsel ask him/her questions, and then the Danish Immigration Service representatives ask

questions. The RAB may ask clarifying questions too. If the RAB asks only few questions, it means that the asylum seekers and their counsel have provided sufficient information for the Board's assessment.

4.28 Regarding the lack of discussion on the medical examination, the State party notes that the RAB had accepted as facts the findings of the report on the medical examination, and the complainant and his counsel had the opportunity to make comments on the report that they find relevant at the RAB's hearing of — March 2016.

4.29 Regarding the complainant's comments on the objectivity and independence of the RAB, the State party notes that the decisions in his case of — August 2013 and — March 2016 were adopted by different RAB's members. The case was reopened, which means a full review of the case, including of any new information in the case, and a different panel conducted an oral hearing on — March 2016. The complainant made a statement, his counsel asked him questions, and he was then questioned by the representative of the DIS. The complainant made a long statement about his circumstances. His counsel and the DIS could make oral arguments, and finally the complainant was given the opportunity to make a final statement.

4.30 The State party notes that in its decision of — March 2016, the RAB noted that it could not retain as a fact the complainant's claims that he had been a member of DTP since 2006, and that he has been subjected to physical and mental abuse in 2006-2008. According to the RAB, the complainant has failed to offer, with the degree of certainty and accuracy that should be expected, an account of when and how he was active within the parties and of the circumstances related to his detention and the abuse against him.

4.31 The RAB also found that the complainant's statement that he joined the PKK and he escaped form a summer 2010 military camp cannot be considered as a fact either. In the asylum proceedings, the complainant has given inconsistent statements as to how he joined the PKK. In addition, his statement that he wanted a weapons training is contradicted by his statement of — March 2013 to the effect that he had not, at any time, contemplated participating in an armed combat of any type. The RAB also found elaborative and not in accordance with his previous statements the complainant's affirmation given to the Board on — August 2013, to the effect that he got arrested several times for other reasons in 2009, as the authorities failed to realise that he was in fact wanted. This statement seems non-credible based on the background information available on the nature and the intensity of the efforts of the Turkish police and intelligence service to arrest Kurdish opponents and charge them under anti-terrorism law.

4.32 Regarding the complainant's affirmation to the effect that he does not wish to perform military service, on — March 2016, the RAB observed the following: "according to the information available, the circumstance that the applicant has not performed compulsory military service will not entail any disproportionate sanction, and it is found that it cannot justify a residence permit".

4.33 The State party notes that on — May 2016, the RAB suspended the time-limit for the complainant's departure from Denmark. On — June 2016, the RAB decided that there was no basis for continuing this suspension. Counsel was notified by the RAB that the complainant must leave Denmark immediately upon service of the RAB decision; otherwise he may be forcibly returned to Turkey.

4.34 The State party emphasises that following the adoption, on 23 November 2015, of the Committee's decision in case 580/2014, the complainant's asylum case has been reopened on this basis. The case has been reconsidered by the RAB on — March 2016, in an oral hearing, based inter alia on the report on the medical examination by Amnesty International's Medical Group and the Committee's decision in case 580/2014. In its decision of — March 2016, the RAB found that the complainant has failed to render probable his grounds for asylum and his request for a residence permit was rejected. The State party considers that the RAB has given full consideration of the Committee's decision of 23 November 2015.

4.35 Regarding the present case, the State party points out that the complainant has submitted no new information to justify yet another examination by the RAB. Accordingly, the present communication should be deemed inadmissible. In these circumstances, the State

party decided not to accommodate the Committee's interim measures request in this particular case, without prejudice of the State party's full support for the opportunity of individuals to present individual communications to the Committee and for the Committee's requests for interim measures to avoid irreparable harm.[11]

4.36 In light of the above considerations, the State party believes that the communication shall be declared inadmissible under article 22 (2) CAT and rule 113 (b) of the Committee's rules of procedure as the same matter has already been examined by the Committee and thus it constitutes an abuse of the individual communications' procedure. The case is also inadmissible under rules 113(b) and 115 (3) of the Committee's rules of procedures as manifestly ill-founded.

Additional submission by the complainant

5. By letter of 21 March 2017, the complainant informed the Committee that he had gone in hiding in light of the State party's intention to deport him. He added that he had introduced a law suit with the City Court of Copenhagen seeking an authorisation to stay in Denmark.

Additional submission by the State party

6. By note verbale of 8 February 2019, the State party noted that the complainant's lates submission does not give rise to any further observations. It adds that on –November 2016, the complainant has appealed to the City Court of Copenhagen against the RAB decision not to continue the suspension of the time-limit for his departure. On — March 2017, the Copenhagen City Court decided that the proceedings before the court are given suspensory effect as regards the time-limit for the complainant's departure. On appeal, on – July 2017, the Eastern High Court decided that the proceedings before the court are not given suspensive effect. On — November 2017, the Supreme Court upheld the decision of the Eastern High Court. On —December 2018, the complainant's counsel revoked the national court proceedings in light with the complainant's removal to Turkey.[12]

Additional submission on behalf of the complainant

7.1 By letter dated 4 February 2020, counsel explains that the complainant has contacted him following the deportation, and he submitted a copy of a medical report dated 27 January 2020[13].

7.2 Counsel refers to his observations regarding the follow up to case 580/2014, and emphasises that the complainant's forcible return to Turkey in spite of the Committee's interim measures request constituted a breach, by the State party, of its obligations under article 22 of the Convention.

7.3 The complainant has informed him that following his deportation, he had been tortured by the police in Turkey and that, at present, he was enrolled in the army and performs compulsory military service.

[11] In reaction to the State party's affirmation that it will not comply with the interim measures request, the Committee, by note verbale of 30 June 2016, reiterated its interim measures request and informed the State party that in accordance with its long-standing jurisprudence, it will be in serious breach of its obligations under article 22 of the Convention by failing to respect the request for interim measures.

[12] In a submission dated 14 November 2019, related to the follow up of case 580/2019, the complainant's counsel confirms that the complainant has been deported to Turkey in April 2018. Counsel explains that since the deportation, the complainant was able to contact him by telephone. The complainant informed that upon arrival in Turkey he had been detained and tortured. Later on, he has been transferred to a military facility to serve his compulsory military service. Counsel notes that the State party has committed a grave breach of article 22 of the Convention by forcible removing the complainant in spite of the Committee's interim measures request.

[13] According to the medical doctor, consisting of one paragraph, the medical examination of the author showed that he suffers from "Traumatic Auxiete Reax Disorder" and necessary medicine has been administrated.

7.4 On 10 February 2020, counsel added, with reference to the case law of the European Court of Human Rights in Savran v. Denmark,[14] that the decision to deport the applicant constituted a breach of article 3 ECHR. Counsel believes that in the present case, the deportation of the author constitutes a similar violation.

7.5 Counsel recall that in case 580/2014, the Committee concluded that the State party has violated articles 3, 12 and 16 of the Convention, including due to the authorities' refusal to order a medical torture examination to assess past tortures. In the context of the present communication, the authorities have again denied a medical examination of the complainant, in violation of article 3 of the Convention. The complainant's deportation in spite of the interim measures request constitutes also a violation of article 3 of the Convention.

Issues and proceedings before the Committee

The State party's failure to cooperate and to respect the Committee's request for interim measures pursuant to rule 114 of its rules of procedures[15]

8.1 The Committee notes that the adoption of interim measures under rule 114 of its rules of procedure, in accordance with article 22 of the Convention, is vital to the role entrusted to the Committee under that article. Failure to respect interim measures requests by the Committee, in particular through such irreparable action as extraditing an alleged victim, undermines the protection of the rights enshrined in the Convention.

8.2 The Committee recalls that the non-refoulement principle codified in article 3 of the Convention is absolute. It observes that any State party that has made a declaration under article 22 (1) of the Convention recognizes the competence of the Committee to receive and consider complaints from individuals who claim to be victims of violations of the provisions of the Convention. By making such a declaration, States parties implicitly undertake to cooperate with the Committee in good faith by providing it with the means to examine the complaints submitted to it and, after such examination, to communicate its comments to the State party and the complainant. The Committee considers that by failing to respect its request for interim measures transmitted on 28 April 2016, and by deporting the complainant to Turkey, the State party seriously failed in its obligations under article 22 of the Convention.

Consideration of admissibility

9.1 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 that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. Accordingly, it is not precluded by article 22 (5) (a) of the Convention from examining the present communication.

9.2 The Committee notes that the State party' does not contest that the available domestic remedies have been exhausted in the present case. The Committee therefore concludes that it is not precluded by article 22 (5) (b) of the Convention from examining the communication.

9.3 The Committee notes that the complainant claimed that his deportation to Turkey would expose him to treatment contrary to article 3 of the Convention. The Committee observes that this claim has been the object of consideration by the Committee in the framework of communication 580/2014, wherein the Committee adopted its decision concluding that by deporting the complainant to Turkey, the State party would violate its obligations under article 3 of the Convention.

9.4 The Committee has noted the State party's observation that in this case, the complainant repeats his allegations regarding his alleged past political activities in Turkey

[14] Application No. 57467/15, judgment of 1 October 2019, referred to the Grand Chamber on 27 January 2020.

[15] For a similar approach, see, inter alia, *H.S: v. Canada*, CAT/C/68/D/568/2013, inadmissibility decision of 15 November 2019, paras 9.1-9.3; *Tursunov v. Kazakstan*, CAT/C/54/D/538/2013, decision of 8 May 2015, paras 7.1 and 7.2; *X. v. the Russian Federation*, CAT/C/54/D/542/2013, decision of 8 May 2015, paras 9.1 and 9.2, R.S. v. Switzerland, CAT/C/53/D/482/2011, decision of 21 November 2014, paragraph 7.

provided in his communication 580/2014, and he reiterates the information that he had been subjected to torture there. The complainant provided no new information in his communication of 15 April 2016 but relies on the same grounds as the ones already exposed in case 580/2014. The State party emphasises that following the adoption, on 23 November 2015, of the Committee's decision in case 580/2014, the complainant's asylum case has been reopened and reconsidered by the RAB on —March 2016, in an oral hearing, based inter alia on the report on the medical examination by Amnesty International Danish Medical Group and the Committee's decision in case 580/2014. In its decision of —March 2016, the RAB found that the complainant has failed to render probable his grounds for asylum and his request for a residence permit was rejected. The State party considers that the RAB has given full consideration of the Committee's decision of 23 November 2015 and it emphasises that the complainant has submitted no new information in his present communication. Accordingly, in the State party's opinion, the present communication should be deemed inadmissible.

9.5 The Committee notes that the subject of the present communication, i.e. the risk for the complainant in case of his deportation to Turkey, constituted the object of the examination of communication No. 580/2014, wherein the Committee concluded that the complainant's deportation would breach the State's party's obligations under article 3 of the Convention. The Committee recalls that in case 580/2014, it considered in particular that, by rejecting the complainant's asylum application without ordering a medical examination in light of the report produced by Amnesty International Danish Medical Group, 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 Turkey, and thus the complainant's deportation would amount to a violation of article 3 of the Convention. The Committee has also concluded to a violation of articles 12 and 16 of the complainant's rights, not invoked in the present case.

9.6 The Committee is satisfied that after the adoption of its decision in case 580/2014, the State party has given it due consideration, and the complainant's asylum case has been reopened and reconsidered by the Refugee Appeals Board, based on the Committee's decision and taking into account of the conclusions of the medial examination of Amnesty International Danish Medical Group of —September 2014. The Committee notes that in this context, both the complainant and his lawyer were given an opportunity to provide information and clarifications to the Danish asylum authorities.

9.7 The Committee further notes the complainant's objection that even if the RAB did reopen the case and did invite him to a hearing, no medical examination on torture was ever ordered, to take into account the Amnesty International's report on past torture.

9.8 The Committee considers that from the documents on file, it transpires that the RAB has given due consideration to the conclusions of the Amnesty International Danish Medical Group's report and, in this context, it revealed a number of contradictions with the complainant's statements given throughout the asylum proceedings. The Committee further notes that from the material on file it cannot conclude that in this case, the RAB has acted in a biased manner, or in a manner, constituting otherwise a denial of justice. The Committee also observes in this connection that the complainant has not referred to any such misconduct but he rather tends to disagree with the Board's conclusions, seeking for instance their review.

9.9 The Committee finally has taken note of the complainant's counsel contention that the complainant has informed him in a telephone conversation that upon deportation, he was tortured by the police in Turkey. The Committee notes that no further information or explanations in support of this claim has been provided, in particular regarding the identity of those responsible for the complainant's ill-treatment, the location where the alleged torture took place, nor was any detail adduced regarding the eventual method of torture and its intensity or of other ill-treatment inflicted. Following the deportation, counsel has submitted a copy of a summary medical certificate dated 27 January 2020, pursuant to which a medical examination of the complainant showed that the later suffered from Traumatic Anxiety Reax Disorder, with no mention of torture whatsoever.[16]

[16] "Traumatic Auxiete Reax Disorder" in the document.

9.10 In these circumstances, and in the absence of any further information of pertinence on file, the Committee considers that the present communication is inadmissible as manifestly ill-founded, under article 22 (2) of the Convention. In the light of this conclusion, the Committee decides not to examine any other inadmissibility ground.

10. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (2) of the Convention;

(b) That this decision shall be communicated to the complainant and to the State party.