

Advance unedited versionDistr.: General
15 May 2023

Original: English

Committee against Torture**Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1044/2020^{*,**}**

<i>Communication submitted by:</i>	N.U. (represented by counsel, Marjaana Laine)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Finland
<i>Date of complaint:</i>	4 December 2020 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 11 December 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	21 April 2023
<i>Subject matter:</i>	Deportation to the Russian Federation; risk of torture
<i>Procedural issues:</i>	Admissibility – manifestly ill-founded; level of substantiation of claims
<i>Substantive issues:</i>	Risk to life or risk of torture or other cruel, inhuman or degrading treatment or punishment, if deported to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is N.A., a national of the Russian Federation born in 1991. He claims that the State party would violate his rights under article 3 of the Convention if it removed him to the Russian Federation. The complainant is represented by counsel, Marjaana Laine.

1.2 On 11 December 2020, in application of rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party not to expel the complainant to the Russian

* Adopted by the Committee at its seventy-sixth session (17 April – 12 May 2023).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Huawei Liu, Maeda Naoko, Ilvija Pūce, Ana Racu and Sébastien Touzé.

*** Pursuant to rule 109, read in conjunction with rule 15 of the Committee's rules of procedure, and article 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa Guidelines), Bakhtiyar Tuzmukhamedov did not participate in the examination of the communication.

Federation while his complaint was being considered by the Committee. On 12 April 2021, 2 July 2021 and 23 September 2022, the State party informed the Committee that it was respecting the request.

The facts as presented by the complainant

2.1 The complainant was born in the Chechen Republic in the Union of Soviet Socialist Republics, currently in the Russian Federation. He is of Chechen ethnicity and Muslim religion. His permanent place of residence and registration is in Sernovodskoye in the Chechen Republic. He was temporarily registered in Ivanovo, in Ivanovo Oblast, during his studies and in Petrozavodsk, in the Republic of Karelia, from 2013 until 2017. The complainant has not been politically active. However, his close friends have participated in rebel activities in the Syrian Arab Republic.

2.2 On 10 August 2017, several armed persons violently took the complainant from his mother's house in Sernovodskoye. They assaulted him while forcing him to enter a vehicle, beating him in his head and kidneys. He was taken to a police unit in Grozny and placed in a cell that was a cold, wet, windowless cellar together with many other detainees and only a few mattresses. He was not given any food on the first day and only rarely afterwards. The conditions in the cell caused him to develop a painful ear infection. His detention lasted approximately ten days, during which he was interrogated several times. During the interrogations, he was made to sit in a chair with his hands tied. During the first interrogation, he was repeatedly beaten on his shoulders and body. The interrogators searched his telephone and questioned him about pictures and conversations that they found on it with his close friends M.I. and A.V., who had left to fight in the war in the Syrian Arab Republic. In May 2016, A.V. was extradited to the Russian Federation, where he was charged with organising or participating in an illegal armed formation under article 208 of the Criminal Code of the Russian Federation.

2.3 On 20 August 2017, the complainant was taken to the criminal investigation unit, where a detective informed him that there was enough evidence to prosecute him. He was released but told not to leave the Sernovodsk area. He was summoned to several interrogations in September-November 2017. He complied and attended the interrogations together with his lawyer. He was interrogated again about M.I. and A.V. as well as about another fighter from Sernovodskoye. He was informed that he was suspected of crimes under article 30 of the Criminal Code of the Russian Federation on preparations for a crime, and article 208 of said Code, and that mere contact with people fighting in the Syrian Arab Republic is a crime.

2.4 On 18 November 2017, the complainant left the Chechen Republic. He was able to do so only after he had received his internal passport back from the detective following several requests from his lawyer and after having signed a written decision on the prohibition of leaving his area of residence. He managed to obtain a temporary registration in Kondopoga in the Republic of Karelia, where he successfully applied for a visa to Finland. Around 21 December 2017, he was informed that he had been summoned for another interrogation. His brother told the investigator that he was too sick to attend. Given his previous cooperative attitude, the investigator accepted this, but requested a doctor's statement. On 27 December 2017, the complainant arrived in Finland, and applied for asylum two days later. The investigator subsequently addressed his brother aggressively after learning that the complainant had left the Russian Federation and informed him that a prosecution is ongoing. The complainant does not know whether there is an official warrant against him.

2.5 On 8 July 2019, the Finnish Immigration Service rejected the complainant's application for asylum. The Immigration Service accepted his account, finding that he consistently and precisely described his arrest, interrogations, beatings, the investigation against him and the summons, of which he provided original documentary evidence. The Immigration Service noted, however, that he had not been taken into pre-trial detention and had not been served an arrest warrant. It found that his international passport had been returned to him, although this observation was based on a confusion between his internal and international passports (paragraph 2.4). It further noted that the information on the progress of his investigation was based entirely on second-hand knowledge. The Immigration Service therefore did not consider it proven that the investigation would have proceeded to a prosecution or to court proceedings, or that, despite his innocence, he would have been convicted. It did consider,

given the complainant's apprehension and interrogations, that he may be apprehended and interrogated again in the Chechen Republic. However, it found that the beatings to which he had been subjected did not constitute persecution, as the assaults had only occurred during the first interrogations.

2.6 As the complainant had held a temporary registration in Petrozavodsk, the Immigration Service assessed his need for international protection with respect to that city. The Immigration Service dismissed his objections that he would not be safe in Petrozavodsk due to the large Chechen community there, whose leaders have direct contact with the Head of the Chechen Republic, Ramzan Kadyrov; that his father, who had lived there, had been imprisoned since 2013; and that his father's case had attracted media attention and exposed their last name. The Immigration Service considered that he had lived in the Republic of Karelia without experiencing any problems. The complainant had argued that it would be unsafe for him to return to Petrozavodsk because of the presence of the Chechen community there, which has contacts with the Head of the Chechen Republic, and because it was known that his father was imprisoned there. However, the Immigration Service did not ask him any questions about this. The Immigration Service took the view that his arrest and detention had been coincidental, as hundreds of people had been arrested during raids by the Chechen authorities, and that the investigation was based on old photographs and harmless messages. Thus, it considered that the Chechen authorities had not profiled him religiously or politically. It pointed out that he was unaware of the existence of an arrest warrant, that he had been able to travel inside the Russian Federation and that he had left through an official border crossing point using his own passport, which did not suggest that a warrant covering the Russian territory had been issued. Considering his background and the severity of the allegations, the Immigration Service reasoned that he did not have such a high profile that the Chechen authorities would look for him outside of the Chechen Republic, or that other authorities in the Russian Federation would be interested in him. Thus, it concluded that there were no well-founded reasons to consider that he would face a risk of being subjected to serious violations of his rights in Petrozavodsk, or that he would be forced back to the Chechen Republic.

2.7 On 13 August 2020, the Administrative Court of Helsinki rejected the complainant's appeal. The Administrative Court found that the complainant had lived in Petrozavodsk on a regular basis since 2013 and had only paid short visits to the Chechen Republic. Thus, it confirmed that the Immigration Service could consider Petrozavodsk as his home area. The Administrative Court considered that he had resided there without any breaches of his human rights or problems relating to his background or last name, and that his detention had occurred in the Chechen Republic and had been relatively short. The Administrative Court accepted that he had been subjected to inhuman treatment but noted that he had been released on the authorities' initiative, that he had been able to travel to Petrozavodsk, and had not faced problems when leaving the Russian Federation for Finland. The Administrative Court therefore found that there were no reasonable grounds to consider that an arrest warrant had been issued against him in the Russian Federation. It further found it unlikely that he was of such interest to the Chechen authorities that he would be searched for elsewhere in the Russian Federation, or that he would be of interest to Russian authorities outside of the Chechen Republic. Therefore, it concluded that there were no grounds to assume that he would be at risk of serious violations of his rights in Petrozavodsk. It further noted that he had only mentioned on appeal that in 2016, the police had searched his apartment there, supposedly due to the criminal activities of his father. The Administrative Court decided not to return the case to the Immigration Service, as the complainant had been able to submit this information on first instance. It further considered that the alleged search had remained a single event, and that he had not claimed that he had participated in his father's activities in any way. It considered that information presented on appeal on an event in Petrozavodsk organized by the authorities for the Chechen community there and an internet article on his father did not provide grounds to assume that the complainant would be at risk of serious violations of his rights. It therefore concluded that it was not likely that he would have well-founded grounds to fear persecution and that he was not in need of subsidiary protection in the meaning of sections 87(1) and 88 of the Aliens Act, respectively.

2.8 On 1 September 2020, the complainant applied to the Supreme Administrative Court for leave to appeal and requested interim measures to suspend his removal. The complainant

submitted that considering his experience of persecution and the seriousness of the criminal investigation, he could not return to any area in the Russian Federation; that his place of residence is not Petrozavodsk, as he only held a temporary registration there; and that Petrozavodsk is not a safe place for him to return. He referred to country information according to which the Chechen authorities can obtain information about wanted persons based on their registration in another area outside the Chechen Republic, and have arrested wanted persons outside of the Chechen Republic, independently or with the assistance of local authorities. He claims that Petrozavodsk is closely monitored by the Chechen authorities, meaning that a Federation-wide arrest warrant would not be necessary to locate and return him to the Chechen Republic. He also referred to a speech by the leader of the Chechen community in Petrozavodsk about persons residing in Petrozavodsk having made a “mistake” such as fleeing to Europe.¹ On 10 November 2020, the Supreme Administrative Court rejected the complainant’s request for leave to appeal.

The complaint

3.1 The complainant refers to country information according to which the human rights situation in the Chechen Republic remains poor.² The Head of the Chechen Republic, Ramzan Kadyrov, is supported by an extensive network of police officers and informants. The Chechen authorities commonly subject those suspected of supporting the Islamist insurgency in the Northern Caucasus to breaches of their human rights, including killings, disappearances by armed persons without insignia, torture, incommunicado detention, and fabricated criminal charges. Torture occurs in official and unofficial places of detention, especially against relatives and neighbours of suspected insurgents and Salafis. Human rights organisations have documented thousands of cases of confessions extracted under torture. Detainees are only moved to official detention facilities upon signing a confession. Some are moved to other republics to complicate the search; others are never found. The conviction rate in such cases is close to one hundred percent, forced confessions usually being the sole piece of evidence. Several dozens of people suspected of supporting the insurgency are arrested yearly. The Chechen authorities may resort to unofficial methods to return suspects to the Chechen Republic, and the department of its Ministry of Internal Affairs that deals with combating terrorism can operate all over the country. It can track wanted persons when they register at a new address, as such information is shared with the registry of the old address. Persons on a federal wanted list may be tracked when they travel on trains or try to leave the Russian Federation through an international airport.

3.2 The complainant submits that the decision of the State party’s authorities to return him to the Russian Federation would expose him to a real, personal, and present risk of being subjected to torture, in breach of article 3 of the Convention. The complainant argues that this risk emanates from his previous experience of torture and detention, the ongoing investigation, his contacts with fighters in the Syrian Arab Republic, including A.V., the criminal proceedings against the latter, his father’s background, and general country information (paragraph 3.1). He notes that he has submitted the original summons to appear for interrogations, the original order of the prohibition to leave his residential area, pictures of his friendship with Chechen fighters in the Syrian war and the statements of representatives of the Chechen authorities in Petrozavodsk. He argues that the State party’s authorities have accepted that he would be at risk if returned to the Chechen Republic, where he is suspected of having committed crimes under articles 30 and 208 of the Criminal Code of the Russian Federation.

3.3 According to the complainant, the State party’s authorities failed to consider his personal situation and the country information in their assessment of his claims consistently with

¹ The complainant notes that the Chechen leader stated that “Therefore, they do not need to be killed, they do not need to do anything, if they do not understand, we have people who will send them home, we will be able to convince them, we used to deal with them cruelly, now we talk to them normally, we are trying to do politics”.

² The complainant refers to: Finnish Immigration Service, Country Information Service, *Suuntaus Project: Current Status of Insurgency in the North Caucasus and Persecution by the Authorities*, 23 June 2015, pp. 17-20; European Union Agency for Asylum, “Country of Origin Information Report Russian Federation: The situation for Chechens in Russia”, August 2018, pp. 46-53.

international and national guidance on asylum claims. They did not fully examine his claims based on the assumption that he could register and continue living in Petrozavodsk. They did not examine the possibility of an internal flight alternative, but the decision on his asylum application is nevertheless based on the finding that he can avoid persecution by relocating to Petrozavodsk. However, this alternative is not reliable, durable, or effective. The complainant refers to the principle that, as he suffered torture in the past, the burden of proof is on the State party to establish that such harm will not be repeated.³ However, the Immigration Service and the Administrative Court of Helsinki ignored his previous experience of torture. He argues, in this regard, that the human rights situation in the Russian Federation has not improved since 2017. Upon return to the Russian Federation, he would have to register his residence, meaning that the Chechen authorities could easily find him. The State party's authorities did not consider whether he could obtain protection from the Russian Federal authorities; however, there is no indication that the Federal authorities would deny access to registration information to the Chechen authorities.

State party's observations on admissibility and the merits

4.1 In its observations of 12 April 2021 and 2 July 2021, the State party submits that the communication is inadmissible under article 22(2) of the Convention and rule 113(b) of the Committee's Rules of procedure, as manifestly ill-founded or insufficiently substantiated. The State party also submits that the communication does not reveal any breach of article 3 of the Convention.

4.2 The State party notes that the Immigration Service and the Administrative Court of Helsinki examined the complainant's asylum application in light of his account, the other evidence presented and country information. The Immigration Service found his account to be credible but did not consider it proven that the investigations would have led to any criminal charges or to a hearing, or that he would have been convicted innocently, as he had not been taken into pre-trial detention, had not been issued a warrant according to his own submission and his passport had been returned to him. The Immigration Service found grounds to believe that he may be apprehended and interrogated by the Chechen authorities upon return but considered that he had mainly resided in Petrozavodsk since 2013, without facing any problems, and thus examined his need for international protection with respect to that city. The Immigration Service considered that he had been apprehended coincidentally in the Chechen Republic while on a family visit, and that his travels in the Russian Federation using his own passport did not support the idea that he was wanted in the whole country. It stressed that he did not have such a high profile that he would be searched for outside of the Chechen Republic. The Immigration Service therefore found that there were no well-founded reasons to believe that he would face a risk of being subjected to serious breaches of his rights upon return to Petrozavodsk.

4.3 The State party notes that in its decision of 13 August 2020, the Administrative Court of Helsinki found that the complainant had resided permanently in Petrozavodsk since 2013 and had paid only short visits to the Chechen Republic thereafter. The Immigration Service had thus justifiably considered Petrozavodsk as his home region. He did not face any problems there before his arrest and detention, which was relatively short. As he had been subjected to inhuman treatment, the Administrative Court accepted that he could be at risk of serious breaches of his rights in the Chechen Republic. However, it found that this did not entail that he would be at risk in Petrozavodsk, as the authorities had released him at their initiative and had travelled within and outside of the country without problems. The State party notes that the Committee has held in another case that the way in which the complainants had left the Russian Federation undermined the credibility of their account.⁴ The State party further notes that in the present case, the complainant was not sure whether the authorities were searching for him and stated that an official arrest warrant had probably not been issued. He further mentioned that if the authorities were searching for him, the investigator would probably have informed his brother. The State party stresses that the Administrative Court found that

³ European Union, Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, article 4(4).

⁴ *S.A.P. v. Switzerland* (CAT/C/56/D/565/2013), para. 7.5.

the complainant had failed to substantiate that a warrant had been issued for his arrest in the Russian Federation and that he had been profiled to such an extent that the Chechen or other Russian authorities would look for him outside of the Chechen Republic. The State party notes that the complainant provided information about the search of his home in Petrozavodsk only on appeal. In this regard, the Administrative Court found that the Immigration Service had not examined the matter deficiently and that he had not experienced any breaches of his human rights in Petrozavodsk thereafter. Moreover, he had not reported any involvement in his father's actions, and nothing suggested that his profile was of interest to the authorities in Petrozavodsk or elsewhere in the Russian Federation. The Administrative Court therefore found that there were no grounds for believing that he would be at risk of serious breaches of his human rights in Petrozavodsk.

4.4 The State party highlights that the Immigration Service and the Administrative Court held that the complainant does not have a profile that would expose him to the risk of being persecuted outside of the Chechen Republic or being returned there if he stayed elsewhere in the Russian Federation. The State party observes that according to country information, the Chechen Republic is exceptionally independent compared to the other federal subjects of the Russian Federation. Although the Chechen authorities can find out about his whereabouts if he registers elsewhere in the country, there are no grounds for believing that they have an interest in finding his place of residence outside of the Chechen Republic or that he would be of interest to the Federal authorities in Petrozavodsk or elsewhere. As it was not established that he was wanted by the police in the territory of the Russian Federation, the complainant had a possibility to return to Petrozavodsk.

4.5 The State party argues that the domestic authorities thoroughly examined the grounds presented by the complainant. The State party observes that the present communication is based on the same facts as the evidence presented to the domestic authorities, that the Committee gives considerable weight to the findings of fact made by organs of the State party concerned and that it is not the role of the Committee to act as a fourth instance. According to the State party, the complainant attempts to obtain a reassessment of his asylum claim from the Committee. In the State party's view, the complainant has failed to sufficiently substantiate that there are substantial grounds for believing that he is in danger of being subjected to torture or inhuman or degrading treatment if returned to the Russian Federation.

4.6 On the merits, the State party refers to the Committee's jurisprudence in cases where it held that removals to the Russian Federation would not constitute a breach of the respective State party's obligations under article 3 of the Convention.⁵ The State party also refers to domestic jurisprudence on removals to the Russian Federation, arguing that cases of forced abductions to the Chechen Republic from elsewhere in the country are sporadic. The State party notes that the complainant must provide exhaustive arguments for the communication, and that the burden of proof is on the complainant to present an arguable case that the danger of being subjected to torture is foreseeable, present, personal and real.⁶

4.7 The State party reiterates that the complainant had resided permanently in Petrozavodsk since 2013, had paid only short visits to the Chechen Republic thereafter, and that the information presented on appeal about the house search did not suggest that he would face a risk of serious breaches of his rights in Petrozavodsk. As it was not accepted that he was wanted by the police in the Russian Federation, he had a possibility to return to Petrozavodsk. Further, he had been able to work there and had not been politically active. The State party reiterates that the complainant had been released from detention at the initiative of the authorities and had managed to travel from the Chechen Republic to Petrozavodsk and to Finland without any problems. Thus, the Immigration Service and the Administrative Court concluded that he was at risk of serious breaches of his rights in the Chechen Republic, but not in Petrozavodsk, and that he did not have a profile exposing him to a risk of being returned to or persecuted outside of the Chechen Republic. The State party notes the Committee's position according to which previous experience of torture and the occurrence of human

⁵ *T.M. v. Sweden* (CAT/C/68/D/860/2019); *S.K. v. Sweden* (CAT/C/54/D/550/2013); *A.B. et al. v. Sweden* (CAT/C/54/D/539/2013); *S.A.P. v. Switzerland*.

⁶ General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22 (CAT/C/GC/4), paras. 39-40.

rights breaches in the country of return are not determinative in answering the question of a present risk.⁷ The State party finds that the complainant's asylum application was examined fairly and thoroughly and that it was not established that he runs a risk of being subjected to a breach of his rights under article 3 of the Convention.

Complainant's comments on the State party's observations

5.1 In his comments of 31 March 2022 and 14 April 2022, the complainant argues that the State party has not presented any grounds for its position that the communication is insufficiently substantiated or manifestly ill-founded.

5.2 The complainant argues that his permanent place of residence has always been in the Republic of Chechnya, and that his temporary registration in Petrozavodsk ended in 2017. According to the complainant, his former temporary residence cannot suffice to find that Petrozavodsk is his home region. The complainant also argues that the State party ignores that in November 2017, the investigative detective returned his passport only following several requests from his lawyer; that he was required to sign a decision prohibiting him from leaving his area of residence; that he was expected to arrive for an interrogation as a suspect in the Chechen Republic at the start of 2018; that the investigator contacted his brother when he did not show up for the interrogation; and that his brother informed him that he was being prosecuted.

5.3 The complainant refers to country information according to which persecuted Chechens relocating to another region of the Russian Federation must register there, rendering it almost impossible to stay under the radar of the Chechen authorities.⁸ The complainant reiterates that the State party's authorities accepted that he is at risk of serious breaches of his human rights in the Chechen Republic and that they suspect him of having committed crimes; that they failed to consider his personal situation and all the evidence in accordance with international and national guidance on assessing asylum claims; and that the burden of proof was applied erroneously.

5.4 The complainant notes that the Committee did not declare the communications invoked by the State party inadmissible (paragraph 4.6). The Committee observed in these cases that the State party's authorities had found the complainants' respective accounts not to be credible or they had obtained their passports after the claimed persecution. However, in the present case, the State party's authorities have accepted the account of the complainant, who obtained his passport before the persecution began. One of the domestic cases invoked by the State party concerns communication No. 517/2012, in which the State party's authorities granted the complainant asylum. In another case, the Supreme Administrative Court overturned prior negative decisions and granted asylum on 20 December 2021 to an appellant at risk of persecution by the local authorities in Ingushetia, in the absence of an internal flight alternative.⁹ The Supreme Administrative Court found that upon return, the appellant would have to register his address, which would be passed on to the Ingushetian authorities. The latter could then issue a national search warrant for a possibly fictitious criminal case, which would provoke his forced return. The Supreme Administrative Court considered that it could not be ruled out that the local authorities may persecute the appellant in that case and concluded that he did not have an internal flight alternative.

5.5 According to the complainant, the country information invoked by the State party shows that the Chechen authorities have forced people back to the Chechen Republic, and that people with different backgrounds have thus been exposed to a risk of persecution.

State party's additional observations

6. In its additional observations of 23 September 2022, the State party argues that the case decided by the Supreme Administrative Court on 20 December 2021 differs from the present case as the appellant in that case had a history of strong political activity and severe

⁷ *T.M. v. Sweden*, para. 12.7; *A.B. et al. v. Sweden*, para. 7.6.

⁸ Norwegian Helsinki Committee, *Report 2019: "Lost in Russia"; A critical assessment of Norway referring to Russia as a safe third country and safe country of origin*.

⁹ Supreme Administrative Court, judgment of 20 December 2021, ECLI:FI: KHO:2021:184.

persecution. By contrast, the complainant in the present case has not been politically active. Against his argument that his residence in Petrozavodsk was only temporary, the State party reiterates that it does not consider the interest of the Chechen authorities in him to be such that they would search for him elsewhere in the Russian Federation. The complainant has not presented any grounds for changing the conclusions of the Immigration Service and the Administrative Court that Petrozavodsk is his place of residence and that he would not risk a breach of his rights under article 3 of the Convention there.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint 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(5)(a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22(5)(b) of the Convention, it shall not consider any 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 has not challenged the admissibility of the complaint on this ground. Accordingly, the Committee considers that it is not precluded by article 22(5)(b) from examining the present complaint.

7.3 The Committee notes the State party's argument that the complaint is inadmissible as insufficiently substantiated or manifestly unfounded. The Committee considers, however, that the complainant has sufficiently substantiated his claims, for the purposes of admissibility, by sufficiently detailing the facts and the basis of the claim for a decision by the Committee. As the Committee finds no obstacles to admissibility, it declares the complaint admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 In accordance with 22(4) of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

8.2 The issue before the Committee is whether the forced removal of the complainant to the Russian Federation would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture or other cruel, inhuman, or degrading treatment commensurate with a risk of torture upon return to the Russian Federation. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3(2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the evaluation is to establish whether the complainant would be personally at a foreseeable and real risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.¹⁰

8.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the non-refoulement

¹⁰ See, for example, *S.K. and others v. Sweden* (CAT/C/54/D/550/2013), para. 7.3; *H.L. v. Australia* (CAT/C/71/D/754/2016), para. 10.3.

obligation exists whenever there are “substantial grounds” for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing removal, either as an individual or a member of a group that may be at risk of being tortured in the State of destination. The Committee also recalls that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real”.¹¹ The Committee 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, by virtue of article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

8.5 In the present case, the Committee notes that the State party’s authorities accepted that the complainant would be at risk of serious breaches of his human rights in the Chechen Republic in the context of a criminal investigation against him concerning articles 30 and 208 of the Criminal Code of the Russian Federation, on preparations for a crime and organising or participating in an illegal armed formation, respectively. The Committee notes that in arriving at this conclusion, the State party’s authorities accepted the complainant’s account, including of the torture to which he had subjected in detention. The State party’s authorities also considered available country information. In this regard, the Committee finds it pertinent to recall its concerns regarding the lack of effective investigations undertaken into past and ongoing human rights violations, including torture, abductions, enforced disappearances and extrajudicial killings, perpetrated by public officials in the northern Caucasus.¹²

8.6 Thus, the Committee notes that the present case differs from the jurisprudence invoked by the State party on cases where the Committee held that removals to the Russian Federation would not constitute a breach of the respective State party’s obligations under article 3 of the Convention (paragraph 4.6). The Committee based its conclusions in those cases on findings that the complainants’ respective accounts lacked credibility, among other elements. By contrast, in the present case, the State party’s authorities have accepted the complainant’s account relating to his past detention, torture and investigation against him, as well as the ongoing risk that he would be subjected to serious violations if returned to the Chechen Republic.

8.7 The Committee notes that the State party’s authorities found that the complainant’s home area was Petrozavodsk in the Republic of Karelia, as he had lived there from 2013 until 2017, and that he was not of such interest to the Chechen or other Russian authorities there that they would search for him there. The Committee recalls, however, that when assessing whether “substantial grounds” exist, the Committee will take into account the human rights situation of a State as a whole and not of a particular area of it.¹³ The State party is responsible for any territory under its jurisdiction, control, or authority. The notion of “local danger” does not provide for measurable criteria and is not sufficient to dissipate totally the personal danger of being tortured. The Committee further recalls that the so-called “internal flight alternative”, that is, the deportation of a person or a victim of torture to an area of a State where the person would not be exposed to torture, unlike in other areas of the same State, is not reliable or effective.¹⁴

8.8 The Committee notes that, despite the finding that the complainant would be at risk of human rights breaches in the Chechen Republic, the State party’s authorities concluded that his profile was not of such interest to the Chechen or other Russian authorities that he would be searched for in Petrozavodsk. Given the foregoing (paragraph 8.7), the Committee considers that this is insufficient to dissipate the personal danger of a breach of article 3 of the Convention. In this regard, the Committee notes that, according to the information on file, there is an ongoing criminal investigation against the complainant, in the context of which he was subjected to beatings during interrogations and deplorable conditions of detention. The Committee further notes that the State party accepted that the Chechen authorities would be able to find out about the complainant’s location if he registers elsewhere in the Russian

¹¹ General comment No. 4, para. 11.

¹² Concluding observations on the sixth periodic report of the Russian Federation (CAT/C/CO/RUS/6), para. 46.

¹³ General comment No. 4, para. 46.

¹⁴ *Ibid.*, para. 47.

Federation. Moreover, the Committee notes the information provided by the parties about forced abductions to the Chechen Republic from other parts of the Russian Federation. In view of the foregoing (paragraphs 8.5-8.8), the Committee concludes that the complainant would face a foreseeable, real and personal risk of being subjected to torture if he is returned to the Russian Federation, in breach of article 3 of the Convention.

9. In the light of the foregoing, the Committee, acting under article 22 (7) of the Convention, concludes that the return of the complainant to the Russian Federation would constitute a violation by the State party of article 3 of the Convention.

10. The Committee is of the view that the State party is required by article 3 of the Convention to reconsider the complainant's asylum application in the light of its obligations under the Convention and the present findings. The State party is also requested to refrain from expelling the complainant while his asylum application is being reconsidered.

11. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps that it has taken to respond to the above observations.
