



Removal of Chechen family from Sweden to Russia would expose them to real risk of ill-treatment

In today's Chamber judgment in the case of [I v. Sweden](#) (application no. 61204/09), which is not final¹, the European Court of Human Rights held, by a majority, that:

The deportation of the applicants to Russia would give rise to a **violation of Article 3 (prohibition of torture and of inhuman or degrading treatment)** of the European Convention on Human Rights.

The case concerned the Swedish authorities' decision to reject a request for asylum lodged by a family from Chechnya (Russia) who stated that they would be exposed to a real risk of ill-treatment if returned to Russia.

The Court held that – while there were reasons to doubt the credibility of the applicants' account as to why they were under threat – a number of factors taken cumulatively gave rise to a real risk of ill-treatment in case of their removal, in particular the fact that Mr I had visible signs of torture, which could indicate that he had actively taken part in the second war in Chechnya.

The Court also found that the right of the Member State of origin of the applicants to submit comments on the case, under Article 36 of the Convention (third party intervention), did not apply where the applicants' reason for applying to the Court was their fear of ill-treatment if returned to that State. Therefore Russia was not notified of the introduction of the case.

Principal facts

The applicants, Mr and Ms I and their child, are Russian nationals of Chechen origin, who were born in 1965, 1978 and 1999 respectively and live in Vilhelmina (Sweden).

In December 2007, the family arrived in Sweden and requested asylum. They submitted that both Mr and Ms I had been tortured in Chechnya and that Mr I was wanted there on account of having documented in photos the execution of Chechen villagers by Russian federal troops between 1995 and 2007 and on account of his contacts with the journalist Anna Politkovskaja, who had been killed in 2006. According to the applicants' submissions, Ms I had been kidnapped by the Russian Federal Security Service and Mr I had been arrested by a military guard, then detained in a cellar and forced under torture to provide information about the Chechen rebels. The torture had included having a cross burned into his chest with cigarettes.

The Swedish Migration Board rejected the applicants' asylum request in October 2008, finding in particular that the situation in Chechnya or the situation for Chechens in Russia alone could not justify the granting of asylum and that the applicants' account had been incoherent and partly inconsistent. Mr I had not been able to show or point to any of the pieces of documentary work he had allegedly produced over several years. Upon appeal, the decision was upheld by the migration

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

courts and gained legal force in October 2009. In November 2009, the European Court of Human Rights applied an interim measure (under Rule 39 of its Rules of Court) in the applicants' case, requesting the Swedish Government to stay their expulsion until further notice.

Complaints, procedure and composition of the Court

The applicants complained that if removed to Russia they would face a real risk of treatment in breach of Article 3 (prohibition of torture and of inhuman or degrading treatment).

The application was lodged with the European Court of Human Rights on 16 November 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Boštjan M. **Zupančič** (Slovenia),
Ann **Power-Forde** (Ireland),
Ganna **Yudkivska** (Ukraine),
Helena **Jäderblom** (Sweden),
Aleš **Pejchal** (the Czech Republic),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 36 (third party interventions)

The Court first addressed the question of whether the Russian Government should have been notified of the application brought against Sweden in view of the fact that the applicants were Russian nationals. Article 36 of the Convention provides a Member State with the right to submit comments if one of its nationals is an applicant in a case before a Chamber of the Court. However, the Court found that in a situation where nationals of a Member State made allegations that they would be subjected to treatment contrary to Articles 2 (right to life) and 3 (prohibition of torture and of inhuman or degrading treatment), if returned to their State of origin, that State did not appear objectively in a position to support its nationals. The Court therefore concluded that Article 36 did not apply in the applicants' case. Consequently Russia was not notified of the application.

Article 3

Having regard to the many cases before it concerning disappearances and ill treatment in Chechnya and to recent reports on the human rights and security situation in Chechnya, the Court was well aware of ongoing disappearances, of arbitrary violence, of impunity and ill-treatment in detention facilities there. It was also aware of interrogations of returnees and of their harassment and possible detention and ill-treatment by State officials. Nevertheless, the Court considered that the unsafe general situation was not sufficiently serious to conclude that the return of the applicants to Russia would amount to a violation of Article 3.

As regards the applicants' individual situation, the Swedish authorities had not questioned that Mr I had been subjected to torture, but they had found that he had not established with sufficient certainty why he had been subjected to it and by whom. There were no indications that the proceedings before the Swedish authorities had lacked effective guarantees to protect the applicants against arbitrary refoulement.

The Court agreed with the Swedish authorities that there were credibility issues with regard to the applicants' submissions, notably as to Mr I's alleged work as a photo journalist over several years,

which he claimed was the main reason for the applicants' ill-treatment. On request by the Court, Mr I had not submitted any article where his name was mentioned or pointed to a single photo taken by him and published by any of the media sources he claimed had used his material. Consequently, the Court agreed that the applicants had failed to give plausible arguments that they would face a real risk of being subjected to ill-treatment upon return to Russia because of Mr I's alleged journalistic activities.

However, while a number of individual factors, when considered separately, might not constitute a real risk, they might give rise to such a risk if taken cumulatively. The Court noted that the Swedish Migration Board and Migration Court had not made a separate assessment of the specific risk in the applicants' case, notably the fact that Mr I had significant and visible scars on his body, including a cross burned into his chest. The medical certificates stated that his wounds could be consistent with his explanations as to the timing and the extent of torture to which he maintained he had been subjected. In case of a body search of Mr I by State officials upon his return to Russia, it would be immediately visible that he had been subjected to ill-treatment for whatever reason, and it would be visible that his scars had been caused in recent years, which could indicate that he had actively taken part in the second war in Chechnya.

Taking those factors into account cumulatively, in the circumstances of the case the Court found that there were substantial grounds for believing that the applicants would be exposed to a real risk of being subjected to ill-treatment if removed to Russia. Their removal would therefore be in violation of Article 3 of the Convention.

The Court further decided to maintain the indication to the Swedish Government, under Rules 39 of its Rules of Court, not to remove the applicants to Russia until the judgment became final or until further order.

Just satisfaction (Article 41)

The applicants had made no claim in respect of pecuniary or non-pecuniary damage. The Court therefore did not make any award under this head.

Separate opinion

Judges Villiger and Yudkivska expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.