



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

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Committee Against Torture
Forty-fifth session
1 – 19 November 2010

Decision

Communication No. 333/2007

<u>Submitted by:</u>	T.I. (unrepresented)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Canada
<u>Date of the complaint:</u>	15 September 2007 (initial submission)
<u>Date of present decision:</u>	15 November 2010
<i>Subject matter:</i>	Deportation of the complainant to Uzbekistan
<i>Procedural issues:</i>	Exhaustion of domestic remedies - lack of substantiation
<i>Substantive issues:</i>	Prohibition of refoulement
Article of the Convention:	1,3,22 (2) (5) (b)

[Annex]

* Made public by decision of the Committee against Torture.

Annex

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

concerning

Communication No. 333/2007

Submitted by: T.I. (unrepresented)
Alleged victim: The complainant
State party: Canada
Date of the complaint: 15 September 2007 (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 15 November 2010,

Having concluded its consideration of complaint No. 333/2007, submitted to the Committee against Torture by T.I. 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 complainant, his counsel and the State party,

Adopts the following:

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

1.1 The complainant is T.I., an Uzbek citizen, currently awaiting deportation from Canada. He claims that his deportation to Uzbekistan would constitute a violation by Canada of articles 1 and 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is unrepresented.

Factual background

2.1 The complainant was born in 1962 in Uzbekistan. He is an ethnic Tatar, who was educated in Russian and does not speak the Uzbek language. In 1991, he was allegedly forced to quit his job as a lawyer because he was a Tatar and only Uzbeks could work in the justice system. In 1992, he started his own company, which he claims was also unsuccessful because of his Tatar origin.

2.2 In 1995, he became a partner in a trading company operating in Dubai. The same year, while he was in Dubai on a business trip, he received a phone call from his mother,

who informed him that his father had been arrested by the national security services of Uzbekistan, allegedly because of his involvement with ethnic Tatars and his friendship with a well-known Uighur writer.

2.3 Not too long after his father's arrest, after he had returned to Uzbekistan, the complainant was allegedly arrested, interrogated about his father's activities and subjected to torture, such as beatings, kicks, placing of needles under his fingernails, sleep and water deprivation, solitary confinement, continuous exposure to light and administration of psychotropic drugs. He complains that he had blood in his urine and lungs. He was held in detention for approximately one month. After his release, he fled, together with his wife and daughter, to the United Arab Emirates. In 1998, his mother informed him that his father had died in prison. Although the official cause of death was said to be "natural causes", the complainant and his family believe that he died from torture.

2.4 In November 2000, a person, identifying himself as a member of the Uzbek Ministry of the Interior, approached him near his house in Dubai and told him he was wanted in Uzbekistan. When the complainant told the person in question that he would not return, he was threatened that there were ways to make him go back to Uzbekistan, including by interfering with his visa. In December 2000, after this incident, the complainant left Dubai for Germany, where he applied for asylum under a false name, for security reasons. His claim was rejected. He subsequently travelled to Norway and filed a refugee claim there, again under a false name, which was also dismissed.

2.5 In September 2001, the complainant entered Canada as a stowaway on an Icelandic ship. On 15 September 2001, he filed a refugee claim in Canada. On 7 November 2002, the Immigration and Refugee Board (IRB) denied him refugee status, as he had failed to submit credible and trustworthy evidence to establish that there was a reasonable risk to his life or torture if returned to Uzbekistan. The IRB was also concerned about the identity of the complainant and found his claim that he would be persecuted because of his Tatar ethnicity implausible. The complainant appealed to the Federal Court, which denied him leave for judicial review on 24 February 2003.

2.6 On 1 April 2003, the complainant applied for permanent residence on Humanitarian and Compassionate Grounds (H&C) and on 19 June 2003, he submitted an application for a Pre-Removal Risk Assessment (PRRA). On 11 May 2006, both applications for PRRA and H&C were rejected, as it was determined that he would not be subjected to persecution, torture or cruel, inhuman or degrading treatment or punishment. The complainant claims that the decisions in relation to both applications were issued by the same PRRA officer, and that he did not receive proper notification of these decisions for more than six months. His official request to receive the decisions was refused by PRRA in December 2006. On 5 February 2007, he applied for leave for judicial review of the PRRA decision to the Federal Court. The Federal Court dismissed his appeal on 17 August 2007.

The Complaint

3.1 The complainant claims that he would be subjected to torture if he were forced to return to Uzbekistan and that this would constitute a violation of articles 1 and 3 of the Convention by Canada.

3.2 The claim is based on his Tatar ethnicity, allegedly a discriminated minority in Uzbekistan, and the complainant's past experience of torture with reference to the human rights situation in Uzbekistan.

3.3 According to the complainant, this case is not under consideration by any other international procedure of investigation or settlement.

3.4 No request for interim measures has been submitted by the complainant.

State party's admissibility and merits observations:

4.1 On 28 May 2008, the State party challenged the admissibility of the complaint for incompatibility with the Convention and non-substantiation in relation to his claim under article 1, and for non-exhaustion of domestic remedies and lack of substantiation in relation to his claims under article 3 of the Convention.

4.2 The State party recalls the allegations advanced by the complainant and submits that he did not present any new arguments to the Committee and merely reiterated the arguments presented to the Canadian authorities. He did not establish that any of the findings of the domestic decision-makers considering his case were arbitrary or amounted to a denial of natural justice. Thus, the State party assumes that the complaint is based on his dissatisfaction with the domestic decisions.

4.3 The State party notes that the complainant did not explain how Canada had allegedly violated his rights under article 1 of the Convention. Even if the complainant's story of alleged past torture by Uzbek authorities were true, it does not engage Canada's responsibility under article 1, in fact or in law. This aspect of the complaint is thus devoid of substantiation and incompatible with the Convention.

4.4 On domestic remedies, the State party submits that the complainant did not apply for leave to apply to the Federal Court for judicial review of the negative decision on his H&C application. It recalls the Committee's jurisprudence and submits that the H&C application is an effective remedy that must be exhausted¹. The H&C application can be based on risk, and if accepted, and subject to security and criminality prohibitions, which are not present here, may lead to permanent residence which can in turn lead to citizenship.

4.5 The State party adds that the complaint is manifestly unfounded, as the complainant did not substantiate his allegations under article 3 even on a prima-facie basis. It recalls the Committee's General Comment on article 3, which places the burden of proof on the complainant to establish that he would be in danger of being subjected to torture. The ground on which the claim is established must be substantial, and must "go beyond mere theory or suspicion". The State party submits that the complainant's credibility is in question and his claims have been inconsistent and implausible; there is no medical or other credible evidence that he was tortured in the past; even if he had been tortured, this would have been in 1995, i.e. not in the recent past; there are no credible reasons to consider that he fits the personal profile of someone who would be of interest to the Uzbek government or particularly vulnerable if returned to Uzbekistan.

4.6 The State party submits that the analysis of the evidence and the conclusions drawn by the Board as well as by the PRRA officer, who assessed the risk, to which the complainant may be exposed if returned to Uzbekistan, were appropriate and well-founded. It recalls the Committee's jurisprudence that it cannot review credibility findings, "unless it is manifest that the evaluation was arbitrary or amounted to a denial of justice"². It cites several examples of inconsistencies and lack of credibility in the complainant's statements. He provided contradictory evidence about his identity documents, first telling immigration

¹ The State party refers to the Committee's arguments as summarized in paras 4.3-4.6 in *T.A v. Canada*, case No: 273/2005 (2006) as well as to the findings of Human Rights Committee in *Khan v. Canada*, communication No. 1302/2004 (2006) and Inter-American Commission on Human Rights in *Harte v Canada*, 11.862 (2005).

² *S.U.A. v. Sweden*, Case 223/2002 (2004), para 6.5, *A. K. v. Australia*, case 148/1999 (2004), para 6.4 and others.

Canada that he had destroyed his travel documents in Iceland before boarding the ship to Canada, and then asserting in his Personal Information Form that he had destroyed his passport in Germany. He also admitted to having made refugee claims under different false names in Germany and Norway. The purported identity documents faxed by his wife from Dubai are insufficiently reliable to establish his identity.

4.7 The State party also submits that the Board's doubts about the complainant's arrest and mistreatment in 1995 are well-founded. It states that the complainant failed to mention his arrest in his first interview with an immigration officer and provided conflicting testimony to the Board, first saying that the threats of mistreatment were not carried out, then testifying that needles had been inserted under his nails. He had also complained that he had blood in his urine and lungs, but had no medical evidence to corroborate any of his allegations. He did not mention his father's arrest in the interview or interviews conducted by Canadian immigration officials after his arrival in Canada. It notes the complainant's claim that he was approached by an Uzbek investigator while in Dubai and was threatened that his visa would be interfered with, if he did not return to Uzbekistan to provide evidence against ethnic activists. Finally, the State party submits that his attempt to mislead asylum authorities in other states cast doubt on the reliability of his allegations made to Canadian tribunals.

4.8 The State party refers to the Committee's recent jurisprudence involving prospective deportations to Iraq³ and Iran⁴ and notes that the problematic human rights situation in Uzbekistan is not in itself sufficient to substantiate the complainant's allegation that he would face a foreseeable, real and personal risk of torture in the event of his return. It refers to the complainant's claim that he was at risk of torture in Uzbekistan because he is an ethnic Tatar and submits that none of the main reports on the human rights situation in Uzbekistan suggest that Tatars are at particular risk of torture in Uzbekistan.

Complainant's comments

5.1 On 7 July 2008, the complainant sought to refute the observations of the State party. He argues that he did not receive the decisions on H&C and PRRA dated 11 May 2006, for more than six months. He claims he received them only after complaining to the Federal Court and after he had received a removal order dated 18 October 2006. Both decisions (H&C and PRRA) were decided by the same immigration official. He claims that he indeed applied for a stay of his removal order and for judicial review of both PRRA and H&C decisions. The case file does not contain a copy of his application for judicial review of the H&C decision.

5.2 The complainant also claims that his credibility and trustworthiness were put in doubt by his lawyer, who was provided by Legal Aid Canada. He claims that his lawyer did not act in his interest and did not provide all the necessary facts and documents to support his claims. He allegedly refused to represent him in the Federal Court.

5.3 The complainant notes the submission by the State party that he failed to mention his arrest in his initial interview with an immigration officer, and provided conflicting information to the Board, first saying that the threats of mistreatment were not carried out, then testifying that nails had been inserted under his nails. He claims that he does not remember whether he had mentioned this detail or not. He could have possibly shown them his fingers and was given consent to do that. He claims that the Immigration and Refugee Board were satisfied with what they had seen at that time. He could not provide medical

³ M.R.A. v. Sweden, 286/2006 (2006)

⁴ S.P.A. v. Canada, 282/2005 (2006)

evidence to corroborate his mistreatment, namely the blood in his urine and lungs, as, he claims, it was unrealistic for him to request his torturers for such a medical report.

5.4 In relation to his identity, the complainant submits that he provided the Tribunal with his original Birth Certificate, which states that both his parents are Tatars, as it is the only document in Uzbekistan that can provide such detail with regard to ethnicity. He claims that the argument regarding contradictions about his identity documents was used by the Canadian authorities to undermine his credibility and it would have been easier to clarify his identity if they had contacted his lawyer at the beginning of the asylum process. He argues that he would have used the official channels to immigrate to Germany as he had planned, if he had not been threatened by an Uzbek investigator.

5.5 The complainant argues that inconsistencies in relation to the documents that he used to come to Canada, could be due to lack of other evidence. He submits that when he came to Canada he did not have documents on him as he had destroyed them in Iceland. He had destroyed his passport earlier upon arrival in Germany after he passed customs control allegedly in fear of deportation to Uzbekistan.

Issues and proceedings before the Committee:

Consideration of admissibility:

6.1 Before considering any claim contained in a communication, the Committee against Torture must decide whether or not 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 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any complaint, unless it has ascertained that the complainant has exhausted all available domestic remedies; this rule does not apply, where it has been established that the application of those remedies has been unreasonably prolonged, or that it is unlikely, after a fair trial, to bring effective relief to the alleged victim.

6.3 The Committee takes note of the State party's argument that the complaint should be declared inadmissible under article 22, paragraph 5 (b), of the Convention, as the complainant failed to apply for leave to apply for judicial review of the decision dated 11 May 2006 on his humanitarian and compassionate application. It also notes that the complainant does not challenge the effectiveness of the remedy of judicial review, although he had an opportunity to do so. In this regard, the Committee recalls that during its twenty-fifth session, in its final observations on the report of the State party, it considered the question of requests for ministerial stays on humanitarian grounds. It noted the apparent lack of independence of the civil servants deciding on such "appeals", and at the possibility that a person could be expelled while an application for review was underway. It concluded that those considerations could detract from effective protection of the rights covered by article 3, paragraph 1, of the Convention. It observed that, although the right to assistance on humanitarian grounds is a remedy under the law, such assistance is granted by a minister on the basis of purely humanitarian criteria, and not only on a legal basis, and is thus *ex-gratia* in nature. The Committee has also observed that when judicial review is granted, the Federal Court returns the file to the body, which took the original decision or to another decision-making body and does not itself conduct the review of the case or hand down any decision. Rather, the decision depends on the discretionary authority of a minister and thus, of the executive. The Committee adds that, since an appeal on humanitarian grounds is not

a remedy that must be exhausted to satisfy the requirement for exhaustion of domestic remedies, the question of an appeal against such a decision does not arise.⁵

6.4 The Committee also recalls its previous case law⁶ to the effect that the principle of exhaustion of domestic remedies requires petitioners to use remedies that are directly related to the risk of torture in the country to which they would be sent, not those that might allow them to remain where they are.

6.5 On the alleged violation of article 1, the Committee notes the State party's submission that this aspect of the complaint is unfounded and incompatible with the provisions of the Convention. The Committee observes that the complainant does not substantiate his claim under article 1 and does not refute the State party's arguments in this regard. Accordingly, the Committee finds that the complainant has failed to substantiate this part of the complaint for the purposes of admissibility, within the terms of article 22, paragraph 2 of the Convention. .

6.6 On the alleged violation of article 3, the Committee is of the opinion that the complainant's arguments in relation to the general human rights situation in Uzbekistan, the allegations of discrimination against Tatars as well as his claims of past torture in Uzbekistan raise substantive issues, which should be dealt with on the merits and not on admissibility alone. Accordingly, the Committee finds this part of the communication admissible.

Consideration of merits:

7.1 The Committee must determine whether the forced return of the complainant to Uzbekistan would violate the State party's obligations under article 3, paragraph 1, of the Convention not to expel or return ('refouler') an individual to another State, where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 The Committee recalls its general comment on article 3 and its case-law, which state that the burden is generally on the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While noting the general comment 1, it also recalls that the Committee 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.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Uzbekistan. 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, in the State concerned, of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of its determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country⁷. Additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of

⁵ Falcon Ríos v. Canada, No. 133/1999, at para. 7.3.

⁶ Anup Roy v. Sweden, decision of 23 November 2001, No. 170/2000, para. 7.1.

⁷ S.P.A. v. Canada, 282/2005

human rights does not necessarily mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.4 The Committee is aware of the poor human rights situation in Uzbekistan. It has itself cited numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by Uzbek law enforcement and investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings, which commonly occur before formal charges are made and during pre-trial detention, when the detainee is deprived of fundamental safeguards, as well as the failure to conduct prompt, impartial and full investigations into claims of torture⁸. However, the Committee notes that the complainant has not provided sufficient information to support his claim that Tatars and therefore, he himself, are discriminated against to the extent that would place him at a particular risk of torture in Uzbekistan. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.⁹

7.5 The Committee notes that despite several inquiries about medical or any other documentary evidence in support of his account of events in Uzbekistan prior to his departure, namely of his alleged arrest, and ill-treatment in detention in 1995, which would corroborate his claim or possible effects of such ill-treatment, the complainant did not provide any such evidence. Neither did he provide any report of a medical examination after his arrival in Canada. In such circumstances, the Committee finds that he has failed to establish his claim that he would personally be exposed to a substantial risk of being subjected to torture if returned to Uzbekistan at the present time.

8. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State Party to return the complainant to Uzbekistan would not constitute a breach of article 3 of the Convention.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

⁸ Committee against Torture. Concluding observations: Uzbekistan. 26 February 2008. CAT/C/UZB/CO/3

⁹ A.R. v. The Netherlands, No. 203/2002, Views adopted on 21 November 2003, paragraph 7.3.