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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 743/2016*, **

Communication submitted by:	F.K. (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The complainant
State party:	Denmark
Date of complaint:	15 April 2016 (initial submission)
Document references:	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 28 April 2016 (not issued in document form)
Date of present decision:	30 December 2020
Subject matter:	Deportation from Denmark to Turkey
Procedural issues:	Another procedure of international investigation or settlement; exhaustion of domestic remedies; substantiation of the complaint; admissibility – *ratione materiae*
Substantive issue:	Risk of torture and ill-treatment
Article of the Convention:	3

1.1 The complainant is F.K.,[1] a national of Turkey born in 1990. His asylum application in Denmark was rejected, and at the time of the initial submission he was in immigration

* Adopted by the Committee intersessionally on 30 December 2020.

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Liu Huawen, Ilvija Pūce, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Jens Modvig and Erdoğan İşcan did not participate in the examination of the communication.

[1] It should be noted that the same complainant submitted a communication under article 22 of the Convention against Denmark in 2013, registered as communication No. 580/2014. The Committee adopted a decision on the merits on 23 November 2015 (CAT/C/56/D/580/2014). The Committee considered, inter alia, that, by rejecting the complainant's asylum application without ordering a medical examination, the State party had failed to sufficiently investigate whether there were substantial grounds for believing that the complainant would be in danger of being subjected to torture in Turkey. As such, the Committee considered that, in the circumstances, the deportation of the complainant to Turkey would constitute a violation of article 3 of the Convention. In addition, the Committee took the view that the State party had violated the requirements of article 12, read in conjunction with article 16, of the Convention, owing to the manner in which the Danish police had treated the complainant and the subsequent lack of investigation.

detention pending deportation to Turkey. He claims that his deportation to Turkey would constitute a violation of his rights under article 3 of the Convention. The Convention entered into force for the State party on 26 June 1987. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 26 June 1987.

1.2 On 28 April 2016, pursuant to rule 114, paragraph 1, of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant to Turkey while the communication was being considered by the Committee.

1.3 In the context of communication No. 580/2014, which the complainant had previously submitted against the State party (see CAT/C/56/D/580/2014), the Committee, on 2 January 2014, had similarly requested the Government not to deport the complainant to Turkey while that case was being considered by the Committee. On 2 July 2014, the State party had informed the Committee that the complainant had been released and ordered to report to the immigration authorities. On 28 June 2016, the State party informed the Committee that it had decided not to accommodate the Committee's request for interim measures in the present case. In a note verbale dated 30 June 2016, the Committee reiterated its request for interim measures and informed the State party that, in accordance with the Committee's long-standing jurisprudence, failure to respect the request would constitute a serious breach of the State party's obligations under article 22 of the Convention. On 14 November 2019, the complainant's counsel confirmed that the complainant had been deported to Turkey.

Facts as presented by the complainant

2.1 The complainant is a Turkish citizen of Kurdish origin. He was arrested in Turkey on several occasions in the period 2006–2010, owing to his political activities. He claims to have been subjected to torture on these occasions.

2.2 The complainant sought asylum in Denmark, and requested the Danish Immigration Service to order a medical examination for signs of past torture. The Danish Immigration Service denied his request and rejected his asylum claim. On 30 August 2013, the majority of the members of the Danish Refugee Appeals Board rejected his appeal of the decision to reject his asylum application, based in particular on the complainant's lack of credibility, without conducting a medical examination regarding his torture claims.

2.3 The complainant's second motive for seeking asylum was that he feared persecution by the Kurdistan Workers' Party (PKK) in Turkey, as he had been an active PKK member before quitting in 2010. That claim was equally rejected by the Danish asylum authorities owing to lack of credibility.

2.4 Previously, in 2008, the complainant had been called for compulsory military service but had absconded, fearing that he would be obliged to fight against other Kurds and that he would be mistreated in the army owing to his Kurdish origin. The fact that he had absconded and sought asylum abroad would expose him to further risks of imprisonment, with a risk of inhuman treatment in prison. However, the Danish asylum authorities decided that imprisonment for absconding military service would not be disproportionate.

2.5 On 18 December 2013, the police tried to force the complainant to go to the Turkish Embassy. According to the complainant, that action potentially drew even more attention to him. He resisted and cut himself on his arms and torso. The detention centre guards handed him over to the police to bring him to the Embassy, but before reaching the Embassy the police reconsidered and returned him to the detention centre, without bringing him to hospital first.

2.6 Based on these facts, on 19 December 2013, the complainant submitted a communication to the Committee. In its decision dated 23 November 2015 (CAT/C/56/D/580/2014), the Committee considered that the deportation of the complainant to Turkey would constitute a violation of article 3 of the Convention. In addition, the Committee took the view that the State party had violated the requirements of article 12, read in conjunction with article 16, of the Convention, owing to the manner in which the police had treated the complainant and the subsequent lack of investigation.

2.7 On 14 March 2016, the complainant was invited to a meeting with the Refugee Appeals Board. He explained to his counsel that he had informed the Danish Immigration Service during his first interview about the tortures that he had suffered in the past, but that he had never been asked to sign a paper confirming his readiness to undergo medical examinations in that regard. During the meetings, none of the Board members asked the complainant any questions. The medical report regarding the complainant's torture, prepared by the Amnesty International Danish Medical Group and dated 25 September 2014, was also not discussed.

2.8 The Refugee Appeals Board issued its decision on the complainant's case on 17 March 2016, finding no reason to request a medical examination. On 21 March 2016, the complainant was informed by the police that he had to leave Denmark immediately.

2.9 The complainant claims that he subsequently applied to the European Court of Human Rights, but that his case was never registered.[2]

2.10 The complainant claims that his deportation would constitute a violation by the State party of his rights under article 3 of the Convention. In support of his claim, he notes that several reports, including the report by the Amnesty International Danish Medical Group, show that the human rights situation in Turkey is such that deportation would violate article 3 of the Convention, with the authorities using excessive force, torture and ill-treatment. The complainant reiterates that:

(a) He has been tortured in the past, as documented in the medical report by Amnesty International dated 25 September 2014, and no other medical reports have been produced despite his specific requests to the Danish immigration authorities in this connection;

(b) He was politically active in PKK in the past, but he quit and will be punished by PKK if he returns to Turkey;

(c) His credibility has been questioned by the Danish immigration authorities, but they never questioned that he has been active for the Kurdish cause since 2006;

(d) The Danish authorities never questioned that he refused to perform compulsory military service and that he fears not only imprisonment and ill-treatment in this connection, but also forcible enrolment in the army.

2.11 The Refugee Appeals Board has focused on the issue of credibility: although a majority of the Board members questioned the complainant's credibility, they were unable to reach agreement as to which points they did not believe. While elsewhere such a decision could normally be appealed, in Denmark decisions of the Board are not subject to court control. In this connection, the complainant notes that the Committee on the Elimination of Racial Discrimination, in its concluding observations following its consideration of the sixteenth and seventeenth periodic reports of Denmark submitted under the International Convention on the Elimination of All Forms of Racial Discrimination, expressed concern that decisions by the Board on asylum requests were final and could not be appealed before a court (CERD/C/DEN/CO/17, para. 13).

2.12 The complainant claims that the responsibility for evaluation of the risks of forcible removal based on past torture rests with the State party. In his opinion, the Refugee Appeals Board tried to avoid this obligation. First, the Board refused to reopen the asylum case on 18 September 2015, when it noted that the report by Amnesty International did not contain such new relevant information as to require the reopening of the case. Second, following the adoption by the Committee in November 2015 of its decision concerning communication No. 580/2014, the Board did reopen the case, but the proceedings resulted in no change. The complainant claims that all of the Board's decisions, in 2015 and 2016 and earlier, were in violation of article 3 of the Convention.

[2] Later in his submission, the complainant's counsel contradicts himself by stating, without further clarification, that the European Court of Human Rights has declared the case inadmissible.

Complaint

3.1 The complainant claims that his initial communication remains valid. Even if the Refugee Appeals Board reopened the case and invited the complainant to a hearing, no medical examination on torture was ever ordered by the State party, despite the report by the Amnesty International Danish Medical Group concerning his past torture. In violation of article 3 of the Convention, the Board has refused to take into consideration the conclusions of the Amnesty International report.

3.2 The complainant believes that, as in the cases of *Oberschlick v. Austria*, in which the European Court of Human Rights delivered two decisions,[3] the decision of the Refugee Appeals Board of 17 March 2016 in his case constitutes a new decision, requiring a new decision by the Committee.

State party's observations on admissibility

4.1 The State party provided its observations on admissibility in a note verbale dated 28 June 2016. It notes that in the present case, unlike in the case of communication No. 580/2014, the complainant does not invoke articles 12 and 16 of the Convention. The State party believes that the communication should be declared inadmissible as the same matter has already been examined by the Committee.

4.2 The State party recalls the facts of the case. The complainant, a Turkish national, entered Denmark in November 2010 without valid travel documents. He was arrested by the police on 4 February 2012 for being in possession of controlled substances and surrendering incorrect information about his identity, and, on 11 December 2012, was given a suspended sentence of 40 days' imprisonment. His expulsion from Denmark was ordered as a result, with a ban on re-entry for six years.

4.3 On 13 November 2012, the complainant applied for asylum. On 31 May 2013, the Danish Immigration Service, rejected his application. On 30 August 2013, the Refugee Appeals Board upheld the refusal of the Danish Immigration Service to grant him asylum. On 19 December 2013, the complainant applied to the Committee (communication No. 580/2014). On 18 September 2015, the Board refused to reopen the case.

4.4 The Committee adopted its decision concerning communication No. 580/2014 on 23 November 2015. On 28 December 2015, the complainant requested the Refugee Appeals Board to reopen his case on the basis of the Committee's decision. On 7 January 2016, the Board decided to reopen the case for a review at an oral hearing and to maintain the suspension of the time limit for the complainant's departure.

4.5 On 17 March 2016, the Refugee Appeals Board upheld the refusal of the complainant's application for asylum.

4.6 On 1 April 2016, the complainant applied to the European Court of Human Rights, claiming that his return to Turkey would amount to a breach of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). On 5 April 2016, the Court rejected the application for non-conformity with articles 34 and 35 of the European Convention on Human Rights.

4.7 On 15 April 2016, the complainant submitted the present case to the Committee, claiming that his forcible return to Turkey would amount to a breach of article 3 of the Convention.

4.8 On 10 May 2016, the Refugee Appeals Board suspended the time limit for the complainant's departure from Denmark pending the Committee's consideration of the complaint submitted on 15 April 2016. On 27 June 2016, the Board decided that there was no basis for further suspension of the time limit for the complainant's departure, and informed the complainant's counsel of the following:

[3] European Court of Human Rights, *Oberschlick v. Austria*, applications No. 19255/92 and No. 21655/93.

> The [Refugee Appeals Board] has now had the opportunity to consider the admissibility and merits of the complaint. Consequently today the Board has forwarded to the Ministry of Justice its contribution to the Government's observations to the Committee from which it appears, inter alia, that, in the opinion of the Board, your client's new complaint to the Committee should be considered inadmissible as manifestly ill-founded. Accordingly, the Board finds no basis for continuing the suspension of the time limit for your client's departure. Your client must therefore leave Denmark immediately upon service of the decision terminating the suspension of the time limit for departure. As appears from the decision of the [Board] of 17 March 2016, your client may be forcibly returned to Turkey if he does not leave voluntarily.

4.9 The State party notes that in his complaint to the Committee, the complainant claims that Denmark would breach article 3 of the Convention in case of his forcible removal. He repeats the allegations regarding his past political activities in Turkey that he made in his communication No. 580/2014, and the information that he was subjected to torture in Turkey. He provides no new information in his communication submitted on 15 April 2016, but relies on the same grounds as in communication No. 580/2014.

4.10 In the context of communication No. 580/2014, the complainant produced a report prepared by the Amnesty International Danish Medical Group, dated 25 September 2014. The complainant reiterates that he has never been subjected to a medical examination for signs of torture by the State party. He claims a violation of article 3 of the Convention, based on the Refugee Appeals Board's rejection of the conclusions of the report by Amnesty International, its refusal to order a medical examination of the complainant and its rejection of the complainant's asylum application. According to the complainant, if the Board had wanted to contest the findings of the Amnesty International report, the Board should have ordered a medical examination. He claims that the State party failed to fulfil its obligations to carry out a medical examination by merely summoning him to an oral hearing. The complainant further claims that at the hearing before the Board on 14 March 2016, members of the Board asked him only a few questions, unrelated to the Amnesty International report.

4.11 The State party notes that in the Committee's decision of 20 May 2005 concerning *Agiza v. Sweden* (CAT/C/34/D/233/2003), the Committee considered whether a complaint submitted to it was a simple resubmission of an already decided issue, thus constituting an abuse of process under article 22 (2) of the Convention and the equivalent of rule 113, paragraph (b), of the Committee's rules of procedures. Since the complaints related to two different persons, the Committee decided that they were not of an essentially identical nature and therefore did not consider the second complaint to constitute an abuse of the right of submission. In the present case, however, the complaint is of an essentially identical nature to the previous complaint. The case relates to the same party as in communication No. 580/2014 and to the same substantive rights, under article 3 of the Convention. Regarding the facts of the case, the State party notes that in both cases, the complainant has relied on the same information on his situation in Turkey during the period 2006–2010. No substantial new information has been provided in the present case beyond that already available in the context of communication No. 580/2014. The present communication should thus be declared inadmissible under article 22 (2) of the Convention and rule 113, paragraph (b), of the Committee's rules of procedures.

4.12 Following the complainant's appearance on two occasions before the Refugee Appeals Board, the Board dismissed in their entirety the complainant's statements regarding his political activities and the resulting abuse and torture. In this connection, the Board took into consideration the Committee's decision of 23 November 2015 concerning communication No. 580/2014.

4.13 The State party considers that the Committee is not better placed to assess evidence than the national migration authorities, which have heard the statements made by the complainant in person. The Committee should rely on the assessment of evidence by the Refugee Appeals Board unless exceptional circumstances apply. In its decision of 17 March 2016, the Board found as follows regarding the possibility of a new medical examination:

> The [Refugee Appeals Board] observes in respect of the medical examination of the applicant conducted by the Amnesty International Danish Medical Group that, on several points, the findings mentioned in the report of 25 September 2014 do not accord with the information on physical abuse against the applicant stated by him in the asylum proceedings. Accordingly, he stated as follows in his asylum application form of 20 December 2012 to clarify how he had been subjected to torture or other physical abuse: "As a result of torture, my left arm is broken; in the middle of my eyebrow, in the middle of my forehead, under my chin and on my head, there are still permanent signs of manipulation … There is a fracture and a twist of the left arm in two places as a consequence of torture."

4.14 The Refugee Appeals Board noted that the torture described by the complainant was seen as inconsistent with the report dated 25 September 2014. With respect to the complainant's arms and legs, the report simply states: "Normal strength, sensitivity and mobility. Nothing abnormal detected." By contrast, the report makes multiple references to beating on the soles of the feet (*falanga*), a form of torture; however, the complainant did not mention this in his asylum application form, at the interviews conducted by the Danish Immigration Service or at the hearing before the Board on 30 August 2013.

4.15 The Refugee Appeals Board further noted that, with the exception of the complainant's fear of punishment for evasion of compulsory military service, his grounds for seeking asylum related to the termination of his membership of PKK and the Kurdistan Communities Union and his escape from a training camp in 2010, and that, in any event, the conclusion of a medical examination is not seen to be directly linked to the assessment of the complainant's credibility. Moreover, the Board found no basis for considering the complainant's statements on and recollection of the events included in this part of the asylum claim to have been affected in a crucial way by any physical abuse to which he had allegedly been subjected. The Board further found that the conclusions of the Amnesty International Danish Medical Group report did not independently add to the credibility of the complainant's grounds for asylum, including that he had already been subjected to torture as described by him, in the circumstances described by him.

4.16 Regarding the credibility assessment by the Refugee Appeals Board, the State party refers to the Views of the Human Rights Committee concerning *K v. Denmark* (CCPR/C/114/D/2393/2014, paras. 7.4–7.5), in which that Committee recalled that it was generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether a real risk of irreparable harm existed if a person was removed from their territory, unless it could be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.[4] The Human Rights Committee noted that the Board had thoroughly examined each of the author's claims, and particularly analysed the alleged threats allegedly received by the author in Afghanistan, and had found them to be inconsistent and implausible on several grounds; and that the author challenged the assessment of evidence and the factual conclusions reached by the Board, but he did not explain why that assessment would be arbitrary or otherwise amount to a denial of justice.

4.17 The State party further notes that in *Mr. X and Ms. X v. Denmark* (CCPR/C/112/D/2186/2012, para. 7.5), the Human Rights Committee observed that the authors' refugee claims had been thoroughly assessed by the State party's authorities, which had found that the authors' declarations about the motive for seeking asylum and their account of the events that had caused their fear of torture or killing were not credible. The Human Rights Committee went on to observe that the authors had not identified any irregularity in the decision-making process, or any risk factor that the State party's authorities had failed to take properly into account. The Human Rights Committee therefore noted that, in the light of those observations, it could not conclude that the authors would face a real risk of treatment contrary to articles 6 or 7 of the International Covenant on Civil and Political Rights if they had been removed to the Russian Federation.

[4] See, among others, *Z v. Australia* (CCPR/C/111/D/2049/2011), para 9.3; *B.L. v. Australia* (CCPR/C/112/D/2053/2011), para. 7.3; and *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.3.

4.18 In *P.T. v. Denmark* (CCPR/C/113/D/2272/2013, para. 7.3), the Human Rights Committee recalled its jurisprudence that important weight should be given to the assessment conducted by the State party, unless it was found that the evaluation had been clearly arbitrary or amounted to a denial of justice, and that it was generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk existed.

4.19 The State party further refers to *N v. Denmark* (CCPR/C/114/D/2426/2014, para. 6.6), in which the Human Rights Committee recalled that it was generally for the organs of States parties to examine the facts and evidence of a case, unless it could be established that such an assessment had been arbitrary or amounted to a manifest error or denial of justice. The author in that case had not explained why the decision by the Refugee Appeals Board had been contrary to that standard, nor had he provided substantial grounds to support his claim that his removal to the Islamic Republic of Iran would have exposed him to a real risk of irreparable harm in violation of article 7 of the Covenant. The Human Rights Committee accordingly concluded that the author had failed to sufficiently substantiate his claim of violation of article 7 for purposes of admissibility and found his communication inadmissible pursuant to article 2 of the Optional Protocol to the Covenant.

4.20 The State party observes that the same due process guarantees and careful consideration of the asylum application applied to the complainant in the present case.

4.21 Regarding the significance of medical information, the State party refers to the judgment of the European Court of Human Rights in *Cruz Varas and others v. Sweden*, (application No. 15576/89), and the decision of the Committee concerning *M.O. v. Denmark* (CAT/C/31/D/209/2002). In both cases, the torture claims made by the complainant were dismissed, as was the medical information presented in that regard, owing to the general lack of credibility of the complainants.

4.22 The State party notes that the Refugee Appeals Board's case law includes cases similar to the present one, with asylum seekers having submitted that they have sustained physical or mental injury originating from torture. Sometimes such information is wholly or partially substantiated by medical examinations, and sometimes by the Amnesty International Danish Medical Group. It is rather common that it appears from the conclusions of the examinations that agreement has been found between the objective findings and the asylum seeker's statements on torture. If the Board disregards the asylum seeker's torture claims – for example, if it cannot be considered as a fact that the asylum seeker has been involved in politics and that the involvement has allegedly been discovered by the authorities – such a conclusion does not independently give rise to the initiation of an examination. The Board may ascertain in such cases that an asylum seeker has suffered a physical or mental injury, but without establishing the reason for the infliction of the injury or by whom it was inflicted. No further clarifications could be obtained by requesting a forensic medical examination. Such an examination would merely show that the asylum seeker had suffered a physical and mental injury, which could have been inflicted in the way claimed or in another manner. Thus, such an examination cannot clarify whether the injury was caused by torture or otherwise (for example, as a result of a fight, an assault, an accident or an act of war).

4.23 If the asylum seeker's torture claim must be disregarded as not credible, and the asylum seeker still claims to be at risk of torture on the same grounds, it cannot be considered as a fact that, on the same grounds, the asylum seeker risks torture upon return. The Refugee Appeals Board therefore finds that there is no need in such cases to initiate an examination for signs of torture because such an examination would not contribute to bringing out the facts of the case.

4.24 The State party notes that the Refugee Appeals Board made a thorough assessment of the facts in the present case, including the findings of the medical examination report. The Board considered that there was no need to obtain a second opinion through a forensic medical examination for signs of torture as such an examination could not be expected to contribute to bringing out further facts in the case.

4.25 The State party has found no reason to question the Refugee Appeals Board's assessment of this issue, and the complainant has not identified any irregularity in the

decision-making process or any risk factor that the State party's authorities have failed to take properly into account.

4.26 In the light of these considerations, the State party believes that the Committee is not in a position to conclude that the complainant would face a real risk of torture if returned to Turkey and that the case should be declared inadmissible as manifestly ill-founded.

4.27 Regarding the hearing before the Refugee Appeals Board on 14 March 2016, the State party notes the complainant's contentions that the Board asked him only a few questions, that he was not asked about inconsistencies between his previous statements and the conclusions of the medical report, and that there was no discussion on the medical examination. The State party notes that under section 40 of the Aliens Act, asylum seekers must provide such information as required for deciding whether they fall under section 7 of the Act. Thus, an asylum seeker must substantiate the claim that the conditions for granting asylum are met. Asylum seekers are given an opportunity, at the hearing before the Board, to make a statement. First, their counsel ask them questions, and then the representatives of the Danish Immigration Service ask questions. The Board may ask further questions for the purposes of clarification. If the Board asks only a few questions, it means that the asylum seekers and their counsel have provided sufficient information for the Board's assessment.

4.28 Regarding the lack of discussion on the medical examination, the State party notes that the Refugee Appeals Board had accepted as facts the findings of the report on the medical examination, and that the complainant and his counsel had the opportunity to make any comments on the report that they found relevant at the Board hearing on 14 March 2016.

4.29 Regarding the complainant's comments on the objectivity and independence of the Refugee Appeals Board, the State party notes that the decisions delivered in his case on 30 August 2013 and 17 March 2016 were adopted by different Board members. The case was reopened, which meant that a full review of the case was conducted, including of any new information in the case, and a different panel conducted an oral hearing on 17 March 2016. The complainant made a statement, his counsel asked him questions, and he was then questioned by the representative of the Danish Immigration Service. The complainant made a long statement about his circumstances. His counsel and the Danish Immigration Service were permitted to make oral arguments, and lastly the complainant was given the opportunity to make a final statement.

4.30 The State party notes that, in its decision of 17 March 2016, the Refugee Appeals Board noted that it could not establish as facts the complainant's claims that he had been a member of the Democratic Society Party since 2006, and that he had been subjected to physical and mental abuse in the period 2006–2008. According to the Board, the complainant has failed to offer, with the degree of certainty and accuracy that should be expected, an account of when and how he was active within the parties mentioned and of the circumstances related to his detention and the abuse against him.

4.31 The Refugee Appeals Board also found that the complainant's statement that he had joined PKK and escaped from a military camp in mid-2010 could not be considered as a fact either. In the asylum proceedings, the complainant had given inconsistent statements as to how he joined PKK. In addition, he had stated that he had wanted weapons training, which contradicted his statement of 21 March 2013 to the effect that he had not, at any time, contemplated participating in an armed combat of any type. The Board also found elaborative and not in accordance with his previous statements the complainant's affirmation given to the Board on 30 August 2013 to the effect that he been arrested several times in Turkey for other reasons in 2009 and that the authorities had failed to realize that he was in fact wanted. That affirmation seemed not to be credible given the background information available on the nature and the intensity of the efforts of the Turkish police and intelligence service to arrest Kurdish opponents and charge them under antiterrorism law.

4.32 Regarding the complainant's affirmation to the effect that he does not wish to perform military service, on 17 March 2016 the Refugee Appeals Board observed the following: "according to the information available, the circumstance that the applicant has not performed compulsory military service will not entail any disproportionate sanction, and it is found that it cannot justify a residence permit".

4.33 The State party emphasizes that following the adoption by the Committee, on 23 November 2015, of its decision concerning communication No. 580/2014, the complainant's asylum case was reopened. The case was reconsidered by the Refugee Appeals Board on 14 March 2016 at an oral hearing, based, inter alia, on the report on the medical examination by the Amnesty International Danish Medical Group and the Committee's decision concerning communication No. 580/2014. In its decision of 17 March 2016, the Board found that the complainant had failed to substantiate his grounds for asylum, and his request for a residence permit was rejected. The State party considers that the Board has given full consideration to the Committee's decision of 23 November 2015.

4.34 Regarding the present case, the State party points out that the complainant has submitted no new information to justify yet another examination by the Refugee Appeals Board. Accordingly, the present communication should be deemed inadmissible. In these circumstances, the State party decided not to accommodate the Committee's request for interim measures in this particular case, without prejudice to the State party's full support for the opportunity of individuals to present individual communications to the Committee and for the Committee's requests for interim measures in order to avoid irreparable harm.

4.35 In the light of the above considerations, the State party believes that the communication should be declared inadmissible under article 22 (2) of the Convention and rule 113, paragraph (b), of the Committee's rules of procedure, because, since the same matter has already been examined by the Committee, it constitutes an abuse of the individual communications procedure. The case is also inadmissible as manifestly ill-founded under rule 113, paragraph (b), and rule 115, paragraph 3, of the Committee's rules of procedure.

Additional submissions by the parties

By the complainant

5. In a letter dated 21 March 2017, the complainant informed the Committee that he had gone in hiding in the light of the State party's intention to deport him. He added that he had initiated a lawsuit with the City Court of Copenhagen, seeking authorization to stay in Denmark.

By the State party

6. In a note verbale dated 8 February 2019, the State party noted that the complainant's latest submission did not give rise to any further observations. On 4 November 2016, the complainant appealed to the City Court of Copenhagen against the decision by the Refugee Appeals Board not to maintain the suspension of the time limit for his departure. On 3 March 2017, the City Court of Copenhagen decided that the proceedings did have a suspensive effect on the time limit for the complainant's departure. On appeal, on 6 July 2017, the Eastern High Court decided that the proceedings before the court did not have suspensive effect. On 15 November 2017, the Supreme Court upheld the decision of the Eastern High Court. On 18 December 2018, the complainant's counsel revoked the national court proceedings in the light of the complainant's removal to Turkey.

On behalf of the complainant

7.1 In letters dated 14 November 2019 and 4 February 2020, the complainant's counsel explained that the complainant had contacted him following his deportation. He submitted a copy of a medical report on the complainant dated 27 January 2020.

7.2 The counsel refers to his observations regarding the follow-up to communication No. 580/2014, and emphasizes that the complainant's forcible return to Turkey in spite of the Committee's request for interim measures request constituted a breach by the State party of its obligations under article 22 of the Convention.

7.3 The complainant informed the counsel that following his deportation, he had been tortured by the police in Turkey and that, at present, he was enrolled in the army to perform his compulsory military service.

7.4 On 10 February 2020, the counsel added that in the case law of the European Court of Human Rights in *Savran v. Denmark*, the decision to deport the applicant constituted a breach of article 3 of the European Convention on Human Rights.[5] The counsel believes that in the present case, the deportation of the complainant constitutes a similar violation.

7.5 The counsel recalls that in its decision concerning communication No. 580/2014, the Committee concluded that the State party had violated article 12, read in conjunction with article 16, of the Convention, including as a result of the authorities' refusal to order a medical examination for past torture. In the context of the present communication, the authorities have again denied the complainant a medical examination, in violation of article 3 of the Convention. The complainant's deportation in spite of the Committee's request for interim measures also constitutes also a violation of article 3 of the Convention.

Issues and proceedings before the Committee

The State party's failure to cooperate and to respect the Committee's request for interim measures pursuant to rule 114 of its rules of procedure[6]

8.1 The Committee notes that the adoption of interim measures under rule 114 of its rules of procedure, in accordance with article 22 of the Convention, is vital to the role entrusted to the Committee under that article. Failure by States parties to respect the Committee's requests for interim measures, in particular through such irreparable action as extradition of an alleged victim, undermines the protection of the rights enshrined in the Convention.

8.2 The Committee recalls that the non-refoulement principle codified in article 3 of the Convention is absolute. The Committee observes that any State party that has made a declaration under article 22 (1) of the Convention recognizes the competence of the Committee to receive and consider complaints from individuals who claim to be victims of violations of the provisions of the Convention. By making such a declaration, States parties implicitly undertake to cooperate with the Committee in good faith by providing it with the means to examine the complaints submitted to it and, after such examination, to communicate its comments to the State party and the complainant. The Committee considers that by failing to respect the request for interim measures transmitted on 28 April 2016 and deporting the complainant to Turkey, the State party seriously failed in its obligations under article 22 of the Convention.

Consideration of admissibility

9.1 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 that the same matter has not been and is not being examined under another procedure of international investigation or settlement. Accordingly, it is not precluded by article 22 (5) (a) of the Convention from examining the communication.

9.2 The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded by article 22 (5) (b) of the Convention from examining the communication.

9.3 The Committee notes that the complainant claimed that his deportation to Turkey would expose him to treatment contrary to article 3 of the Convention. The Committee observes that this claim was the object of consideration by the Committee in the framework of communication No. 580/2014, concerning which the Committee adopted its decision concluding that by deporting the complainant to Turkey, the State party would violate its obligations under article 3 of the Convention.

[5] Application No. 57467/15, Judgment, 1 October 2019 (referral to the Grand Chamber on 27 January 2020).

[6] For a similar approach, see, inter alia, *R.S. et al. v. Switzerland* (CAT/C/53/D/482/2011), para. 7; *Tursunov v. Kazakhstan* (CAT/C/54/D/538/2013), paras. 7.1–7.2; *X v. Russian Federation* (CAT/C/54/D/542/2013), paras. 9.1–9.2; and *H.S. v. Canada* (CAT/C/68/D/568/2013), paras. 9.1–9.3.

9.4 The Committee has noted the State party's observation that in this case, the complainant repeats the allegations regarding his past political activities in Turkey that he made in his communication No. 580/2014, and he reiterates the information that he was subjected to torture in Turkey. The complainant provides no new information in his communication submitted on 15 April 2016, but relies on the same grounds as in communication No. 580/2014. The State party emphasizes that following the adoption by the Committee, on 23 November 2015, of its decision concerning communication No. 580/2014, the complainant's asylum case was reopened. The case was reconsidered by the Refugee Appeals Board on 14 March 2016, at an oral hearing, based, inter alia, on the report on the medical examination by the Amnesty International Danish Medical Group and the Committee's decision concerning communication No. 580/2014. In its decision of 17 March 2016, the Board found that the complainant had failed to substantiate his grounds for asylum, and his request for a residence permit was rejected. The State party considers that the Board has given full consideration to the Committee's decision of 23 November 2015. Accordingly, and since the complainant has submitted no new information, the present communication, in the State party's opinion, should be deemed inadmissible.

9.5 The Committee notes that the subject of the present communication – the risk for the complainant of his deportation to Turkey – constituted the object of consideration in communication No. 580/2014, concerning which the Committee concluded that the deportation of the complainant would breach the State's party's obligations under article 3 of the Convention. The Committee recalls that in its decision concerning communication No. 580/2014, it considered that, by rejecting the complainant's asylum application without ordering a medical examination in the light of the report by the Amnesty International Danish Medical Group, the State party had failed to sufficiently investigate whether there were substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Turkey. As such, the Committee considered that the deportation of the complainant to Turkey would constitute a violation of article 3 of the Convention. The Committee also took the view that the State party had violated the requirements of articles 12, read in conjunction with article 16, of the Convention, not invoked in the present case.

9.6 The Committee is satisfied that of the State party has given due consideration to the Committee's decision concerning communication No. 580/2014, and that the complainant's asylum case was reopened and reconsidered by the Refugee Appeals Board on the basis of the Committee's decision and taking into account of the conclusions of the medical report by Amnesty International Danish Medical Group dated 25 September 2014. The Committee notes, in this context, that both the complainant and his lawyer were given an opportunity to provide information and clarifications to the Danish asylum authorities.

9.7 The Committee further notes the complainant's objection that even if the Refugee Appeals Board did reopen the case and did invite him to a hearing, no medical examination on torture was ever ordered, despite the report by the Amnesty International Danish Medical Group on past torture.

9.8 The Committee considers that, from the documents on file, it transpires that the Refugee Appeals Board has given due consideration to the conclusions of the report by the Amnesty International Danish Medical Group, which revealed a number of contradictions with the complainant's statements given throughout the asylum proceedings. The Committee notes that from the material on file, it cannot conclude that, in the present case, the Board has acted in a biased manner, or in a manner constituting otherwise a denial of justice. The Committee also observes in this connection that the complainant has not referred to any such misconduct; rather, he tends to disagree with the Board's conclusions, seeking, for instance, their review.

9.9 The Committee has noted the contention by the complainant's counsel that the complainant informed him that upon deportation, he was tortured by the police in Turkey. The Committee notes that no further information or explanation in support of this claim has been provided, in particular the identity of those responsible for the complainant's ill-treatment, the location in which the alleged torture took place, or details regarding the method of torture and its intensity or of other ill-treatment inflicted. Following the deportation of the complainant, his counsel submitted a copy of a summary medical certificate, dated 27 January 2020, according to which a medical examination of the complainant had shown that

the latter was suffering from an anxiety disorder, with no mention of torture whatsoever.[7] The Committee also notes that it has not been specified whether the complainant has complained to the competent Turkish authorities regarding these torture claims, and with what result.

9.10 In these circumstances, and in the absence of any further information of pertinence on file, the Committee considers that the present communication is inadmissible as manifestly ill-founded, under article 22 (2) of the Convention. In the light of this conclusion, the Committee decides not to examine any other grounds for inadmissibility.

10. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (2) of the Convention;

(b) That the present decision shall be communicated to the complainant and to the State party.

[7] The phrase “Traumatic Auxiete Reax Disorder (sic)” was used in the medical certificate.