



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

Communication No. 593/2014

**Decision adopted by the Committee at its fifty-seventh session (18
April-13 May 2016)**

<i>Submitted by:</i>	Ms. I.M. and Mr. V.Z. (represented by counsel)
<i>Alleged victim:</i>	The complainants
<i>State party:</i>	Denmark
<i>Date of complaint:</i>	24 March 2014 (initial submission)
<i>Date of present decision:</i>	6 May 2016
<i>Subject matter:</i>	Extradition to ^A
<i>Procedural issue:</i>	Non-substantiation of the claim.
<i>Substantive issue:</i>	Risk of torture upon return to the country of origin
<i>Article of the Convention:</i>	3

[Annex]



Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-seventh session)

concerning

Communication No. 593/2014*

Submitted by: Ms. I.M. and Mr. V.Z. (represented by counsel)

Alleged victim: The complainants

State party: Denmark

Date of complaint: 24 March 2014 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 6 May 2016,

Having concluded its consideration of complaint No. 593/2014, submitted to the Committee against Torture by Ms. I.M. and Mr. V.Z. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainants are Ms. I.M. and Mr. V.Z., both **A** nationals born in in 1967 and 1968 respectively. At the time of the submission of the present complaint, both complainants were detained in the Center **██████** at the Danish Red Cross, awaiting deportation to **A**. They claim that if Denmark proceeds with their deportation, it will violate their rights under article 3 of the Convention. The complainants are represented by counsel, Mr. Niels-Erik Hansen.

1.2 On 28 March 2014, acting under rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party to refrain from expelling the complainants to **A** while their complaint was under consideration by the Committee.

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Sapana Pradhan-Malla, Kening Zhang, Claude Heller Rouassant, Abdelwahab Hani and Sébastien Touze.

1.3 On 29 September 2014, the State party submitted its observations on admissibility and merits, and asked the Committee to review its decision for interim measures of protection.¹ On 6 November 2014, the complainants provided their comments on the State party's request to lift interim measures. Having considered both parties' submissions, the Committee decided to lift its request for interim measures of protection.

Factual background

2.1 In **A** the complainants used to own a private business. In 2001, their business faced "serious financial obstacles". As a result, the complainants as owners of the business were sued by their creditors, principally by someone called Mr. M.C. The complainants claim that this Mr. M.C. is an influential person who had connections with "political opposition parties". The complainants claim that they received threats from Mr. M.C., and as a result of this pressure, Mr. V.Z. attempted suicide in **early** 2002.² He was admitted to a psychiatric hospital for six months, at which time he was interrogated by police officers concerning his debt to Mr. M.C.

2.2 The complainants further submit that their company went bankrupt in **early** 2002. Due to this bankruptcy and threats from Mr. M.C., they had to leave their home; Ms. I.M. and her son went to stay with her mother, and Mr. V.Z. moved in with his sister. Criminal investigations against the complainants were initiated in **spring** 2002 for allegations of fraud and they were detained for five days. Ms. I.M. claims that during the detention, she was subjected to inhuman conditions, such as overcrowded detention cells with no windows, and no access to counsel or family. She also claims that she was coerced to sign a confession on behalf of her husband as he was in state of shock and could not understand what was happening. The complainants further claim that their son was bullied by the principal of his school, who happened to be a colleague of Mr. M.C.³

2.3 In 2003, Mr. M. C. started blackmailing the mother of Ms. I.M., who owned a store at which Ms. I.M. worked. At some point in **fall** 2003, the mother's store was attacked and damaged, whereas Ms I.S. was subject to a bodily injury.⁴ She claims that Mr. C. was behind this attack as he was not happy about not being able to recover his money from the complainants. The complainants filed a police complaint⁵ but no perpetrator was identified.

2.4 In 2004, the complainant's son came home crying after having been taken into a car by unknown persons. At that point Ms. I.M. decided to seek asylum in **B** together with her mother and son.⁶ They arrived to **B** in 2004 and applied for protection. Ms. I.M., her son and mother were granted asylum status in **B** in **spring** 2005.⁷ Mr. V.Z. remained in **A** as the complainants were not officially married and he could not obtain a visa.

2.5 The complainants further submit that in 2006, they were convicted for fraud by the tribunal of **■** (in **A**) and sentenced to 11 years of imprisonment. They also claim that the course of the trial was impacted by Mr. M.C., who was well connected with the police, prosecution and the "political circles". Ms. I.M. claims the judge was corrupt.⁸ In

¹ The State party claims, *inter alia*, that the complainants were not able to show that they are at risk of suffering "irreparable damage" if returned to **A**.

² The complainants do not provide exact date and details of this incident.

³ The complainants provide no further details on this.

⁴ The specific nature of property damage as well as bodily injuries is not provided.

⁵ A copy of this complaint is not provided.

⁶ The complainant doesn't explain why she has chosen **B** to seek asylum.

⁷ The complainants provide no information on asylum proceedings in **B**.

⁸ This claim is not supported by any evidence.

Summer 2006, Ms. I.M. returned to A from B as Mr. V.Z. had health issues. The complainants got married in A, planning to apply for the family re-unification in B. During her stay in A, Ms. I.M. was not subjected to harassment but was confined to her home.

2.6 In early 2007, Ms. I.M. returned to B and applied for the family re-unification with her husband. In the same year, the second instance court in A upheld the complainants' conviction and sentence. According to the complainants, Mr. M.C. was exerting influence on the appeal court as well. In summer 2007, Ms. I.M. travelled from B back to A as Mr. V.Z.'s grandmother was very sick. The grandmother died in late 2007. She claims that in the meantime, she received a notice that her husband could reside in B with her. The B Embassy in A however, refused to issue him a visa to enter B.

2.7 The complainants submit that in 2008, a third instance appeal court quashed the lower court's sentence, and ordered a re-trial. This was possible as at that time Mr. M.C. has already resigned from his political party and was unable to exert political influence on that court. In 2010, the Court of Appeals of the city of A acquitted the complainants of all charges. Mr. M.C. did not hold any political position and wasn't able to impact the court. After the acquittal, the complainants wanted to depart for B, however the prosecution appealed the acquittal decision and they had to remain in A.

2.8 Spring 2011, the Supreme Court of A convicted the complainants for fraud and sentenced them to several years of imprisonment. The complainants claim that a couple of judges in the Supreme Court were involved in corruption scandals in A. Mr. M.C. at the time of conviction held a senior position in the public administration and therefore could again exert pressure on judges. They claim that the new conviction was based on the same evidence brought before the court that acquitted them. The prosecution did not provide any new evidence. Their case was covered in media, and it was claimed that Mr. M.C. was involved. They also refer to the ECHR decisions where the Court has concluded that A has failed in its duty to ensure a right to a fair trial.

2.9 The complainants also submit that in spring 2011, a day after their verdict was announced, they fled to Denmark. They travelled to Denmark without holding valid passports. They immediately started checking options on how to travel to B from there and contacted the B Embassy in Copenhagen who invited them to visit a consulate, but refused to issue a visa. They travelled to Berlin and met with officials of the B Consulate there with the aim of getting a travel document based on the residence approval Mr. V.Z. received in 2007.

2.10 However, the B Consulate in Berlin also refused to issue them a visa and requested them to come back with valid passports. The complainants were not able to obtain passports through the A Embassy as they would have been arrested should they approach the Embassy. As Mr. M.C. was still holding a senior position in the public administration, they decided to hide in Denmark under different identity with no legal status, and this lasted for two years.

2.11 The complainants claim that early 2013, they were arrested by the police based on an international arrest warrant issued against them by A. They informed the police that they were fleeing the A authorities after the conclusion of an unfair trial against them. During their arrest they informed that they sought police protection and that they wish to be taken to B and not to stay in Denmark. They were interviewed separately by the immigration services officers 28 and 29 days later and again a month later.

2.12 Around that time A's extradition request was rejected by Denmark. The reason for rejecting the request was that the A authorities could not show in their request for extradition that the complainants were present during all the judicial proceedings that led to their conviction in spring 2011 and that it was not possible from the evidence before the Court to determine the precise extent of their participation in the trial.

2.13 Fall 2013, the Danish Immigration Service rejected the complainants' asylum application. The Immigration Service did not find that if returned to A, they would be subject to persecution, death sentence, torture or inhuman treatment. The Immigration Service concluded that the fear of Mr. M.C. could not lead to a protection under the Convention, and that the conflict involving this individual happened a long time ago.

2.14 The Danish Immigration Service also concluded that there was no evidence that the complainants or members of their family had been attacked or threatened in 2003 and 2004, and that Mr. M.C. had been involved in the alleged attacks or threats. As for their conviction and sentence, the Immigration Service did not find that the sentence was unfair in this particular case. The Immigration Service stated that they were represented by a lawyer and had the opportunity to submit evidence to court and to give statements during the trial. As concerning the general detention conditions in A, the Immigration Service did not find that this claim by itself could justify a Convention protection; it also took in consideration the fact that complainants arrived in Denmark in spring 2011 while the protection claim was submitted only in early 2013.

2.15 Early 2014, the Refugee Board upheld the decision issued by the Danish Immigration Service. It also requested that the complainants leave the country within 15 days of the said decision. The Refugee Board did not question the claim that the complainants had a dispute with a former business associate, but it did not consider that this conflict was of such a nature or intensity so as to justify issuance of residence permits pursuant to the Aliens Act, paragraph 7. The Refugee Board also stated that the complainants submitted vague and general statements on threats. While the threats started in 2001, the complainants chose to leave A only after they became aware of their criminal sentence of spring 2011.

2.16 The Refugee Board further stated that although they entered Denmark in spring 2011, their first asylum application was submitted in early 2013 after they had been arrested pursuant to an international arrest warrant. They have spent long periods in A since their company's bankruptcy in 2001. Moreover, the Refugee Board found some discrepancies in Ms. I.M.'s claims. Concerning the complainants' claim that they faced an unfair trial in A, it's noted that the criminal proceedings against them have been considered by several courts in A. They were present during criminal proceedings and were represented by a lawyer and had the opportunity to present evidence in their defence and testify. It is based solely on their presumption that the outcome of the criminal proceedings in whole or in part, was a result of corruption.

2.17 The fact that A, in several cases before the European Court of Human Rights was held of violation of Article 6 does not lead to a different assessment. Finally, the complainants pointed out that they fear having to serve prison sentences under conditions which are contrary to Article 3 of the European Convention on Human Rights. They referred to the general background information on prisons in A together with the fact that A in several cases before the European Court of Human Rights has been held in violation because of the poor conditions of detention.

2.18 The Refugee Board finally did not consider that the general background information and the cited judgments of the European Court of Human Rights, constituted a sufficient

basis for believing that the complainants, if they were to serve prison sentences in **A**, would be exposed to a treatment contrary to Article 3 of the ECHR. **17 days later**, the complainants met with the police to arrange for their voluntary return to **A**, and were informed that as of **2 days earlier** they were staying illegally in Denmark, and therefore their forcible deportation to **A** was imminent.

The complaint

3.1 The complainants claim that the Refugee Board ignored their political asylum status in **B** as well as the Danish decision not to extradite them to **A**. They claim that if deported to **A**, they would risk persecution and be subjected to torture.

3.2 This belief arises from that fact that they published their story in the media in **A** while exposing that Mr. M.C. was corrupt. Because of that disclosure, coupled with the refusal of Denmark to extradite them, they are convinced that if returned, they will be tortured, beaten, punished or even killed in prison. They also refer to many cases of death in custody in **A** prisons. They further claim that the reasons for their prosecution in **A** were generated by corruption.

State party's observations on admissibility and merits

4.1 By Note Verbale of 29 September 2014, the State party submitted its observations on the admissibility and merits of the communication. It recalls the facts of the case and also provides excerpts from relevant domestic legislation and international law. The State party submits that the complainants were arrested on **early 2013**, based on the European arrest warrants issued **in the fall of 2011**.

4.2 By letters of 17 January 2013, 25 January 2013, 1 February 2013, the Danish Ministry of Justice asked the **A** authorities whether the complainants appeared in person in court proceedings in **A** in accordance with the requirements of the Danish Act on Extradition of Offenders. Based on the replies from the **A** authorities, the Justice Ministry decided not to extradite the complainants, since "it had not been possible to determine the scope" of the participation of the complainants in the court proceedings. The State party submits that the Danish Ministry of Justice did not make any other findings, including a finding on the risk of torture or persecution or other inhuman or degrading treatment or punishment relevant under asylum law.⁹

4.3 **Early 2013**, the complainants applied for asylum in Denmark. **Fall 2013**, the Danish Immigration Service rejected the complainants' asylum applications. The case then was brought to the Danish Refugee Appeals Board. **Early 2014**, the Refugee Appeals Board upheld the decision of the Immigration Service.

4.4 **Early 2014**, the Refugee Appeals Board found that the applicants have given "vague and general" statements about threat of persecution in **A**. It also noted that the applicants gave inconsistent statements about the alleged kidnapping of Ms. I.M.'s

⁹ While acknowledging that the Danish Ministry of Justice refused to extradite the complainants based on the failure by the **A** authorities to satisfy the requirements of the European arrest warrant, the State party argues that the Danish Ministry of Justice did not make any other determinations. For example, the State party argues, the Danish Ministry of Justice did not determine whether, in addition to the requirements of the European arrest warrant, there were other grounds for refusing extradition, including the question whether there was a risk that, following extradition, the complainants would be subjected to persecution or torture, or other inhuman or degrading treatment or punishment relevant under asylum law. The State party claims that independent of the Danish Ministry of Justice, the Danish Immigration Service and the Refugee Appeals Board made a finding that the complainants' request for asylum should be rejected as manifestly ill-founded.

son, about the length of the threats made against them, about threats after their departure and other details.

4.5 The Refugee Appeals Board specifically noted that while the threats started in 2001, the complainants did not leave A until a criminal sentence was imposed on them in spring 2011. The Board also stated in its decision that the complainants only applied for asylum after having been arrested early 2013. Moreover, the Refugee Appeals Board has emphasized that complainants have stayed in A for long periods of time since they initially reported their problems in 2001.

4.6 As it is indicated in the submissions, the criminal case against the complainants was adjudicated at several judicial instances in A. The complainants were present during these hearings, and were represented by lawyers. The notion that the outcome of the criminal case was the result of corruption, in full or in part, is based solely on the complainants' assumption.

4.7 The State party therefore claims that the complainants failed to establish a prima facie case for the purposes of admissibility. It has not been established that there are substantial grounds for believing that the complainants are in danger of being subjected to torture or other cruel, inhuman or degrading treatment if they are returned to A.

4.8 The State party relies entirely on the Refugee Appeals Board decision of early 2014, in which the Board gave a thorough account of facts and assessed the evidence presented. The complainants also had an opportunity to argue their case both in writing and orally in front of the Board, with the assistance of counsel. The State party further submits that the fact that Ms. I.M. has obtained asylum in B does not lead to a different assessment of the facts at stake.

4.9 The State party submits that the complainants have failed to establish a prima facie case for the purpose of admissibility and that the communication is therefore manifestly ill-founded and should be declared inadmissible.

The complainant's comments on the State party's observations on admissibility and merits

5.1 On 30 December 2014, in reply to the State party's observations, the complainants submit that they remain at risk of torture, if returned to A. The fear of persecution has been well grounded, given the fact that Ms. I.M. already received a protected status in B. Ms. I.M. had to travel back to A "in order to rescue" Mr. V.Z. from persecution in A and take him with her to B.

5.2 The complainants further submit that the initial request by the A authorities to extradite the couple was denied by the Danish Ministry of Justice in early 2013. But the complainants were arrested nevertheless and had to seek asylum in order to avoid their extradition to A. The complainants did not seek to stay in Denmark; their intention was to depart for B as soon as they could.

5.3 The Danish Immigration Service rejected their asylum application as manifestly unfounded. The Danish Refugee Appeals Board upheld this decision, stating that the widespread corruption may have influenced the outcome of the criminal case against the complainants.

5.4 The mere fact that Ms. I.M. already received international protection under the Refugee Convention means that the authorities in B made a finding of an established fear or persecution. There is no question that upon return to A, the complainants will be placed in detention. The conditions of detention, as stated before, violate the requirements of article 3 of the Convention.

5.5 The Danish Immigration Service and the Danish Refugee Appeals Board failed to make a risk assessment as required by the general comment No. 1 on the implementation of article 3 of the Convention. There has been a pattern of gross, flagrant and mass violations of human rights in A. Especially with regards to prison conditions in A, there are still major problems. As the complainants already had similar problems in A before, this goes beyond a simple theory or suspicion.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 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.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the instant case, the State party has not contested that the complainants have not exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

6.3 The Committee takes note of the State party's argument that the communication should be declared inadmissible as manifestly ill-founded. The Committee notes that in early 2013, the complainants were arrested based on a European arrest warrant, and based on that warrant, and on the decision by the Danish Refugee Board of early 2014, both complainants were extradited to A to serve their sentence imposed on them pursuant to the court verdict. The Committee notes that all arguments presented by the complainants do not specifically relate to allegations of violations under the Convention, as the complainants only refer to claims relating to their conditions of detention, without describing these conditions. The Committee considers that the complainants have failed to present substantiation of any of their claims under article 3 of the Convention. Accordingly, it concludes that the communication is manifestly unfounded under Rule 113 (b) of its Rules of Procedure and, therefore, inadmissible under article 22, paragraph 2, of the Convention.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22, paragraph 2, of the Convention;
 - (b) That this decision shall be communicated to the complainants and to the State party.
-