



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

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Committee against Torture

Communication No. 555/2013

**Decision adopted by the Committee at its fifty-fifth session
(27 July-14 August 2015)**

<i>Submitted by:</i>	Z. (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Denmark
<i>Date of complaint:</i>	25 July 2013 (initial submission)
<i>Date of present decision:</i>	10 August 2015
<i>Subject matter:</i>	Deportation to China
<i>Procedural issues:</i>	Admissibility
<i>Substantive issues:</i>	Non-refoulement; refugee(s); torture
<i>Articles of the Convention:</i>	Article 3



Annex

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

concerning

Communication No. 555/2013*

Submitted by: Z. (represented by counsel, Niels-Erik Hansen)

Alleged victim: The complainant

State party: Denmark

Date of complaint: 25 July 2013 (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 10 August 2015,

Having concluded its consideration of complaint No. 555/2013, submitted to it by Z. under article 22 of the Convention,

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 (7) of the Convention

1.1 The complainant is Z., a Chinese national born on 8 May 1953. He claims that his deportation to China would constitute a violation by Denmark of article 3 of the Convention. He is represented by counsel, Niels-Erik Hansen.

1.2 Acting under rule 114, paragraph 1, of its rules of procedure, on 29 July 2013 the Committee requested the State party to refrain from expelling the complainant to China while his complaint was under consideration by the Committee. On 11 March 2014, the Committee denied the State party's request to lift interim measures. The complainant remains in Denmark.

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Felice Gaer, Abdoulaye Gaye, Claudio Grossman, Sapana Pradhan-Malla and George Tugushi. Pursuant to rule 109 of the Committee's rules of procedure, Jens Modvig and Kening Zhang did not participate in the consideration of this communication.

Factual background

2.1 The complainant is an ethnic Uighur from Urumqi in Xinjiang province. In 2005, he was working as a taxi driver and transported a passenger whom the Chinese authorities suspected of being a Uighur terrorist. Soon afterwards, despite the fact that the complainant was not personally acquainted with the passenger, he was arrested by the police, who interrogated him about the passenger's whereabouts and activities. The complainant has never been a member of any political or religious association or organization, and has not otherwise been politically active. Given that he had no relevant knowledge about the passenger, he was unable to provide the police with any information. As a result, the police cut off three of his fingers.¹ After two months in detention, the complainant was released without charge.

2.2 The complainant left China on an unspecified date and arrived in Denmark in August 2010. He applied for asylum on 27 June 2011. On 25 March 2013, the Danish Immigration Service rejected his application. On 11 July 2013, his appeal against that decision was dismissed by the Danish Refugee Appeals Board, which denied his requests for an oral hearing and a medical examination for signs of torture.

2.3 The complainant contends that he has exhausted all available and effective domestic remedies, as it is not possible to file appeals against decisions of the Refugee Appeals Board. He indicates that he has not submitted his complaint for consideration before any other international complaint mechanism.

The complaint

3.1 The complainant claims that the State party would violate his rights under article 3 of the Convention if it deported him to China, as he would risk persecution, torture and inhumane treatment there. The complainant asserts that many Uighurs who were deported to China in 2011 and 2012 are now missing, after having been imprisoned in China upon their return,² and that some of them were given prison sentences of between 11 months and 15 years for alleged separatist activities.

3.2 The complainant maintains that the State party violated article 3 of the Convention by breaching several procedural rights during the asylum process. First, the complainant submits that the Refugee Appeals Board denied him the right to a medical examination, which would have confirmed that three of his fingers had been cut off, thus indicating that he had been tortured. He maintains that article 3 of the Convention requires State parties to establish whether an asylum applicant was tortured before fleeing his country of origin. The complainant asserts that in its decision on communication No. 464/2011,³ the Committee found a violation of article 3 of the Convention owing to the fact that the Danish authorities had rejected the complainant's request for a medical examination.

3.3 The complainant maintains that the Board wrongfully denied his request for an oral hearing. He submits that the Refugee Appeals Board rejected his affirmation that he is an ethnic Uighur after administering a language test. He maintains that, had his request for an oral hearing before the Board been granted, he would have been able to convince the Board

¹ In further correspondence dated 17 July 2014, the complainant submitted a photograph showing two hands missing three fingers.

² The complainant cites unspecified reports of the United Nations High Commissioner for Refugees, Amnesty International, Human Rights Watch and the Uyghur Human Rights Project, and country of origin and research information. He does not provide citations or copies of the reports.

³ See communication No. 464/2011, *K.H. v. Denmark*, decision adopted on 23 November 2012, para. 8.8.

that he is indeed an ethnic Uighur, as the difference between Uighurs and Hans is plain to see. In addition, the complainant argues that the State party violated article 3 of the Convention by denying him any real possibility of having his rejected asylum decision reviewed. The complainant maintains that this argument is supported by the Committee's decision on communication No. 416/2010.⁴

State party's observations on admissibility and the merits

4.1 In its observations dated 29 January 2014, the State party describes the structure and operation of the Refugee Appeals Board and indicates that it is an independent, quasi-judicial body. The Board is considered as a court within the meaning of the European Union Council Directive 2005/85/EC on minimum standards for procedures for granting and withdrawing refugee status (art. 39). Since 1 January 2013, cases before the Board have been heard by five members: one judge (the chairman or the deputy chairman of the Board), an attorney, a member serving with the Ministry of Justice, a member serving with the Ministry of Foreign Affairs, and a member appointed by the Danish Refugee Council as a representative of civil society organizations. After two terms of four years, Board members may not be reappointed. Under the Danish Aliens Act, Board members are independent and cannot seek directions from the appointing or nominating authority. The Board issues a written decision, which may not be appealed; however, under the Danish Constitution, applicants may bring an appeal before the ordinary courts, which have authority to adjudicate any matter concerning limits on the mandate of a government body. As established by the Supreme Court, the review by ordinary courts of decisions made by the Board is limited to a review of points of law, including any flaws in the basis for the relevant decision and the illegal exercise of discretion, whereas the Board's assessment of evidence is not subject to review.

4.2 The State party indicates that, pursuant to section 7, paragraph 1, of the Aliens Act, a residence permit can be granted to an alien if the person's circumstances fall within the provisions of the Convention relating to the Status of Refugees. Article 1 (A) of that Convention has therefore been incorporated into Danish law. Although the article does not mention torture as one of the grounds justifying asylum, it may be considered as an element of persecution. Accordingly, a residence permit can be granted in cases where it is found that the asylum seeker has been subjected to torture before coming to Denmark, and where his or her fear resulting from the torture is considered well-founded. The permit is granted even if a possible return is not considered to entail any risk of further persecution. Likewise, pursuant to section 7, paragraph 2, of the Aliens Act, a residence permit can be issued to an alien upon application if the alien risks the death penalty or being subjected to torture, inhuman or degrading treatment or punishment in case of return to his or her country of origin. In practice, the Refugee Appeals Board considers that those conditions are met if there are specific and individual factors rendering it probable that the person will be exposed to such a real risk.

4.3 The State party observes that decisions of the Refugee Appeals Board are based on an individual and specific assessment of the case. The asylum seeker's statements regarding the motive for seeking asylum are assessed in the light of all relevant evidence, including general background material on the situation and conditions in the country of origin, in particular whether systematic gross, flagrant or mass violations of human rights occur. Background reports are obtained from various sources, including the Danish Refugee Council, other governments, the Office of the United Nations High Commissioner for

⁴ See communication No. 416/2010, *Ke Chun Rong v. Australia*, decision adopted on 5 November 2013, para. 7.5.

Refugees, Amnesty International and Human Rights Watch. The Board is also legally obligated to take into account the international obligations of Denmark when exercising its powers under the Aliens Act. To that end, the Board and the Danish Immigration Service have jointly drafted several memorandums describing in detail the international legal protection offered to asylum seekers under, inter alia, the Convention against Torture, the European Convention on Human Rights, and the International Covenant on Civil and Political Rights. The memorandums form part of the basis of the decisions made by the Board, and are continually updated.

4.4 The State party adds to the factual background of the communication and points to several inconsistencies and deficiencies in the information the complainant provided during asylum proceedings.⁵ The State party considers that on 1 and 6 July 2011, the complainant stated that he was of Uighur ethnicity, whereas during his second interview with the Danish Immigration Service on 4 May 2013, he stated that he was of Han ethnicity. During the latter interview, the complainant's attention was drawn to this inconsistency. He responded that that was a mistake and that he was of Han ethnicity. During the same interview, the complainant stated that he was born in an unknown port in China and had moved to the city of Urumqi at the age of five. When asked in which province Urumqi is located, the complainant said that he had heard that it was located in Tibet. However, he had also heard that it was located in Xinjiang, but he was not sure. The complainant provided the street address at which he lived in Urumqi, but did not remember any monuments or public buildings in Urumqi. He was "subsequently unwilling to assist further in bringing out the facts of the case". The Refugee Appeals Board decision indicates that an interpreter was used during both interviews with the Danish Immigration Service. According to the Danish Immigration Service report on the first interview in 2011, the complainant "was asked whether there had been any language problems during the interview, and he replied in the negative. The interview report was translated by the interpreter and reviewed with the applicant". According to the Danish Immigration Service report on the second interview in 2013, "the applicant was told to speak out immediately if he had any problems understanding the interpreter". According to the report, at the conclusion of the interview, "the applicant stated that he had understood everything that the interpreter had said at today's interview".

4.5 The State party also observes that the complainant entered Denmark in mid-2010, but did not apply for asylum until 27 June 2011, when he was stopped and arrested by the police at a festival. During asylum proceedings, the complainant explained that he had not applied for asylum upon arrival in Denmark because he did not know what asylum was, and because he just wanted to be comfortable and earn a little money. On 8 July 2011, the Danish Immigration Service recommended to the Danish Refugee Council that the asylum application should be denied and processed in accordance with the statutory procedure for manifestly unfounded cases. On 13 July 2011, the Danish Refugee Council observed that it did not concur that the claim should be processed as a manifestly unfounded case. On 25 March 2013, the Danish Immigration Service denied the complainant's asylum application. On 11 July 2013, that decision was upheld by the Danish Refugee Board, on the basis of written evidence.

4.6 During asylum proceedings, the complainant stated that after he was released from detention, he stayed in a hospital for 15 days while his hands and feet were in bandages. He then stayed with a taxi driver for a month to recover enough to be able to go home. He left China one or two months after returning home. The complainant was asked whether the

⁵ The Refugee Appeals Board decision states that during his first interview with the Danish Immigration Service on 6 July 2011, the complainant was invited to produce documents he deemed important to his asylum application, but did not have anything to produce.

police had sought him out at his home, and replied that his wife had told him that the police had been to their home an unknown number of times to look for him. The police had come to his house both while he was detained and during the following month, when he was staying with the taxi driver. When asked why the police had tried to find him at his house even though he was in police detention at that time, the complainant stated that he did not know. When asked whether the police had come to his home after he returned there one month after his detention, the complainant stated that they had not and that he did not know why not. The complainant also stated that he feared he would have the rest of his fingers cut off if he returned to China, and that he assumed he would be killed. When asked why there would be a problem today, considering that the incident had occurred in 2005, he replied that the police would find him “when the terrorist had revolted”.

4.7 Concerning the grounds for the negative asylum decision dated 11 July 2013, the State party observes that the Refugee Appeals Board found that the complainant was not credible because he had made inconsistent and inadequate statements about his ethnicity, his place of birth, and the persecution he allegedly endured in China. Specifically, the Board reasoned that: (a) it appeared unlikely that the police would have detained the complainant for two months solely because, by virtue of his occupation as a taxi driver, he had driven an alleged terrorist suspect; (b) the complainant was unable to give further details about the taxi incident, such as the address to which he had driven the suspected terrorist; (c) it was unlikely that the police would have released the complainant unconditionally, while nevertheless persistently inquiring after him at his home address while he was staying with another taxi driver; (d) it was unlikely that the police would have inquired after the complainant at his home address at the time that he was being detained by the police; (e) the complainant provided conflicting statements regarding his ethnicity; (f) the complainant provided vague replies to questions about his home city and his life there; (g) a language analysis test carried out on the complainant indicated that his language usage was not compatible with that of the community in Urumqi, Xinjiang, but was, rather, associated with the usage prevailing in the central and/or southern regions of China; and (h) the complainant indicated at his second interview with the Danish Immigration Service on 4 March 2013 that he was unwilling to continue assisting in elucidating the facts of his case.

4.8 The State party considers that the communication is inadmissible as it is manifestly ill-founded because the complainant has not established that there are substantial grounds for believing that he would be in danger of being subjected to torture if he were returned to China, for the reasons set forth by the Refugee Appeals Board and described in paragraph 4.7 above. Moreover, even if the complainant’s statement about his detention was considered a fact, the detention allegedly took place in 2005, which makes it unlikely that he is still of interest to the police today, as indicated by the fact that the police released him unconditionally, according to his own statement. Furthermore, his assertion that he is seeking protection from ill-treatment by the Chinese authorities is weakened by his failure to provide a compelling explanation of why he did not apply for asylum when he entered Denmark in 2010, but waited until 2011 to do so when the Danish police stopped him and arrested him. The complainant has stated that he has never been a member of, or sympathized with, any political or religious party or other organization or association, and that he has never participated in any demonstrations or been otherwise involved in any political activities.

4.9 Regarding the complainant’s criticism of the Danish authorities’ failure to examine him for signs of torture, the State party observes that the Refugee Appeals Board has to use its discretion when deciding which asylum seekers to send for an examination for signs of torture. The decision as to whether such an examination is necessary will typically be made at a Board hearing and depends on the circumstances of the specific case, including the credibility of the asylum seeker’s statement about torture. An examination is deemed not to

be necessary in cases in which an asylum seeker has appeared not credible throughout the proceedings and the Board rejects the asylum seeker's statement about torture in its entirety.⁶ The State party considers that there was no need in the present case to conduct such an examination because the Refugee Appeals Board found that no torture had occurred, as a result of its determination that the complainant's statements concerning a series of crucial issues were not credible, as indicated in paragraphs 4.4 to 4.8 above. The fact that the complainant has three fingers missing cannot in itself make it necessary to conduct an examination for signs of torture. As to the complainant's credibility regarding the significance of medical information, the State party relies on the judgement of the European Court of Human Rights in *Cruz Varas and Others v. Sweden*,⁷ and to the Committee's decision in *M.O. v. Denmark*,⁸ and asserts that in those cases, the complainants' claims of torture were dismissed owing to a general lack of credibility.

4.10 Concerning the complainant's claim that he had no access to an appeal or an oral hearing before the Refugee Appeals Board, the State party observes that the decision of the Danish Immigration Service to deny his asylum application was appealed and the appeal processed by the Refugee Appeals Board in accordance with the rules applicable to the procedure for manifestly unfounded cases. Under this procedure, established in the Aliens Act, the Danish Immigration Service may determine upon submission to the Danish Refugee Council that a negative decision on an asylum application that is manifestly unfounded may not be appealed before the Refugee Appeals Board. The Aliens Act provides a non-exhaustive description of the circumstances in which that procedure should apply, including cases in which the factual circumstances invoked are manifestly irrelevant to asylum, or cases involving factual circumstances that cannot constitute the basis for asylum under the Board's case law. The procedure may also be used in cases in which the statement given is manifestly not credible. If the Danish Refugee Council does not concur in the assessment of the application as manifestly unfounded, the case will be considered by a chairman or deputy chairman of the Refugee Appeals Board, unless there is a reason to assume that the Board will alter the decision of the Danish Immigration Service. Such cases are considered on the basis of written evidence, but may be assigned to oral proceedings, depending on the circumstances.⁹ The Refugee Appeals Board assigns counsel to the asylum seeker in cases processed under that procedure. Counsel receives a copy of the case file and may meet with the asylum seeker. Counsel then submits his observations on the case in writing to the Refugee Appeals Board. The State party considers that, given that the complainant's claim was correctly processed in accordance with the laws applicable to the procedure for manifestly unfounded cases, there is no reason why the complainant's appeal should now be heard at an oral Board hearing.

4.11 The State party considers that the complainant is attempting to use the Committee as an appellate body to have the factual circumstances of his asylum claim reassessed. As indicated in the Committee's general comment No. 1 (1998) on the implementation of article 3 of the Convention in the context of article 22, the Committee is not an appellate body, or a quasi-judicial or an administrative body, but rather a monitoring body (para. 9). Therefore, the Committee should give considerable weight to findings of fact made by the authorities of the State party, in the present case, the Refugee Appeals Board. In the present

⁶ The State party also provides extensive background information on the asylum process in Denmark and the operating procedures of the Refugee Appeals Board.

⁷ See *Cruz Varas and Others v. Sweden*, European Court of Human Rights, application No. 15576/89, judgement of 20 March 1999, paras. 77-82.

⁸ See communication No. 209/2002, *M.O. v. Denmark*, decision adopted on 12 November 2003, paras. 6.4-6.6.

⁹ The State party refers to sections 56 (3) and 56 (5) of the Danish Aliens Act.

case, the Refugee Appeals Board upheld the negative decision of the Danish Immigration Service based on a procedure in which the complainant had the opportunity to present his views to the Board with the assistance of legal counsel. The Board conducted a comprehensive and thorough examination of the evidence in the case. For the reasons detailed above, the State party considers that the communication is without merit.

Complainant's comments on the State party's submission

5.1 In his comments dated 19 May 2014, the complainant provides additional information about his interviews with the Danish Immigration Service. He states that, as a victim of torture and having been detained for a long time, he refused to answer questions, and that the Danish Immigration Service rejected his asylum application on the ground that he had an obligation to provide information about his case. However, the complainant asserts that when his case was examined by the Danish Refugee Council under the procedure for manifestly unfounded cases, the Council gathered a large amount of information supporting his claims. Specifically, the Danish Refugee Council found that the complainant was a Uighur, cited numerous documents concerning the persecution of Uighurs in China, and found that the fact that he had left China illegally would be a problem for him upon return to the country. The complainant asserts that at appeal, the Refugee Appeals Board should have taken this information into account and should have allowed him an oral hearing and a medical examination for signs of torture. The complainant emphasizes that the core of his complaint is that the Refugee Appeals Board did not base its decision on all of the relevant facts, since it denied him the right to a medical examination and therefore failed to adequately explore whether there were substantial grounds for believing that he risks being subjected to torture if returned to China. He submits that he did not have the means to pay for a medical examination himself.

5.2 The complainant also criticizes specific observations made by the State party concerning alleged inconsistencies or implausible information in his account. Regarding his ethnicity, the complainant considers that it seems strange that according to the State party, he allegedly stated that he was of Han ethnicity at the same interview in which he allegedly refused to provide information about his case. With respect to his lack of political affiliation, the complainant claims that he also fears persecution on the grounds of ethnicity and religion. He submits that his case should not have been processed as a manifestly unfounded case, since he is missing three fingers, and because torture is widespread in China. He maintains that because he is missing two fingers from one hand and one finger from the other, it is highly improbable that the injury could be the result of a work-related accident, since such an accident would be likely to sever fingers from the same hand. He claims that he should have been given the benefit of the doubt.

5.3 The complainant also reiterates his comments regarding the procedural necessity of a medical examination for signs of torture and the possibility of review of a first instance asylum decision. He alleges that the denial of his right to have the Refugee Appeals Board decision reviewed is a major problem as far as fair trial is concerned, since the issue of evidence is central in most cases and the evidence in his case was not subjected to any review. The complainant submits that the need for review is even greater because only the Chairperson of the Refugee Appeals Board, as opposed to the entire Board, made the decision concerning his request for an oral hearing.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 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.

6.3 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.¹⁰ 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

7.1 In accordance with article 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.

7.2 With regard to the complainant's claim under article 3 of the Convention, the Committee must determine whether there are substantial grounds for believing that he would be in danger of being subjected to torture, should he be returned to China. In assessing this 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 such a determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she 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.¹¹

7.3 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable", the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a "foreseeable, real and personal" risk.¹² The Committee recalls that in accordance with its general comment No. 1, it gives considerable weight to findings of fact

¹⁰ See, inter alia, communication No. 308/2006, *K.A. v. Sweden*, decision adopted on 16 November 2007, para. 7.2.

¹¹ See, inter alia, communication No. 470/2011, *X. v. Switzerland*, decision adopted on 24 November 2014.

¹² See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003 and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

that are made by organs of the State party concerned,¹³ while at the same time it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention, of free assessment of the facts based on the full set of circumstances in every case.

7.4 In assessing the risk of torture in the present case, the Committee notes the complainant's contention that there is a foreseeable, real and personal risk that he will be tortured and possibly killed if returned to China, because he was arrested, detained and tortured by the Chinese police in 2005 after having transported in his taxi a suspected Uighur terrorist and that the police went looking for him at his home during his detention and during the month thereafter. The Committee also notes the State party's observation that its domestic authorities found that the complainant lacked credibility because, inter alia, he did not apply for asylum in a timely manner after the incidents that caused him to flee China in 2005, but waited until he had been arrested in 2011; he made conflicting statements regarding his ethnicity; his claims concerning the actions of the Chinese police during his detention and subsequent release were implausible; he made vague replies to questions about his home city and life there; a language test indicated that his use of language is incompatible with the speech patterns of the province from which he claims to be; and he refused to answer questions concerning his asylum application during his second interview with the Danish Immigration Service in 2013. The Committee observes that the complainant has not denied the State party's assertion that he made conflicting statements regarding his ethnicity. The Committee also notes that the incidents that led the complainant to leave China occurred in 2005, and observes that the complainant has not made any allegations or provided any evidence concerning the critical issue of whether he currently runs a risk of torture if returned to China today, given that 10 years have passed.

7.5 The Committee takes note of the complainant's claims that he has three fingers missing, which were cut off by the Chinese police; that his request for a medical examination to ascertain whether he has signs of torture was denied by the Danish authorities; and that he did not have the funds to pay for such an examination himself. The Committee observes, however, that in the present case, where the complainant has failed to substantiate basic elements of his claims, as described in para. 7.4 above, the responsible organs of the State party have thoroughly evaluated all the evidence presented by the complainant and have found it to lack credibility. The Committee therefore finds that the complainant has not demonstrated that the authorities of the State party that considered the case have failed to conduct a proper assessment of the risk of torture.

7.6 The Committee observes that, even assuming that the complainant was tortured in the past, the alleged instances of torture did not occur in the recent past. The Committee notes that, even if it were to accept the claim that the complainant was subjected to torture in the past, the question is whether he currently runs a risk of torture if returned to China. It does not necessarily follow that, 10 years after the alleged events occurred, he would still currently be at risk of being subjected to torture if returned to his country of origin.¹⁴

7.7 In addition, the Committee observes that the complainant did not present any documentary evidence that there were any criminal proceedings pending against him or that the Chinese authorities had issued an arrest warrant for him. On the contrary, according to his own statement, after his arrest he had been released without charges.

¹³ See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

¹⁴ See communications No. 431/2010, *Y. v. Switzerland*, decision adopted on 21 May 2013, para. 7.7, and No. 491/2012, *E.E.E. v. Switzerland*, decisions adopted on 8 May 2015, para. 7.5.

7.8 The Committee also takes note of the complainant's submission that the Refugee Appeals Board wrongfully denied his request for an oral hearing, because an oral hearing before the Board would have given him the opportunity to convince the Board that he is indeed an ethnic Uighur. The Committee, however, observes that in the present case, the complainant had two interviews with the Danish Immigration Service, during which he had the opportunity to present his case and elaborate on the evidence. During the interviews, the complainant was asked that question and offered no consistent account regarding his ethnicity. The Committee observes that the complainant has not explained how an oral hearing before the Refugee Appeals Board would have given him the opportunity to substantiate his claims of persecution and torture or to prove his ethnicity in a way that was different from the opportunities he had already been given in the two interviews.

7.9 The Committee recalls paragraph 5 of general comment No. 1, according to which the burden of presenting an arguable case lies with the author of a communication. In the Committee's opinion, the complainant has not discharged this burden of proof.¹⁵

8. In the light of the considerations above, and on the basis of all the information submitted by the complainant, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his forcible removal to his country of origin would expose him to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

9. The Committee against Torture, acting under article 22 (7) of the Convention, therefore concludes that the complainant's removal to China would not constitute a breach of article 3 of the Convention.

¹⁵ See communication No. 429/2010, *M.S. v. Denmark*, decision adopted on 11 November 2013, paras. 10.5 and 10.6.