



# 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. 691/2015\*, \*\*

<i>Communication submitted by:</i>	S. (represented by counsel, Viktoria Nystrom)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	1 June 2015 (initial submission)
<i>Date of the present decision:</i>	16 November 2018
<i>Subject matters:</i>	Risk of torture in the event of deportation to country of origin (non-refoulement); prevention of torture
<i>Substantive issue:</i>	Deportation of the complainant from Sweden to the Islamic Republic of Iran
<i>Procedural issue:</i>	Admissibility – manifestly ill-founded
<i>Articles of the Convention:</i>	3 and 22

1.1 The complainant is S., a national of the Islamic Republic of Iran, born in March 1981. Her claim for asylum in Sweden was rejected by the Swedish Migration Board on 27 June 2014. The initial complaint was submitted on 1 June 2015 and further information was provided on 21 July 2015. She claims that her deportation to the Islamic Republic of Iran would constitute a violation by Sweden of her rights under article 3 of the Convention. The complainant is represented by counsel.

1.2 On 28 July 2015, pursuant to rule 114, paragraph 1 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the complainant to the Islamic Republic of Iran while the complaint was being considered by the Committee.

#### The facts as presented by the complainant

2.1 The complainant married her now ex-husband in the Islamic Republic of Iran on 7 October 2010. As the husband was already living in Sweden, he was not present during the ceremony and the marriage was conducted with a power of attorney. She arrived in Sweden on 30 October 2011 and obtained a temporary residence permit. After her arrival, her husband showed a “controlling side”, and he and his sister subjected the complainant to

\* Adopted by the Committee at its sixty-fifth session (12 November–7 December 2018).

\*\* The following members of the Committee participated in the consideration of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.



regular mental and physical abuse, including by beating and insulting her. They also threatened to send her back to the Islamic Republic of Iran. She talked to a lawyer but decided not to file a complaint.<sup>1</sup>

2.2 In June 2013, the complainant's husband filed for divorce but later withdrew his application. In November 2013, he again filed for divorce without informing her. On that occasion, the divorce was made official.<sup>2</sup> After the divorce, the complainant's temporary residence permit was not renewed by the Swedish authorities.

2.3 Given the consequences of the divorce and taking into account the threats that the complainant was still receiving from her ex-husband, she decided to apply for asylum in Sweden. The day she went to the office of the Swedish Migration Board to obtain information on the asylum application, a lawyer was appointed to represent her. Her ex-husband became extremely distressed about that and locked her in their bedroom during the night. She was so afraid of him that the next day she went to the police and contacted her lawyer, who helped her to move to a women's shelter. Her ex-husband then began to send her messages that he loved her and wanted her back. As she did not reply, he threatened her by telephone and through friends, saying that he would disseminate intimate pictures of her in the Islamic Republic of Iran and spread the rumour that she had relationships with other men while in Sweden. He accused her of infidelity and told her family in the Islamic Republic of Iran about these accusations. His brothers also visited her family in the Islamic Republic of Iran and told them that she had dishonoured them and would be punished. Her ex-husband's relatives have tried to contact the complainant by telephone in Sweden, but she did not answer their phone calls out of fear.

2.4 Furthermore, the complainant claims to be a member of the Democratic Party of Iranian Kurdistan, which the Iranian authorities consider to be a terrorist group. She submitted two letters, dated 29 April 2014 and 15 July 2015, from the party's office of international relations in Europe, which indicated that she was a sympathizer of the party and that if she was returned to the Islamic Republic of Iran her life would be in danger.<sup>3</sup> She submits that she has been a member of the party since she was 18 years old and that her two brothers, who both currently live in Denmark, are also members of the party.<sup>4</sup> They were granted asylum in Denmark because of the threats they received from the Iranian authorities as a consequence of their political affiliation.<sup>5</sup> She claims that her third brother was killed as a result of his affiliation with the party.<sup>6</sup>

2.5 The complainant applied for asylum on 11 December 2013. On 27 June 2014, the Swedish Migration Board rejected her application. It considered that her story lacked credibility and that she did not demonstrate that she would face a well-founded risk of honour-related violence upon her return to the Islamic Republic of Iran, either by her family or her ex-husband's family. The Board did not question her membership in the Democratic Party of Iranian Kurdistan, but considered that she did not provide a reliable account of the persecution she would face if she was returned to the Islamic Republic of Iran.

2.6 On an unspecified date, the complainant appealed the Board's decision. On 14 October 2014, the Migration Court rejected her appeal, considering that she had provided

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<sup>1</sup> According to one of the appendices to the complaint, the complainant did file a police report regarding the abuse and threats, but the investigation was later closed (a copy of the police decision was submitted with other documents).

<sup>2</sup> No date provided.

<sup>3</sup> The Democratic Party of Iranian Kurdistan office of international relations in Europe is located in Paris. A copy of the letters is provided.

<sup>4</sup> The complainant submits a letter dated 7 June 2001 by the Democratic Party of Iranian Kurdistan office of international relations in Europe indicating that her brother, S.S., is a sympathizer of the party and that, if he was returned to the Islamic Republic of Iran his life would be in danger.

<sup>5</sup> The complainant provides copies of passports, driver's licences and residence permits of her two brothers, S.S. and K.S., in Denmark. She also provides a copy of a certificate issued by Office of the United Nations High Commissioner for Refugees indicating that her brother S.S. was recognized as a refugee in 2001.

<sup>6</sup> The complainant provides a copy of a list of "victims of terrorism by the Iranian State" issued by the Democratic Party of Iranian Kurdistan office of international relations in Europe, in which her brother K.S. is listed as a martyr. She also provides photographs of his funeral.

conflicting information regarding her relationship with her ex-husband, thus failing to show that she was exposed to a level of violence that would merit a residence permit. Furthermore, it considered that one of the letters she had submitted to prove her membership in the Democratic Party of Iranian Kurdistan was of “low quality”. The Court also considered that she had not proved that she risked being harmed by the Iranian authorities, her family or her ex-husband’s family. On an unspecified date, she appealed that decision before the Migration Court of Appeal. The Court denied her leave to appeal on 18 December 2014. The expulsion order therefore became executory. She submits that she has exhausted all available domestic remedies.

2.7 On 9 February 2015, the complainant sought interim measures before the European Court of Human Rights. On 10 February, that Court, through the Acting President of the Section, sitting in a single judge formation, decided not to prevent her expulsion. The Court declared the application inadmissible as, in the light of the material in its possession and insofar as the matters complained of were within its competence, it found that the admissibility criteria set out in articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) had not been met.

### **The complaint**

3.1 The complainant claims that her deportation to the Islamic Republic of Iran would constitute a violation of her rights under article 3 of the Convention. She claims that there is a substantial risk that she will be arrested and tortured upon return because of her divorce and her political affiliation. In particular, she submits that she fears she will be ill-treated by her ex-husband’s family because he accused her of infidelity and of living with another man in Sweden. She alleges that her ex-husband’s family has declared that “the family honour has been disrespected” and that she must be punished, and that her ex-husband has intimate pictures of her, which may be used as evidence to accuse her of “promiscuous living” and prostitution. She also submits that she has fears about her own family, as they have declared that, when she returns to the Islamic Republic of Iran, they intend to punish her and expel her from the family in order to restore their honour. She also fears the Iranian authorities, because her ex-husband comes from a very influential and powerful family in the Islamic Republic of Iran. His father is an imam and he has good contacts with the authorities, so his testimony will have more value than her own. A guilty verdict is therefore highly likely if the complainant is arrested and charged in the Islamic Republic of Iran. The complainant recalls that adultery is punishable under the Islamic Penal Code,<sup>7</sup> and that the penalty is whipping, stoning or even death. Honour killings and public punishment take place daily in the Kurdish areas in the Islamic Republic of Iran.<sup>8</sup> She submits that people who commit honour crimes in the Islamic Republic of Iran are not punished.

3.2 The complainant indicates that the Iranian authorities are not aware of her membership in the Democratic Party of Iranian Kurdistan, as party members hide their membership in order to avoid persecution. However, her ex-husband or his family would reveal her membership to the authorities as revenge for having “dishonoured” them. She also submits that once the authorities are aware of her membership in the party, she will be arrested or at least interrogated, which means that she will face torture or sexual abuse, as that is common practice in the Islamic Republic of Iran. She maintains that, given that the Iranian authorities have extensive intelligence operations abroad, they may already be aware of her membership in the party, as she has openly attended party meetings in Sweden.<sup>9</sup> In that context, she refers to a report of the Ministry of Foreign Affairs of Sweden, in which it is stated that Kurds who express themselves politically are likely to be arrested, imprisoned or tortured in the Islamic Republic of Iran.<sup>10</sup> According to a report of the Home Office of the United Kingdom of Great Britain and Northern Ireland, persons who can show that they are members or supporters of the party are at risk of persecution and should be

<sup>7</sup> The complainant refers to articles 63 and 102 of the Islamic Penal Code.

<sup>8</sup> No further information is provided in that regard.

<sup>9</sup> The complainant attaches pictures of her with “very well-known” representatives of the Democratic Party of Iranian Kurdistan taken at meetings held in Sweden.

<sup>10</sup> No further information is provided on the report.

granted residence permits and international protection.<sup>11</sup> Furthermore, the complainant cites the 2014 human rights report on the Islamic Republic of Iran by the Department of State of the United States of America, which contains information on the human rights violations suffered by women in the country.

#### **State party's observations on admissibility**

4.1 On 25 September 2013, the State party contested the admissibility of the complaint, claiming that the European Court of Human Rights had already examined the same matter raised before the Committee. The State party recalls the Committee's jurisprudence in which it has consistently held that the "same matter", within the meaning of article 22 (5) (a) of the Convention, must be understood as relating to the same parties, the same facts and the same substantive rights.<sup>12</sup> In that connection, it notes that the present communication raises claims under article 3 of the Convention in relation to the alleged risk of torture to which the complainant would be subjected if removed to the Islamic Republic of Iran. It points out that, from the letter of the European Court of Human Rights to the complainant dated 10 February 2015, it is clear that she had submitted an application to the Court, including a request that the Court prevent her expulsion to the Islamic Republic of Iran.

4.2 The State party indicates that, according to the Court's requirements concerning requests for interim measures, complainants must state the reasons on which their particular fears are based, the nature of the alleged risks and the provisions of the European Convention on Human Rights that have allegedly been violated. Given that, on 10 February 2015, the European Court of Human Rights decided to reject the complainant's request for interim measures and to declare her application inadmissible, the complainant must have stated the reasons for her request to that Court. The State party therefore finds it evident that the application to the European Court of Human Rights and the request for interim measures submitted by the complainant must, as is the case with the present communication to the Committee, have concerned the risks that she would allegedly face if returned to the Islamic Republic of Iran. The State party therefore concludes that the present communication concerns the same matter as the application previously lodged by the complainant with the European Court of Human Rights.<sup>13</sup>

4.3 With regard to the issue of whether the European Court of Human Rights has examined the substance of the complainant's application in the sense of article 22 (5) (a) of the Convention, the State party recalls that the Committee has on many occasions considered that a communication has been examined by another procedure of international investigation or settlement if its decision was not based solely on mere procedural grounds, but also on reasons that indicate a sufficient consideration of the merits of the case.<sup>14</sup> The State party notes that, according to the complainant's submissions and the letter of the European Court, the European Court declared the complainant's application inadmissible on 10 February 2015, since it found that the admissibility criteria in articles 34 and 35 of the European Convention on Human Rights had not been met. The State party also notes that there is nothing in the complainant's submission that indicates that her application to the European Court did not fulfil the criteria established in article 34 of the European Convention on Human Rights, as it is evident from the facts of the case that the decision concerning the complainant's expulsion had gained legal force and that she had exhausted domestic remedies in 2014 before she submitted her application to the European Court. In addition, according to case law of the European Court, the six-month time limit does not de facto apply in cases concerning expulsion when the applicant has not yet been expelled.<sup>15</sup>

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<sup>11</sup> No further information is provided on the report.

<sup>12</sup> The State party quotes *M.T. v. Sweden* (CAT/C/55/D/642/2014) and the Committee's decisions on the communications cited therein.

<sup>13</sup> The State party quotes *M.T. v. Sweden*; *A.R.A. v. Sweden* (CAT/C/38/D/305/2006), paras. 6.1–6.2; and *A.G. v. Sweden* (CAT/C/24/D/140/1999), paras. 6.2 and 7.

<sup>14</sup> The State party quotes *M.T. v. Sweden*; *A.A. v. Azerbaijan* (CAT/C/35/D/247/2004), paras. 6.6–6.9; and *E.E. v. Russian Federation* (CAT/C/50/D/479/2011), paras. 8.2–8.4.

<sup>15</sup> The State party quotes the European Court of Human Rights, *P.Z. and others v. Sweden* (application No. 68194/10), judgment of 29 May 2012; and *B.Z. v. Sweden* (application No. 74352/11), judgment of 18 December 2012.

Therefore, in the State party's view, it is clear that the European Court did not dismiss the complainant's application for failure to exhaust domestic remedies or because the application had not been submitted within the six-month time limit.

4.4 The State party contends that the complainant's submissions do not include any information according to which the inadmissibility grounds established in article 35 (2) (a) and (b) of the European Convention on Human Rights would be applicable, and that the only remaining admissibility grounds to be considered are those established in article 35 (3) (a) and (b). The State party further submits that, from the wording of the European Convention, it is clear that an assessment of both those grounds must involve a sufficient consideration of the merits of the case. In view thereof, it considers that the European Court of Human Rights must have declared the complainant's application inadmissible for substantial rather than mere procedural grounds and has therefore already examined the same matter raised before the Committee. The State party concludes that the communication should be declared inadmissible pursuant to article 22 (5) (a) of the Convention.

#### **Complainant's comments on the State party's observations**

5.1 On 4 January 2016, the complainant submitted her comments to the State party's observations on the admissibility of the communication. With regard to the decision of the European Court of 10 February 2015, the complainant submits that it is unclear whether the single judge examined the case or on what reasons he or she based his or her decision to declare the application inadmissible. The complainant considers that, in the light of the limited information provided in the letter of the European Court dated 10 February 2015, it cannot be assumed that the European Court has examined the matter within the meaning of article 22 of the Convention. She submits that, given the limited information provided in the letter of the European Court, it is very likely that the European Court has not conducted a proper examination of the substance of her case. She therefore considers that the Committee should consider her complaint admissible and conduct a proper examination of her complaint.

5.2 Even if the Committee considers that the circumstances presented before both international mechanisms are the same, new circumstances arose in the case of the complainant after her application to the European Court of Human Rights that demonstrate the risk she would face if returned to the Islamic Republic of Iran. Her ex-husband remarried in the Islamic Republic of Iran and brought his new wife to Sweden. However, he never formally divorced the complainant in the Islamic Republic of Iran. By not doing so, he remains her "owner" and he can control her upon her return. Furthermore, the complainant no longer lives in a women's shelter and is not supported by her husband or any other male. Such an independent way of living would have negative consequences for her if she returned to her country of origin,<sup>16</sup> which renders her complaint to the Committee different from the one she submitted to the European Court of Human Rights, and should be considered as such by the Committee.

5.3 On 9 February 2016, the complainant informed the Committee that, in application No. 60300/14, *Yakunova and others v. Sweden*, the European Court of Human Rights, sitting in single judge formation, had found that no violation of the rights established in the European Convention on Human Rights had been committed, and had declared the application inadmissible. The complainant notes that, in that case, the European Court indeed examined the substance of the case before declaring it inadmissible. She submits that the European Court did not express itself in the same way in her case and therefore did not examine it properly. She concludes that her previous application before the European Court does not preclude the Committee from reviewing the present communication.

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<sup>16</sup> No further information is provided on that matter.

**Committee's decision on admissibility**

6. On 25 November 2016, at its fifty-ninth session, the Committee considered the admissibility of the complaint and decided that it was admissible.<sup>17</sup> The Committee concluded that the succinct reasoning provided by the European Court of Human Rights in its decision of 10 February 2015 did not allow the Committee to verify the extent to which the Court had examined the complainant's application, including whether it conducted a thorough analysis of the elements related to the merits of the case.

**State party's observations on the merits**

7.1 By note verbale of 30 March 2017, the State party submitted its observations on the merits of the complaint. The State party provides its own statement of facts, and notes that the complainant first applied for a Swedish residence permit in October 2010 at the Embassy of Sweden in Tehran, invoking as the legal basis for her application her marriage to her husband, by then a Swedish national. On 10 January 2011, the Swedish Migration Agency (formerly the Swedish Migration Board) rejected the complainant's application on the grounds that the couple had not seen each other for 13 years and they had not been able to prove that they had been in contact with each other. The Agency further held that the couple had not been simultaneously present at the wedding, nor made any attempt to meet each other in a third country before their marriage. The Agency concluded that their marriage had the sole purpose of obtaining a residence permit for the complainant.

7.2 Upon appeal by the complainant, the Migration Court subsequently revoked the decision by the Migration Agency and granted the complainant a temporary residence permit for one year. The Court concluded that the marriage was legally binding and could therefore serve as a basis for granting the complainant a residence permit. The Migration Agency subsequently granted the complainant a residence permit for the period from 4 October 2011 to 4 October 2012.

7.3 The complainant arrived in Sweden on 30 October 2011, and on 5 August 2012 she applied for an extension of the residence permit. In a letter addressed to the Migration Agency dated 20 June 2013, the complainant's husband attached a copy of a petition for divorce between him and the complainant dated 10 June 2013. In the letter, he stated, *inter alia*, that the complainant had entered into the marriage on false pretences and that her main purpose had been to obtain a permanent residence permit in Sweden. On 7 October 2013, an immigration officer had a telephone conversation with the complainant's husband, who was in the Islamic Republic of Iran at the time. He informed the migration officer that his relationship with the complainant had ceased a few months earlier and that he had filed for divorce. He also stated that the complainant had hit him several times in order to provoke him to hit her back, so that she would be able to go to a women's shelter and call the police, all in order to obtain a residence permit. He added that he had been threatened by the complainant's brothers and had reported her to the police. It was later discovered that, on 18 August 2013, the complainant's husband had filed a simple assault report with the police against the complainant.

7.4 On 18 October 2013, both the complainant and her husband were invited to an interview at the Migration Agency. Only the complainant appeared for the interview. She explained that her husband had been asleep at home when she left, that their relationship was working well, that he had changed his mind about the divorce and that he had withdrawn the assault report. When asked if there was anything hindering her from returning to the Islamic Republic of Iran, the complainant stated that she had no problems with the Iranian authorities and that she was capable of returning. Later that day, the migration officer called the complainant's husband and learned that he had returned from the Islamic Republic of Iran the previous week; however, he had not seen the complainant, and they did not live in the same apartment. He stated that he did not want the complainant to apply for a residence permit as his spouse or to rely on her ties to him. He added that he had withdrawn his application for a divorce because he and his family in the Islamic

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<sup>17</sup> See *S. v. Sweden* (CAT/C/59/D/691/2015).

Republic of Iran had been threatened,<sup>18</sup> but that he intended to file for divorce as soon as the Migration Agency had delivered its decision.

7.5 In her submission to the Migration Agency on 26 November 2013, the complainant stated, *inter alia*, that her marriage was genuine, but that she had been subjected to abuse by her husband and his sister ever since her arrival in Sweden. She claimed that her husband yelled at her and she feared that he would become physically violent, so she had moved to a women's shelter and reported her husband to the police.<sup>19</sup> She also claimed that her husband and his family had threatened her and her family, and that her husband belonged to a powerful family in the Islamic Republic of Iran with well-established contacts among local authorities. She claimed that if she was returned to the Islamic Republic of Iran, she would be arrested and subjected to torture and probably raped.

7.6 The State party notes that, in her application for asylum submitted on 11 December 2013, the complainant stated that her life was in danger because of her husband and his family. She claimed that her brothers-in-law had visited her father in the Islamic Republic of Iran and had threatened him. They had also threatened to kill her for reasons of honour if she were to return to the Islamic Republic of Iran. During the first asylum interview, on 31 March 2014, the complainant stated that her family was politically engaged and very well-known in the Islamic Republic of Iran. One of her brothers had worked for the Democratic Party of Iranian Kurdistan and had lost his life. When the complainant was asked whether it was correct that she had not had any problems with the authorities in the Islamic Republic of Iran, as she had previously stated, she confirmed that she had not had any problems with them. She added, however, that she was afraid that her husband would reveal to them that her brother was involved with the Democratic Party of Iranian Kurdistan. Another interview was conducted on 28 April 2014. Both interviews were conducted in the presence of counsel and interpreters.

7.7 On 27 June 2014, the Migration Agency decided to expel the complainant. The Migration Court rejected her appeal on 14 October 2014. By its decision of 15 January 2015, the Migration Agency extended the complainant's time limit for a voluntary return until 12 February 2015. According to her own statement, the complainant intended to return to the Islamic Republic of Iran, but she wanted to avoid a decision banning her from returning to Sweden, therefore she needed more time to prepare for her return. On 13 February 2015, the Migration Agency decided to ban the complainant from returning to Sweden for a period of one year, and her expulsion was transferred to the police as she was deemed to have absconded.

7.8 The State party submits that, in accordance with the Aliens Act, an expulsion order that has not been issued by a court expires four years after it becomes final and non-appealable. In the complainant's case, the four-year period expires on 18 December 2018; the State party therefore requests the Committee to consider the present case well before that date in order to leave enough time to arrange for the complainant's expulsion, should the Committee's examination lead to a finding that the complaint is inadmissible or that it reveals no violation of the Convention.

7.9 With regard to the admissibility of the complaint, the State party submits that the communication is manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure.

7.10 With regard to the merits of the complaint, the State party notes that, when determining whether the forced return of the complainant to the Islamic Republic of Iran would constitute a breach of article 3 of the Convention, the following considerations are relevant: (a) the general human rights situation in the Islamic Republic of Iran; and, in particular, (b) the personal, foreseeable and real risk of the complainant being subjected to torture following her return. According to the State party, although there are concerns that may legitimately be expressed with respect to the current human rights situation in the Islamic Republic of Iran and the situation of women in the country, these concerns are not in themselves sufficient to establish that an expulsion of the complainant would entail a

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<sup>18</sup> No further details provided.

<sup>19</sup> No further details provided.

violation of article 3 of the Convention.<sup>20</sup> Hence, the State party contends that the expulsion of the complainant to the Islamic Republic of Iran would only entail a breach of the Convention if she could show that she would be personally at risk of being subjected to treatment contrary to article 3 of the Convention.

7.11 The State party submits that, in view of the fact that the Migration Agency and the migration courts are specialized bodies with particular expertise in the field of asylum law and practice, there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. Accordingly, the State party suggests that considerable weight must be attached to the opinions of the Swedish migration authorities, as expressed in their rulings ordering the expulsion of the complainant to the Islamic Republic of Iran. The State party draws the Committee's attention to the fact that the complainant arrived in Sweden in October 2011 and was granted temporary residence due to her ties to her husband. She did not apply for asylum until December 2013, after her husband had already divorced the complainant and no longer supported her application for a residence permit. She thus had ample time to present her reasons for requesting asylum to the Swedish authorities if she had deemed it necessary to apply for asylum because of her alleged political activities.

7.12 The State party further submits that both the Migration Agency and the Migration Court held that there were reasons to question the credibility of the complainant's account. The Migration Agency held that, inter alia, the complainant's account was merely speculative and based on assumptions. The only concrete events on which the complainant's fear was based were the alleged visit to her parents' house by her ex-husband's brothers, certain attempts by her ex-husband's family to call her and her ex-husband's behaviour in Sweden while they lived together.

7.13 The State party notes that the Migration Agency found that the certificate from the Democratic Party of Iranian Kurdistan in Paris submitted by the complainant stated that she had left the Islamic Republic of Iran because of oppression by the regime due to her political activities, which is not consistent with her own account of why she left the Islamic Republic of Iran. The State party also notes that, compared with her submissions before the national authorities, the complainant's account before the Committee has escalated, especially regarding the allegations concerning her ex-husband's accusations and his wish to punish her by disseminating pictures of her and her fear of being charged and convicted by the Iranian authorities. Also, before the Committee the complainant stated that she had been politically active since she was 18; however, that information was not provided to the Swedish authorities.

7.14 With respect to the alleged threat from the complainant's ex-husband or his family, the Migration Agency held that there was nothing to indicate that they wanted to harm her, and thus her fear seemed to be based solely on speculation and hearsay. No evidence or reasoning has been presented to support the complainant's allegation that her ex-husband has accused her, or will accuse her, of infidelity or promiscuity or that he, for example, will share intimate pictures of her with the authorities in the Islamic Republic of Iran.

7.15 The State party draws the Committee's attention to another document submitted by the complainant in support of her allegation that her ex-husband had abused and threatened her. It was submitted as a decision by the police to close an investigation against the complainant's ex-husband regarding one count of assault and one count of an illegal threat on 18 August 2013. The State party, however, notes that, despite the very poor quality of the document, it seems that the document was addressed to the complainant's ex-husband rather than to the complainant herself. The State party also notes that, according to the case files of the Migration Agency, it was the complainant herself who was suspected of simple assault on 18 August 2013. There is no official information that her ex-husband was suspected of any criminal offence on the same day. According to the case files, her ex-

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<sup>20</sup> The State party notes that the Migration Agency based its decision on country information from the report of the United Kingdom Home Office, Country of Origin Information Service, *Iran Country of Origin Information Report*, dated 16 December 2013.



husband had reported her to the police for assaulting him, a fact that was not disputed by the complainant.

7.16 The State party stresses that, according to the Convention, “torture” refers to severe pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. A threat of violence from close family members or the stigma or dishonour that someone may suffer from a divorce does not in itself constitute torture according to the Convention. The State party notes that the Committee has emphasized that the issue of whether a State party is under an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside of the scope of article 3 of the Convention.<sup>21</sup>

7.17 With regard to the alleged risk from the Iranian authorities due to the complainant’s political engagement, the State party submits that the complainant herself acknowledged that she did not have a prominent role in the Democratic Party of Iranian Kurdistan, even if she was a member. The Migration Agency found that her account was not credible and that she had not plausibly demonstrated that her engagement was such that she would have been of interest to the authorities. The Migration Court concurred with the Migration Agency that the information in the written certificate submitted by the complainant in support of her allegation regarding her political activity did not correspond to the information she had submitted about why she left the Islamic Republic of Iran, rendering the certificate of very low probative value. The fact that she appeared in photographs with, according to the complainant, leading figures in the organization did not alter the Migration Court’s view of the need for protection. The complainant’s arguments that her ex-husband would interfere with her and spread false accusations in various ways are speculative and not supported by any evidence or factual events. As the Migration Agency concluded, nothing has emerged to suggest that her ex-husband would have access to the images of her at political meetings. Furthermore, the complainant was allowed to leave the Islamic Republic of Iran legally, using her Iranian passport, which suggests that she was not of any particular interest to the Iranian authorities. Therefore, the State party concludes that the complainant has failed to demonstrate that there are substantial grounds for believing that she would be personally at risk of being subjected to torture in the meaning of the Convention upon return to the Islamic Republic of Iran.

#### **Complainant’s comments on the State party’s observations**

8.1 On 14 August 2017, the complainant submitted her comments on the State party’s observations on the merits of the communication. With regard to the general human rights situation, the complainant submits that the need for protection against a risk of being subjected to torture in the Islamic Republic of Iran is not dependent on whether the human rights situation in the country amounts to a general level of persecution. She notes that the State party fails to acknowledge in its observations that the complainant, apart from being a woman, is also of Kurdish descent and, as such, is part of a marginalized minority in the Islamic Republic of Iran that faces ill-treatment from both the regime and Iranian society. For this reason, the assessment of the human rights situation in the Islamic Republic of Iran today, as it applies to her case, cannot focus solely on the situation of women in the Islamic Republic of Iran, but must also take into account the situation of Kurds there too. The complainant references a Home Office report of the United Kingdom in which it is stated that Kurds in the Islamic Republic of Iran are subject to discrimination that negatively affects their access to basic services.<sup>22</sup> According to the report, politically active Kurds are subject to arbitrary arrests, prolonged detention and physical abuse by the Iranian authorities. The report also concludes that, where a person can demonstrate, to a reasonable degree of likelihood, that he or she is known or is likely to be made known to the Iranian authorities on the basis of membership or perceived membership of a Kurdish political group, the person should be granted asylum.

<sup>21</sup> *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.5.

<sup>22</sup> United Kingdom, Home Office, “Country Information and Guidance: Iran – Kurds and Kurdish political groups”, version 2.0 (London, July 2016), p. 7, available at [www.refworld.org/pdfid/578f67c34.pdf](http://www.refworld.org/pdfid/578f67c34.pdf).

8.2 The complainant submits that the fact that she did not apply for asylum until her husband declared his concerns about their relationship does not make her need for protection less viable or sincere. There was no need for her to seek protection until her husband threatened her. The complainant also submits that she was also living in a very threatening situation, in which her application for asylum would risk setting off her husband and placing her in even greater danger. This is corroborated by the fact that she sought and was afforded protection from her husband at a women's shelter.

8.3 The complainant further submits that her accounts have changed somewhat over time due to her changing situation and the escalation in the threats she received. Her story was also perhaps not as detailed or consistent as it might have been due to her stressful living situation and her fear of her husband and his family. However, regardless of her story and the State party's evaluation of it, the complainant stresses that the fact that she is divorced and has been granted protection from her ex-husband at a women's shelter, together with the relevant country information, must serve as the basis for the Committee's final assessment of the merits of the case.

8.4 The complainant rejects the State party's argument that she has submitted no evidence or reasoning in support of her allegations that her ex-husband accused her of infidelity and promiscuity and that he intended to disseminate intimate pictures of her to authorities in the Islamic Republic of Iran. She notes that it is far from unreasonable or even illogical that an abusive ex-husband, if he felt betrayed by his wife, would use his advantageous position to try to hurt her in various ways, as cases of abuse and manipulation of women in these types of situations are well documented. The complainant further notes that the same could be said about her risk of being subjected to ill-treatment due to her political affiliation. The State party's submission does not contribute anything new in this respect, apart from reiterating the conclusions of the domestic authorities, which did not necessarily provide a correct assessment.

8.5 The complainant concludes that there are several different factors in her situation that, when considered and assessed in conjunction, together with the dire situation that women and politically active Kurds today face in the Islamic Republic of Iran, ultimately must lead to the conclusion that she faces a personal, foreseeable and real risk of being subjected to torture in the Islamic Republic of Iran, and that her expulsion would therefore amount to a breach of article 3 of the Convention.

### **Issues and proceedings before the Committee**

#### *Consideration of the merits*

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

9.2 In the present case, the issue before the Committee is whether the removal of the complainant to the Islamic Republic of Iran would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture (refoulement). This includes torture or other ill-treatment at the hands of non-State entities, including groups that are unlawfully exercising actions that inflict severe pain or suffering for purposes prohibited by the Convention and over which the receiving State has no or only partial de facto control, or whose acts it is unable to prevent or whose impunity it is unable to counter.<sup>23</sup>

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to the Islamic Republic of Iran. In assessing that risk, the Committee must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the Islamic Republic of Iran. However, the Committee recalls that the aim of such determination is to establish whether the individual

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<sup>23</sup> Committee against Torture, general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 30.

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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

9.4 The Committee recalls its general comment No. 4 (2017), in which it stated, in paragraph 45, that it would assess “substantial grounds” and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of the Committee’s decision, would affect the rights of the complainant under the Convention in the case of his or her deportation.

9.5 The Committee notes the complainant’s claim that she will be ill-treated by her ex-husband’s family as well as by her own family because her ex-husband has accused her of infidelity and of living with another man in Sweden. The Committee also notes the State party’s submission that the complainant’s account is merely speculative and based on assumptions, and that the only concrete events on which the complainant’s fear are based are the visit to her parents’ house by her ex-husband’s brothers, certain attempts by his family to call her and her husband’s behaviour in Sweden while they lived together. The Committee also notes the State party’s argument that a threat of violence from close family members or the stigma or dishonour that someone may suffer from a divorce does not, according to the Convention, in itself constitute torture.

9.6 The Committee recalls that article 3 must be interpreted by reference to the definition of torture set out in article 1 of the Convention.<sup>27</sup> According to article 1, the term “torture” refers to any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

9.7 Furthermore, the Committee notes the complainant’s claim that, although the Iranian authorities are not aware of her membership in the Democratic Party of Iranian Kurdistan, her ex-husband or his family will reveal her membership to the authorities as revenge for having “dishonoured” them, and that once the authorities become aware that she is a member of the party, she will likely be arrested or at least interrogated, which means that she would face torture or sexual abuse, as they are common practice in the Islamic Republic of Iran. The Committee also notes that, since the Islamic Republic of Iran is not a party to the Convention, in the event of a violation of the complainant’s rights under the Convention in that State, she would be deprived of the legal option of recourse to the Committee for protection of any kind. In addition, the Committee takes note of the State party’s argument that the Migration Agency found that the complainant’s account was not credible and that she had not plausibly demonstrated that her political engagement was such that she would have been of interest to the authorities.

9.8 The Committee notes the complainant’s claim that she has been a member of the Democratic Party of Iranian Kurdistan since she was 18 years old, as well as the information contained in the certificate issued by the Party’s office in Paris stating that she left the Islamic Republic of Iran because of oppression by the regime due to her political activities. The Committee also notes, however, the objection by the State party to the effect that the complainant never presented this information before the Swedish authorities. According to the documents submitted by the State party, during her interview with the

<sup>24</sup> See, *M.S. v. Denmark* (CAT/C/55/D/571/2013), para. 7.3.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> General comment No. 4, para. 5; see also *G.R.B. v. Sweden*, para. 6.5.

Migration Agency, the complainant confirmed that there was nothing hindering her from returning to the Islamic Republic of Iran and that before leaving the country she had not had any problems with the Iranian authorities. The Committee further notes that, according to the authorities in the State party, the complainant's arguments that her ex-husband would interfere with her and spread false accusations in various ways are speculative and not supported by any evidence or factual events. For example, the complainant submits photographs of her family members and herself in the company of various members of the Democratic Party of Iranian Kurdistan as proof of her ties to the Party, but she does not state whether her husband knew about those photographs or how the Iranian authorities might have obtained them.

10. The Committee refers to paragraph 38 of its general comment No. 4, according to which the burden of proof is upon the author of the communication who has to present an arguable case. In the Committee's opinion, the complainant has not discharged that burden of proof. Furthermore, the complainant has not demonstrated that the authorities of the State party failed to conduct a proper investigation into her allegations.

11. The Committee therefore concludes that the complainant has not adduced sufficient grounds for it to believe that she would run a real, foreseeable, personal and present risk of being subjected to torture upon return to the Islamic Republic of Iran.

12. The Committee against Torture, acting under article 22 (7) of the Convention, concludes that the complainant's removal to the Islamic Republic of Iran by the State party would not constitute a breach of article 3 of the Convention.

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