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

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Committee against Torture

Communication No. 653/2015

Decision adopted by the Committee at its sixtieth session (18 April – 12 May 2017)*

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

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

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

1.1 The complainants are A.M.D (born on – February 1966 in Chechnya) and M.M.Y (born on – November 1977 in Chechnya). They present their complaint on their own behalf and on behalf of their three minor children, K.D (born on – March 2000), M.D (born on – February 2002) and Z.D (born on – March 2006). They are all Russian Federation nationals. The complainants claim that their deportation to Chechnya (Russian Federation) would expose them to a risk of torture and death. They are represented by counsel.[1]

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

The facts as submitted by the complainant

2.1 During the period between 2010 and 2013, the first complainant's brother, who was a Chechen rebel, asked him several times for help, which he provided. The brother visited him on numerous occasions, usually at night, seeking shelter and the first complainant bought clothes and medicine for him. In the night of – – June 2013, shortly after a visit from the first complainant's brother, armed and masked men, whom he assumed were from the pro-Russian Chechen authorities, came to the complainants' home and detained him. The first complainant was beaten; the second complainant was hit and she lost consciousness.

2.2 The first complainant was detained for nine days and while in detention he was interrogated and tortured. He was starved, beaten with objects such as plastic bottles filled with water and subjected to very painful electric shocks. He was hit on his entire body, his head and neck.[2] The authorities also threatened to kill him and his family or rape his teenage daughter. The first complainant was released after he promised to hand over his brother to the authorities the next time the latter visited.

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

2.4 In August 2013, the complainants' house in Chechnya was deliberately set on fire and burned by unknown assailants.[3] Neighbours, with whom they were in contact, informed

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

[2] On – April 2015, the first complainant submitted a medical certificate, dated – March 2015, issued by the Amnesty International Danish Medical Group, stating that his psychological pattern was consistent with post-traumatic stress disorder (PTSD) and that there is a consistence between the described torture and the physical and psychological symptoms and that objective findings that he presented during the examination.

[3] The complainants submit a copy of a certificate of the fact of the fire from the Fire Brigade in Grozny, stating that a property at a particular address had burned completely as a result of arson. The also submit a copy of a certificate, dated – October 2013, from the investigative department of the Ministry of Internal Affairs, stating that they are investigating a case of arson, at the above address, that they have established that the arson was started by unknown armed man, who then prevented the neighbors and the fire brigade to extinguish the fire; and that the case was under investigation.

the first complainant that the police had prevented them and the fire brigade from extinguishing the fire. According to the complainants that indicated that the police may have been accomplices in the arson.

2.5 The Danish Immigration Service interviewed the complainants on — August 2013, — November 2013, — November 2013 and — July 2014. On — November 2013, the first complainant signed a consent form stating that he had been subjected to torture and that he agreed to participate in a medical examination. The Danish Immigration Service, however, failed to order a medical torture examination for the complainant and rejected the complainant's asylum claim on — December 2013. On — May 2014, the complainants' counsel made a submission to the Danish Refugee Appeals Board (hereafter the RAB). The RAB returned the case to the Immigration Service on — May 2014, annulling its first decision, because new information had been submitted about the complainants' application. On — August 2014, the Danish Immigration Service again rejected the complainants' request for asylum.

2.6 In the beginning of December 2014, the first complainant received from his daughter, who was still living in Chechnya, a copy of an order issued by an investigator of the Ministry of Internal Affairs, dated — July 2013, to open a criminal investigation against him under articles 32 and 33 of the Criminal Code of the Russian Federation. On — December 2014, the complainants' counsel made a written submission to the RAB, requesting again that a torture investigation be carried out to prove that the first complainant had been tortured in the past. The RAB rejected the asylum claim on — December 2014 without commenting on the request for a medical torture examination. The RAB gave the complainants 15 days to leave the country voluntarily. At the time of submission of the communication to the committee, no deportation date had been set, but the complainants maintained that their deportation was imminent. The complainants submitted that they had exhausted all domestic remedies, as under the Danish Alien's Act the RAB decisions cannot be challenged before the courts.

The complaint

3. The complainants claim that their deportation to Chechnya, Russian Federation would expose the first complainant to torture, which he has suffered in the past while in detention. This risk is strengthened by the information that a criminal investigation has been opened against him by the Chechen authorities. His family is also at risk for being relatives of an individual who is sought by the authorities.

State party's observations on admissibility and the merits

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

4.2 The State party confirms that the complainants entered Denmark on — July 2013 without valid travel documents and applied for asylum the same day; on — December 2013, the Danish Immigration Service refused granting them asylum; on — May 2014, the RAB decided to remit the cases back to the Danish Immigration Service for reconsideration because of new information; on — August 2014, the Danish Immigration Service again refused them asylum; on — December 2014, the RAB upheld the refusal by the Danish Immigration Service of the complainants' asylum application.

4.3 Following the complainants' submission of a communication to the Committee, on — January 2015, the complainants requested the RAB to reopen their application for asylum, enclosing a report of — March 2015 made by the Amnesty International Danish

Medical Group on the examination of the first complainant for signs of torture. On [illegible] May 2015, the RAB refused to reopen the asylum proceedings.

4.4 The State party submitted that in its decision of [illegible] December 2014, the RAB had stated, *inter alia*, that the majority of the members of RAB did not find the complainants' statements credible, because they had failed to state, on their own initiative, that international passports had been issued to them in April 2013 and that they had applied for visas for Spain; when confronted with that information, they stated that, around May 2013, they had taken steps to have visas issued for Spain. From the case file it appears that there is a visa application dated [illegible] July 2013 signed by the applicants for visas for Spain. It also appeared from the case file that there were flight tickets for departure from Moscow to Barcelona on [illegible] July 2013, while the complainants had stated at the asylum screening interviews that they had left their country of origin to go to Denmark precisely on [illegible] July 2013. The majority also found their statements not to be credible because they responded vaguely and evasively to key questions, including how often the first complainant's brother came to visit them between 2010 and 2013. The RAB therefore found that the complainants have not substantiated that the conditions for residence under section 7(1) or (2) of the Aliens Act have been met.

4.5 The State party further provides a detailed description of the legal basis for the work of the RAB and their methods of work.[4]

4.6 The State party further maintained that the Convention Relating to the Status of Refugees, the European Convention on Human Rights, the Convention against Torture and the International Covenant on Civil and Political Rights are of special relevance to the activities of the RAB and that protection against torture and similar treatment under the said conventions has been incorporated into section 7(2) of the Aliens Act. However, according to the case-law of the RAB, the conditions for granting asylum or protection status cannot be considered satisfied in all cases where an asylum-seeker has been subjected to torture in his country of origin. This also accords with the practice of the Committee.[5] Where the RAB considers it a fact that an asylum-seeker has been subjected to torture and risks being subjected to torture in connection with persecution for reasons falling within the 1951 Geneva Convention in case of return to his country of origin, the RAB will grant residence under section 7(1) of the Aliens Act (Convention status), provided that the conditions for this are otherwise met. Furthermore, following a specific assessment, a residence permit can be granted under section 7(1) of the Aliens Act where it is found that an asylum-seeker has been subjected to torture before he fled to Denmark, and where his substantial fear resulting from the abuse is therefore considered well-founded, although, by an objective assessment, return is not considered to entail any risk of further persecution.

4.7 Moreover, the RAB will find that the conditions for granting residence under section 7(2) of the Aliens Act (protection status) are met if specific and individual factors render it probable that the asylum-seeker would be at a real risk of being subjected to torture in case of return to his country of origin. The fact that an asylum-seeker has been subjected to torture may also have an impact on the assessment of evidence made by the RAB because individuals who have previously been subjected to torture cannot always be expected to give an account of the facts of the case in the same way as individuals who have not been

[4] For detailed description see for example communication No. 580/2012, *F.K. v. Denmark*, decision adopted on 23 November 2015, paras 4.9-4.11.

[5] The State party referred to, *inter alia*, the Committee's decisions in communications No. 277/2005, *N.Z.S. v. Sweden*, adopted on 29 November 2006; No. 466/2011, *N [illegible] A [illegible] Denmark*, adopted by the Committee on 14 May 2014.

subjected to torture. This follows also from the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*.[6]

4.8 Where torture is invoked as one of the grounds for asylum, the RAB may sometimes find it necessary to obtain further details on such torture before determining the case; it may, *e.g.*, order an examination of the asylum-seeker for signs of torture. Any such decision will typically not be made until the Board hearing as the Board's assessment of the necessity thereof often depends on the asylum-seeker's statement, including the asylum-seeker's credibility. If the RAB considers it proved or possible that the asylum-seeker has previously been subjected to torture, but finds, upon a specific assessment of the asylum-seeker's situation, that there is no real risk of torture upon a return at the present time, it will normally not order an examination. The RAB normally does not order an examination for signs of torture where the asylum-seeker has lacked credibility throughout the proceedings and the Board therefore has to reject the asylum-seeker's statement about torture in its entirety.

4.9 Concerning the significance of the asylum seeker's credibility relative to the significance of medical information, the State party referred to the Committee's decision in communication No. 209/2002, *O. v. Denmark*,[7] in which the complainant's statements on torture and the medical information provided on this were set aside due to the complainant's general lack of credibility. In this decision, the Committee referred to para. 8 of its general comment No 1, pursuant to which questions about the credibility of a complainant, and the presence of relevant factual inconsistencies in his claim, are pertinent to the Committee's deliberations as to whether the complainant would be in danger of being tortured upon return. The State party also referred to the Committee's decision in communication No. 466/2011, *N. A. v. Denmark*,[8] in which it found that the State party's authorities thoroughly evaluated all the evidence presented by the complainant, found the complainant to lack credibility, and did not consider it necessary to order a medical examination. It further referred to the judgment delivered by the European Court of Human Rights on 20 March 1991 in *C. V. and Others v. Sweden* (application No. 15576/89), paras 77 to 82.

4.10 When torture is invoked as a ground for claiming asylum, factors like the nature of the torture, including the extent, grossness and frequency of the abuse, and the asylum-seeker's age may be accorded importance in the determination of the case. It is observed that the torture exercised may be in the nature of both gross psychological and gross physical abuse. Moreover, particularly the time of the abuse relative to the asylum-seeker's departure and any changes in the regime in his country of origin may be decisive as to whether residence is granted. An asylum-seekers fear of abuse in case of return to his country of origin may result in asylum being granted if it is supported by an objectively founded assumption that the asylum-seeker will be subjected to abuse upon his return. In its assessment of this, the RAB includes information as to whether systematic gross, flagrant or mass violations of human rights occur in the asylum-seeker's country of origin.

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

[6] The State party made reference to paras 207 to 212 of the Handbook.

[7] Decision adopted by the Committee on 12 November 2003, paras 6.4 to 6.6.

[8] Decision adopted on 14 May 2014.

[9] Adopted on 6 May 1998, para. 11.2.

[10] Adopted on 12 December 2005, para. 6.4.

4.12 The State party also explains that when the RAB has decided a case, the asylum-seeker may request it to reopen the asylum proceedings. If the asylum-seeker claims that essential new information has come to light as compared with the information available when the RAB made its original decision and that this new information may result in a different decision, the RAB will make an assessment of whether this new information may give rise to reopening of the proceedings for reconsideration of the case. Under section 53(10) and (11) of the Aliens Act and rule 48 of the Rules of Procedure for the RAB, the chairman of the panel (always a judge) which made the original decision in the case may determine the case if there is no reason to assume that the RAB will change its decision, or the conditions for being granted asylum must be deemed evidently satisfied. The chairman may also decide to reopen a case and remit it to the Danish Immigration Service relying on his powers as chairman.

4.13 The chairman may further decide that the panel which previously decided the case is to decide on the reopening of the case either at a hearing or by deliberations in writing, that the case is to be reopened and considered at a new oral hearing by the panel which previously decided the case, and with all parties to the case present, or that the case is to be reopened and considered at a hearing by a new panel, see rule 48(2) of the Rules of Procedure.

4.14 Cases may be reopened and considered at a new oral hearing by the panel which previously decided the case if the applicant has provided essential new information of significance to the decision of the case and if it is assessed that the asylum-seeker should be given the opportunity to make a statement in person in this respect.

4.15 Cases may be reopened and considered at an oral hearing before a new panel if a member of the former panel is unable to attend and it gives rise to due process concerns to replace that member by another member from the same authority or organisation. If a basis is found for reopening a case, the time limit for departure will be suspended pending the re-hearing of the case. The RAB will also assign counsel to represent the complainant.

4.16 With regard to the complainants' case, the State party observed that the complainants have provided no new information on their conflicts in their country of origin beyond the information available when the RAB made its decisions on — December 2014. As regards the complainants' submission that the immigration authorities decided the complainants' asylum cases without summoning the first complainant for an examination for signs of torture, the State party observed that the RAB does not initiate an examination for signs of torture in cases in which it cannot accept as a fact the asylum-seeker's statement on his grounds for asylum. As appears from the decisions of the RAB of — December 2014 and — May 2015, the majority of its members found that they could not consider as facts the complainants' statements on their conflicts in their country of origin prior to their departure and therefore found no basis for initiating an examination of the first complainant for signs of torture.

4.17 The State party reiterated its submissions regarding the complainants' failure to mention their obtaining visas and tickets to go to Spain and observes in this respect that it also seemed to lack credibility when stated by the complainants that they were allegedly not aware that it appeared from their visa applications that they had previously been issued with Schengen visas for the period from — August 2010 to — August 2010 and that the visa agency had allegedly included this information without the complainants' knowledge. It observed in this respect that, according to his statement, the first complainant had had personal contact with the visa agency seven or eight times during the months of May and June 2013. The State party maintained that it was not credible as stated by the complainants that they had merely signed blank visa application forms and had had no knowledge of the contents of the applications. It further observed that it generally weakens the credibility of the complainants that they maintained their incorrect statements on international passports

and visas despite numerous opportunities of correcting the statements. Those circumstances cannot be explained by the abuse to which the first complainant was subjected while detained, as claimed by himself.

4.18 With regard to the report of — March 2015 made by the Amnesty International Danish Medical Group on the examination of the first complainant for signs of torture. The State party maintained that it was taken into consideration by the RAB, when it took its — May 2015 decision to refuse to reopen the asylum proceedings. The RAB found 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 on their grounds for asylum and that the consistency between the first complainant's description of torture and the physical and psychological symptoms and the objective findings in connection with the examination described in the report, did not mean that he had been subjected to the physical and/or mental abuse that he has relied upon. Accordingly, the RAB still found, based on an overall assessment of the information on file, including the report made by the Amnesty International Danish Medical Group on — March 2015, that the complainants had not rendered probable the grounds for asylum that they relied upon, including that the first complainant had been detained and subjected to torture and other physical abuse by persons supporting the Chechen authorities shortly before their departure in July 2013.

4.19 The State party refers in this respect to the above observations on the credibility of the statements made by the complainants during the asylum proceedings, not least about the circumstances preceding their departure in 2013, shortly after the detention of the male complainant according to the information provided. The State party observes on this matter that both the male and the female complainants made concurrent incorrect statements on their passports and visa applications until they met with counsel, although they had been given several opportunities to correct their statements.

4.20 As regards the complainants' submission on arson to the complainants' home in Chechnya, the State party observes that the RAB had in its possession the police statements already at the initial hearing of the appeal. The State party finds that the alleged arson to the complainants' home in Chechnya does not constitute proof that the complainants risk abuse falling within the Convention upon return to their country of origin. It is observed in this respect that it seems to be the assumption of no one else but the complainants and the witness produced that the arson was organised by the authorities and that the police statements said as a matter of fact that the authorities had initiated an investigation of the arson.

4.21 Finally, the State party finds that the document produced on an alleged criminal case pending against the male complainant cannot lead to a different assessment of the complainants' credibility. The document dated — July 2013, but only received by the complainants on — October 2014 according to the information provided, appears to have been fabricated for the occasion. In this respect, the RAB noted the late appearance of the document. It also noted that according to the background material, that: "According to a Western embassy it is possible to buy any kind of documents in Russia.[…] When asked about the prevalence of false documents ordering people to report for questioning at the police station or in court in connection with a case of support to the insurgency, a human rights activist in Grozny (A) explained that such false documents are very common and easy to come by. They are common because people who want to leave Chechnya for

Europe believe they will be rejected asylum unless they are able to document that they are in risk of being persecuted.'[11]

4.22 The State party made reference to the findings of the European Court of Human Rights concerning assessments of credibility in asylum cases, including in the judgment delivered in *R.C. v. Sweden* (application No. 41827/07), para. 52 or the judgment delivered on 26 June 2014 in *M.E. v. Sweden* (application No. 71398/12), para. 78. The State party further refers to the judgment of 8 July 2014 in *M.E. v. Denmark* (application No. 58363/10), para. 63, where the European Court of Human Rights expressed its opinion on the examination of a specific asylum case by the Danish Immigration Service and the RAB, including the due process guarantees that characterised the examination. It also referred to the views adopted on 22 October 2014 by the Human Rights Committee in communication No. 2186/2012, *Mr. X and Ms. X v. Denmark*, para. 7.5.

4.23 The RAB, which is a collegial body of a quasi-judicial nature, made a thorough assessment of the complainants' credibility and specific circumstances and found that the complainants had failed to render probable that they will risk abuse contrary to article 3 if returned to Russia. The State party agreed with this finding and reiterated that, in their communication to the Committee, the complainants failed to provide any new, specific details about their situation, therefore their complaint to the Committee merely reflects that they disagree in the assessment of their credibility made by the RAB in the case at hand, and in their complaint to the Committee the complainants failed to identify any irregularity in the decision-making process or any risk factors that the RAB failed to take properly into account.

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

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

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

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

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

Complainants' comments on the State party's observations

5.1 On 15 September 2016, the complainants submitted that since the — December 2014 decision by the RAB, by which their asylum was rejected, a medical torture examination of the first complainant had been carried out by Amnesty International and that its conclusion corroborates his allegations of torture. Further, the first complainant has described in detail the torture he had been subjected to; his psychological condition was very critical. The complainants applied for a reopening of their case, but, on — May 2015, the RAB refused to reopen it.

5.2 The complainants noted that in its — December 2014 decision, the RAB underlined that they considered that the complainants lacked credibility, but that after that decision the medical examination of the complainant confirmed that his symptoms were consistent with PTSD. Despite that, the RAB found that that there were no new facts that would justify reopening the case. The complainants maintain that they have established a prima facie case for the purpose of admissibility of my complaint under article 3.

5.3 The complainants further noted that in its submission the State Party maintained that the majority of the members of the RAB members found that their statements lacked credibility, including the statement on torture, but at the same time the State Party did not take into account the first complainant's physical and psychological situation. The complainants maintained that the first complainant had been subjected to torture in the past and that a person, who has been exposed to torture, is likely to experience "serious difficulties if returned, as the risk of the authorities bringing him in for repeated interrogation with accompanying torture is very high".

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

5.5 The complainants also submitted that during the hearing in the RAB on — December 2014, they were allowed to present a witness. The witness provided a long statement, testifying that their home was burned down and that neither the neighbours, nor the Fire Department, were allowed to help. The complainants maintain that several reports about Chechnya mention that burning of houses is used as a scare technique against the owners. They also noted that the RAB decision does not mention about the testimony of this witness, and it is difficult to see if the statement had been taken into consideration by the RAB. They maintained that their witness was also an asylum seeker in Denmark and that he would only give a truthful statement before the RAB, because otherwise he would jeopardize his own asylum application.

5.6 The complainants stress that, although the Committee may not be an appellate body, they brought their case before the Committee because the Immigration Service and later the RAB, denied the first complainant the opportunity to undergo a medical torture examination, and then, when an examination was conducted by the Amnesty International Danish medical group, the State party did not take the report into account.

State party's further observations

6.1 On 24 March 2017, the State party submitted that the complainants' additional observations of 15 September 2016 did not add to the case any new information on the conflicts in the complainants' country of origin. It referred to its observations of 23 July 2015. It noted the complainants' submission that an examination for signs of torture of the first complainant was carried out by Amnesty International Danish Medical Group on — December 2014, that the conclusion of this examination corroborated his allegations of

torture, and that it also concluded that the first complainant's mental symptoms were consistent with PTSD. The State party submitted that in the case at hand, the RAB could not accept as a fact the first complainant's account of the alleged torture, and also found that the inconsistencies in crucial elements of his grounds for asylum were not attributable to the alleged torture in his country of origin.[14]

6.2 The State party points out that the case law of the RAB includes cases, like the case at hand, in which the asylum-seeker submitted that he or she sustained physical or mental injury originating from the relevant torture according to his or her own statement. Sometimes, the information given by the asylum-seeker on his or her injuries is wholly or partly substantiated by medical examinations, and it is rather common that it appears from the conclusion of a medical examination report that the objective findings are consistent with the asylum-seeker's statements on torture inflicted as a consequence of a conflict with the authorities. However, if in such case the RAB were to disregard the asylum-seeker's account of the circumstances that allegedly gave rise to the torture described, e.g., because it cannot in any way be considered a fact that the asylum-seeker has been involved in politics, nor that any such political involvement has been discovered by the authorities, such conclusion does not independently give rise to a different assessment of his or her credibility or to the initiation of an examination for signs of torture. The results of an examination for signs of torture merely reflect that the asylum-seeker suffers from physical or mental injury, which may have been inflicted in the way described by the asylum-seeker, although it could also have been inflicted in numerous other ways. In other words, an examination does not necessarily clarify whether the asylum-seeker's injury was caused by torture at all or whether the injury sustained was caused by an incident like a fight, an assault, an accident or an act of war; and an examination cannot at all clarify whether or not the statement given by the asylum-seeker on the reason why he or she was subjected to abuse and by whom is true.

6.3 The State party submits accordingly that, in its decision of — May 2015 refusing to reopen the asylum proceedings, the RAB Board expressly found that the examination for signs of torture could not lead to a different assessment of the credibility of the complainants' statements on their grounds for asylum. The State party also reiterates its submission regarding the inconsistencies in the complainants' statements. The State party noted the Committee's decision in communication No. 634/2014, *M.B., A.B., D.M.B and D.B. v. Denmark*, adopted on 25 November 2016, which states in para. 9.6: "[...] the Committee is of the view that the impartial and independent assessment of whether the reason for the inconsistences in his statements might be that he had been subjected to torture could have been made by the Board only after having ordered the first complainant's examination for signs of torture." The State party submitted that it disagrees with the view expressed in the above decision and finds that the circumstance 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 any such examination, not even in cases in which an asylum-seeker has produced medical information indicating that the asylum-seeker might have been subjected to torture. It maintained that the issue of whether to initiate an examination for signs of torture must be determined on the basis of an individual assessment, including an assessment of whether the outcome of the examination must be deemed to be of significance to the RAB's decision.

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

6.4 With regard to the complainants' submission that the RAB decision failed to mention the testimony of the witness who testified in their favor on 19 December 2014 (see para 5.5), the State party submitted that the testimony of the witness was reproduced in the RAB decision and that RAB decisions are made on the basis of all of the material presented, including the statements and testimonies made before the RAB – also in case no specific reference is made to such material, statement or testimony in the reasoning of the decision. The State party also contested the complainants' claim that "it affects the credibility of the witness that he is an asylum-seeker himself".

Further comments from the complainants

7.1 On 2 May 2017, the complainants referred to their previous submissions. They also noted that in its latest observation the State party failed to comment on the submission that that the first complainant had assisted Chechen rebels in the period 2010 - 2013, by helping his brother. The — December 2014 refusal of the RAB also does not address this submission in detail, although the situation in Chechnya is a very central issue in his case. The RAB only remarks in the decision that the first complainant's statements had been inaccurate and focuses on question how often the complainant's brother had visited him. The first complainant reiterated that he has not only been sympathizer, but has also cooperated with the rebels and maintained that country background information clearly states that previously suspected rebels are still in danger. The above does not appear to have been taken into consideration by the RAB. The relationship of the first complainant with his brother, who was very active in the rebel movement, means that the complainant is strongly exposed to reprisals. The complainants do not know where the brother is today or whether he is alive. They refer to the Norwegian Ministry of Foreign Affairs LandInfo Note of 4. October 2016 on "Family Members of Persons involved in the Rebel Movement", which states that it is primarily the families of active rebels, who are exposed to reprisals by the authorities and that reprisals against family members may last even after a rebel was killed by the authorities. The complainants reiterate their submission about the intentional burning of their house.

7.2 The complainants also refer to the State party's submission that the results of an examination for signs of torture merely reflect that the asylum-seeker suffers from physical or mental injury, which may have been inflicted in the way described by the asylum-seeker, although it could also have been inflicted in numerous other ways. They maintained that the State party's position make it impossible to use the results of a medical examination in evidence, because only the one who was present when the damage occurred can give a "100% sure testimony". They note that, despite of the analysis of Amnesty International Danish Medical Group and without specific reasons the RB had concluded that the complainant lacked credibility that the examination for signs of torture conducted by the Amnesty International Danish Medical Group could not lead to at different assessment of the credibility of the complainants' statements on their grounds for asylum.

7.3 The complainants also submitted that it is very rare to be granted permission in the RAB to be present an oral witness. They emphasise that the RAB decision was a majority decision. Since descents are not published, is it not known how many of the RAB members disagreed with the decision, but there was at least one RAB member believed that the complainants were trustworthy and that the family should not be returned to Chechnya.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same

matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the present case the State party does not contest that the complainant has exhausted all available domestic remedies.

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

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

9.2 The issue before the Committee is whether the expulsion of the complainants to Chechnya, Russian Federation, would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture upon return to the Russian Federation. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individuals concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return; additional grounds must be adduced to show that the individual concerned would be personally at risk.[16]

9.4 The Committee recalls its general comment No 1 (1997) on the implementation of article 3 of the Convention, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable", but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal. The Committee recalls that under the terms of general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

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

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

9.5 In the present case, the first complainant claimed that, because he was providing assistance to his brother rebel in Chechnya, in the night of — — June 2013, he had been, detained for 9 days, interrogated and tortured while in detention. He alleged being starved, beaten with objects such as plastic bottles filled with water and subjected to electric shocks. He was also threatened that he and his family will be killed and his teenage daughter will be raped. The first complainant also submitted that if he was returned to the Russian Federation he would be rearrested and would face torture because of his perceived affiliation with the Chechen resistance. The Committee notes that the State party dismissed the first complainant's account of torture in Chechnya, stating that his entire account lacked credibility because the complainants had failed to state, on their own initiative, that international passports had been issued to them in April 2013 that they had airplane tickets for departure from Moscow to Barcelona on — July 2013. The Committee also notes the State party's submission that its immigration authorities had found, based on an overall assessment of the information on file, including the report made by the Amnesty International Danish Medical Group on — March 2015, that the complainants had not rendered probable the grounds for asylum that they relied upon, including that the first complainant had been detained and subjected to torture and other physical abuse by persons supporting the Chechen authorities shortly before their departure in July 2013.

9.6 The Committee notes that the first complainant provided a detailed description of the torture that he had endured, both to the national authorities and in his submission to the Committee. The Committee takes note of the submission by the State party that the consistency between the first complainant's description of torture and the physical and psychological symptoms and the objective findings in connection with the examination described in the report, did not mean that he had been subjected to the physical and/or mental abuse that he has claimed. The Committee observes, however, that the medical certificate, dated —March 2015, states that he suffers from post-traumatic stress disorder and confirms that it is likely that he had been subjected to torture in the past. The Committee also observes that the RAB refused to reopen the complainant's asylum case even when faced with that evidence. The Committee considers that the State party, in the light of those doubts, could have reopened the proceedings and ordered an additional examination of the complainant in order to reach a fully informed conclusion on the matter.[17]

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

[17] See communications No. 481/2011 and 483/2011, *Mr. X and Mr. Z v. Finland*, decision adopted on 12 May 2014, para. 7.5.

[18] See communications No. 21/1995, *A — v. Switzerland*, Views adopted on 8 May 1996, para. 11.3; No. 43/1996, *T— v. Sweden*, Views adopted on 15 November 1996, para. 10.3; and No. 41/1996, *K —v. Sweden*, Views adopted on 8 May 1996, para. 9.3.

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

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

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

12. The Committee is of the view that the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainants to the Russian Federation or any other country where they run a real risk of being expelled or returned to the Russian Federation. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days of the date of the transmittal of the present decision, of the steps it has taken to respond to the above considerations.