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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. Communication No. 744/2016[**,**]

Submitted by:	H.A. (represented by counsel, Viktoria Nyström)
Alleged victim(s):	The complainant
State party:	Sweden
Date of complaint:	8 April 2016 (initial submission)
Date of adoption of decision:	11 May 2018
Subject matter:	Deportation to Iraq
Substantive issue(s):	Non-refoulement
Procedural issue(s):	Examination by another procedure of international investigation or settlement, level of substantiation of claims
Article(s) of the Convention:	3

[*] Adopted by the Committee at its sixty-third session (23 April – 18 May 2018).

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

GE.18-03928(E)

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

1.1 The complainant is H.A., an Iranian national of Kurdish ethnicity born on 24 December 1989 in Iraq. His asylum request in Sweden was rejected and he claims that his deportation to Iraq would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel, Viktoria Nyström.

1.2 On 29 April 2016, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to issue a request for interim measures.

1.3 On 31 January 2017, the Committee decided, in accordance with rule 115, paragraph 3, of its rules of procedure, to examine the admissibility of the complaint together with its merits.

Factual background

2.1 The complainant is an Iranian national of Kurdish ethnicity, born and raised in the Kurdistan Region of Iraq (KRI), where he lived in different refugee camps.[1] At an unknown date after the Iranian revolution of 1979, his family fled from Iran to Iraq because his father and grandfather belonged to the opposition party in Iran, the Kurdish Democratic Party of Iran (KDPI). His father and grandfather were among the founders of the party, and thus amongst the most well-known members of the party, and were both members of Peshmerga.[2] Growing up in such a family made the complainant himself being very active with the KDPI and having close relationships to some of the highest-level leaders within the KDPI. He himself has been the leader of the KDPI's youth wing[3] and also active in the party's choir. In that capacity, he allegedly appeared in newspapers, radio and TV as representing the party. The main reason why he fled to Sweden was his active involvement with the KDPI in Iraq. Even since moving to Sweden, the complainant has been active within the party.[4]

2.2 The complainant entered Sweden on 16 August 2012 and applied for asylum on 17 August 2012. He submitted that he was an Iranian citizen residing in Iraq but that, as an active member of the KDPI, his life would be in danger in Iran, and that he could not return to Iraq because he had no valid permit.

2.3 On 17 May 2013, the Migration Agency dismissed the complainant's request for residence and work permits and travel documents because he was deemed to be a refugee in Iraq. It therefore ordered his expulsion to Iraq.

2.4 On 20 June 2013, the Migration Court set aside the decision of the Migration Agency and referred the case back to the Agency for re-examination. The Court found that it had not been demonstrated that the complainant had been declared a refugee in Iraq or that he was entitled to the corresponding protection. There were thus no grounds for presuming such protection.

2.5 On 25 December 2013, the Migration Agency rejected the complainant's application for a residence permit and a work permit and decided not to grant him a refugee status

[1] According to the complainant, these refugee camps are run by the Kurdish Democratic Party of Iran (KDPI) and serve as a living place for many members of the KDPI and Peshmerga.

[2] The complainant submits that due to his membership in Peshmerga, his grandfather faced prison in such conditions that he lost one leg. He also pretends that, given his grandfather's engagement with the KDPI, Al-Jazeera made a documentary about him, as a key actor of the party.

[3] A letter issued on 16 August 2012 by the Leadership Committee of Democratic Youth Union of the East of Kurdistan certifies that the complainant is a member of that Union. The complainant also provided several pictures attesting his involvement with the party.

[4] A letter issued on 2 January 2013 by the Organization Department of the KDPI and addressed to the Swedish authorities certifies that the complainant's father and grandfather were active members of the party, being thus under "strict pressure by the Islamic Regime of Iran" and consequently, if the complainant would be deported, "he would, no doubt, face the danger of execution.".

declaration, a subsidiary protection status declaration or a status declaration as a person otherwise in need of protection. The Agency ordered his expulsion to Iraq if he could not show that other country can accept him and gave him four weeks to leave the country. In reaching that decision, the Agency considered that the complainant failed to prove or plausibly demonstrate his identity with the documents produced, which nonetheless proved that he has been resident in Iraq. Thus, in support of his identity, the complainant submitted Shenasnamehs for his alleged father and grandparents and an ID card issued by the KDPI in Iraq. The Agency held that since he had not submitted any ID documents that proved or plausibly demonstrated his identity, he could have not been linked to the submitted Shenasnamehs, which in any event alone could not prove his identity or even plausibly demonstrate it. Regarding the ID issued by the KDPI, the authorities noted that it lacked a data chip, fingerprints, hologram, security features or anything else that might have guaranteed its authenticity. Nor was it issued by a competent authority. It was therefore considered of a "simple nature" and was therefore accorded limited probative value in establishing his identity. The complainant was thus deemed to have neither proved nor plausibly demonstrated his identity through the submitted documents. The Agency found that the complainant has also not submitted any documentation to show or even imply that he was a citizen of Iran. It therefore declared that the complainant had not shown that he was either a citizen of Iran, or an Iranian refugee in Iraq, or a citizen of Iraq. In light of the information in the file, it found that the complainant was probably a resident in Iraq, reason why it examined the grounds for protection in relation to the prevailing conditions in Iraq. The Agency also noted that the complainant did not state in what way he had been personally threatened by the Iranian authorities, but simply referred to a threat of persecution on grounds of his engagement with the KDPI. It thus found that the complainant had not plausibly demonstrated that he encountered any problems in Iraq on grounds of race, nationality, political views, gender or sexual orientation.

2.6 The complainant appealed, alleging that he was not legally entitled to remain in Iraq, that the mere membership of the party entailed a risk of being subjected to abuses and also submitted evidence showing that the KRI did not guarantee refugees any level of security if individuals had political views and that it was well-known that the Iranian security services kill members of the opposition outside Iran and that they conduct extensive infiltration activities. He also contested the fact that the Migration Agency did not consider whether he was a member of the KDPI, which was a crucial question. The Migration Court heard two witnesses who confirmed that the complainant's family had long been politically active within the KDPI, that they were well-known within the party and that their involvement was well-known to the authorities in Iran.

2.7 On 9 October 2014, the Migration Court rejected the complainant's appeal against the decision of the Migration Agency. It held that the complainant had not plausibly demonstrated his identity and citizenship and also did not make acceptable efforts to obtain documents to support his identity; that the general situation in Iraq as such was not sufficiently serious to entitle an applicant to a residence permit; that the evidence did not show that through his membership of the KDPI[5] alone the complainant risked treatment constituting grounds for protection on return to Iraq; that he has not plausibly demonstrated that he was in need for protection vis-à-vis Iraq on the grounds that he had no legal right to remain in the country, given that he was born and grew up in the Iraqi Kurdistan, attended school in Iraq for fourteen years and his parents and siblings still live in Iraq; that the evidence was not sufficient to show that his fear of being subjected to treatment constituting grounds for protection in the form of persecution due to his political views was well-founded; and that there was no well-founded reason to assume that upon return he would risk being subjected to inhuman treatment or punishment on grounds of his political views.[6]

[5] The court found no reason to question the fact that the complainant was a member of the KDPI.

[6] Two judges submitted a dissenting opinion, considering that the complainant had plausibly demonstrated that he was a citizen of Iran and therefore the case should have been referred back to the Migration Agency to examine whether he had grounds for protection with respect to Iran.

2.8 The complainant appealed, but on 22 May 2015, the Migration Court of Appeal denied leave to appeal. Therefore, the decision to expel the complainant became final.

2.9 On 2 July 2015, the complainant submitted a request for Interim Measures to the European Court of Human Rights. On 17 July 2015, the European Court of Human Rights informed the complainant that his request for interim measures was rejected and that, the Acting President sitting in a single judge formation decided to declare his application inadmissible. The letter thus mentions that "[i]n the light of the material in its possession and in so far as the matters complained of are within its competence, the Court found that the admissibility criteria set out in articles 34 and 35 of the Convention had not been met."

2.10 On 15 June 2016, the complainant applied for residence permit, invoking impediments to enforcement of the expulsion decision and claiming reconsideration of his case, based on the existence of new facts. On 23 August 2016, the Migration Agency decided not to grant a residence permit according to Chapter 12, Section 18 of the Aliens Act or a re-examination of the case according to Chapter 12, Section 19 of the Aliens Act. The complainant did not appeal the decision to the Migration Court and he subsequently left Sweden.

The complaint

3.1 The complainant claims that his forcible return to the Islamic Republic of Iran or to the Republic of Iraq would constitute a breach by Sweden of article 3 of the Convention.

3.2 He submits that he would face a real risk of being subjected to treatment contrary to the Convention if he were deported to the Islamic Republic of Iran or to the Republic of Iraq, given that his strong connection with the KDPI makes him of great interest for the Iranian Government, because people like him lead the political movement forward and thus create problems for the Government. Political opponents in the Islamic Republic of Iran are frequently imprisoned, abducted, murdered or tortured, and members of the KDPI are particularly exposed to these kind of threats.[7] The Iranian authorities refer to KDPI as a terrorist group and the Ministry of Foreign Affairs reports that Kurds expressing themselves politically are likely to be arrested, imprisoned and tortured.[8]

3.3 The complainant fears that given that he belongs to a well-known and politically active family with strong connections with the KDPI leaders, he is at risk of being exposed to assaults whether residing in Iraq or in Iran. Iranian citizens move relatively freely within the KRI and a great number of KDPI members have already disappeared or killed in Iraq. The complainant considers that this implies that the border between Iran and Iraq does not hinder the Iranian Government from acting against dissidents who enter Iraq and that the Iraqi Government cannot provide protection for dissidents against the Iranian Government. He has been the leader of the KDPI youth wing and, as such, he has participated in TV and radio interviews on several occasions. He has also participated in all of the KDPI's convents and sang in the KDPI's choir. Thus, he is well-known to the Iranian Government due to his family history and his own connections with the KDPI.

3.4 The complainant also submits that the close relations between the Iraqi and the Iranian governments and the fact that members of the KDPI have neither citizenship nor residence denotes a lack of determination from the Iraqi authorities in protecting KDPI members. Even if he receives full protection within the refugee camp, which is not very likely, it is not reasonable to expect from him to spend the rest of his life in the camp area.

[7] The complainant refers to a report by the Danish Refugee Council, *Iranian Kurds*, September 2013, available at https://www.nyidanmark.dk/NR/rdonlyres/D82120CB-3D78-4992-AB57-4916C4722869/0/fact_finding_iranian_kurds_2013.pdf, which states that "low profile supporters of KDPI will be taken to detention and be kept there for few days. Sometimes, they are tortured during the interrogation to confess" (p. 17). He also cites a report by the United Kingdom Home Office, *Country Information and Guidance – Iran: Kurds and Kurdish political groups*, July 2016, available at http://www.refworld.org/docid/578f67c34.html, which assumes that "persons with a high political profile as well as human rights activists and those seeking greater recognition of their cultural and linguistic rights are targeted by the authorities because of their political opinion" (p. 6).

[8] However, the complainant does not provide any reference to these allegations.

Moreover, in Iraq, the risk of *refoulement* to Iran is very high in so far as members of the KDPI are considered to be threats to the security and treated accordingly. He thus risks torture, other inhuman treatment or even death. He further argues that if he is deported to Iraq, he will probably be sent to Iran, given that he is an Iranian citizen and that he has neither Iraqi citizenship nor a residence permit. This would imply severe and life-threatening consequences for him.

3.5 The complainant also considers that he has presented unquestionable evidence to the Swedish authorities that he and his family are Iranian citizens and members of the KDPI; that there is a risk for members of the KDPI to be subjected to assaults and torture by the Iranian regime; and that Iranian authorities have a right to reside in Iraq without a visa and have already killed and kidnapped members of the KDPI. Therefore, the burden of proof should fall on the Swedish authorities, but they nonetheless have not presented country information or other type of information that would contradict his submissions. Moreover, the Swedish authorities should have assessed the vast amount of documents presented as evidence cumulatively, not separately.

3.6 Regarding the decision of the European Court of Human Rights, the complainant argues that it is unclear that an examination has been performed or if there are other reasons why the Court has not considered the issue admissible. In view of the limited information in the Court's letter, the complainant considers that it cannot be assumed that the European Court has examined the matter in the way provided by article 22 of the Convention. By contrast, when the Court declared inadmissible another application,[9] it clearly stated that it did not disclose any appearance of a violation of the rights and freedoms set out in the European Convention or its Protocols. In his case, however, given the scarce information in the reply by the European Court, it is reasonable to assume that the matter has not been examined thoroughly because the reason for inadmissibility can be either procedural or substantive. Therefore, in the presence of such a limited and unclear motivation of the European Court's decision, the complainant concludes that it should not be used to his detriment because that decision does not involve the examination required to prevent the Committee from considering his case.

3.7 Finally, the complainant argues that when examining the admissibility of his case, the Committee should take into account the new evidence available since his application to the European Court, which proves the risks he faces. He therefore refers to reports attesting the growing influence of Iran in Iraq[10] and the Iraqi Government's treatment of camps' residents.[11] He states that the security situation in Iraq has deteriorated since he left the country and also since he applied to the European Court.[12]

State party's observations on admissibility and merits

4.1 On 29 June 2016 and 11 July 2017, the State party respectively submitted observations on the admissibility and the merits of the communication.

4.2 As to the facts of the communication, the State party submits that according to information from Norway[13] sent to the Swedish Migration Agency, the complainant lodged an application for asylum in Norway on 1 March 2017. On 7 March 2017, the Swedish Migration Agency received a request from Norway for transfer of the complainant back to Sweden in accordance with Regulation (EU) 604/2013.[14] The Swedish Migration Agency

[9] The complainant refers to the case of *Yakupova and others v. Sweden* (application no. 60300/14).

[10] Kenneth Katzman and Carla E. Humud, *Iraq: Politics and Governance*, Congressional Research Service, 9 March 2016, pp. 35-36, available at https://fas.org/sgp/crs/mideast/RS21968.pdf.

[11] The complainant cites the People's Mojahedin Organization of Iran and Kenneth Katzman, *Iran, Gulf Security, and U.S. Policy*, Congressional Research Service, 14 January 2016, available at https://www.everycrsreport.com/files/20160114_RL32048_7e5ae3f05cc484a2478ac62020fc56fa57a508a7.pdf.

[12] The complainant refers to https://lifos.migrationsverket.se/dokument?documentSummaryId=36927.

[13] No further information is provided.

[14] Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining

accepted the request on 10 March 2017. Then, according to information from Germany[15] sent to the Swedish Migration Agency, the complainant entered Germany on 24 May 2017 and applied for asylum on 7 June 2017. On 14 June 2017, the German authorities requested acceptance for transfer of the complainant back to Sweden in accordance with Regulation (EU) 604/2013. The Swedish Migration Agency accepted the request on 20 June 2017.

4.3 As far as the admissibility is concerned, the State party recalls that the complainant has previously lodged an application with the European Court of Human Rights, which was declared inadmissible. The State party submits that there is nothing in the complainant's submissions before the Committee to suggest that his application to the European Court concerned something else than his expulsion to Iraq. As to the complainant's argument that new information on the Iranian influence and the security situation in Iraq constitute new facts and that his complaint to the Committee should hence be considered a different matter than his application to the European Court, the State party considers that merely updated information on the situation in Iraq cannot be considered as new circumstances distinguishing the two complaints. Therefore, the application before the European Court relates to the same parties, the same facts, the same substantive rights and therefore the same matter as those invoked in the present complaint. In other words, the present complaint regards the same matter as the application previously lodged by the complainant with the European Court.[16]

4.4 Turning to the issue of whether the European Court 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 repeatedly considered that a communication has been examined by another procedure of international investigation or settlement if its decision was not solely based on mere procedural issues, but on reasons that indicate a sufficient consideration of the merits of the case.[17] After enumerating the admissibility criteria in articles 34 and 35 of the European Convention on Human Rights, the State party concludes that there is nothing in the complainant's submissions to indicate that his application to the European Court did not fulfil the criteria in article 34 of the European Convention. The complainant had exhausted domestic remedies before applying to the European Court; according to the European Court's case law, the six-month time limit does not de facto apply in cases concerning expulsion when the applicant has not yet been expelled;[18] and the complainant has not mentioned anything which would indicate that his application to the European Court was anonymous or substantially the same as a matter already examined by the Court or submitted to another procedure of international investigation. For the State party, the only inadmissibility grounds that remain are article 35 (3) (a) and (b) of the European Convention,[19] and it is clear from the wording of that Convention that an assessment of both these grounds must involve a sufficient consideration of the merits of the case.

4.5 Therefore, the State party claims that the European Court must have declared the complainant's application inadmissible for reasons relating to the substance of his application, rather than solely on mere procedural grounds. Under these circumstances, it

an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

[15] No further information is provided.

[16] *M.T. v. Sweden* (CAT/C/55/D/642/2014), paras. 8.3-8.4; *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.

[17] *M.T. v. Sweden*, paras. 8.3-8.5; *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.

[18] The State party quotes European Court of Human Rights, *P.Z. and others v. Sweden* (application No. 68194/10), decision of 29 May 2012, paras. 27-36, and *B.Z. v. Sweden* (application No. 74352/11), decision of 29 May 2012, paras. 24-34.

[19] Article 35 (3) (a) and (b) read as follows: "(a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

must be considered that the Court has examined the complaint within the meaning of article 22 (5) (a) of the Convention.[20] In the event that the Committee finds that the basis of the European Court's decision is unclear, the State party invites the Committee to contact the secretariat of the European Court in order to clarify this issue. The State party also deems it reasonable to request the complainant to disclose to the Committee a copy of the application to the European Court, in order to provide both the State party and the Committee with an opportunity to make an assessment on the reasons for the Court's decision of 17 July 2015 to declare the complainant's application inadmissible. The State party maintains that if the complainant does not present the said application to the Committee, it should be presumed that an assessment of the substance matter was made by the European Court.

4.6 The State party acknowledges that all available domestic remedies have been exhausted, but irrespective of the outcome of the Committee's examination of the issues relating to article 22 (5) (a) and (b), it considers that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of the Convention fails to rise to the basic level of substantiation required for the purposes of admissibility and is thus inadmissible pursuant to article 22 (2) of the Convention.

4.7 As to the merits of the communication, the State party considers that, according to article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds for believing that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. Such a pattern is not in itself a sufficient basis for concluding that an individual might be subjected to torture upon his or her return to his or her country. To benefit from the protection under article 3, an applicant should show that he or she would "personally" be at a "foreseeable and real risk" of being subjected to torture in the country to which he or she would be returned. Thus, when determining whether the forced return of the complainant to Iraq would constitute a breach of article 3 of the Convention, the following considerations are relevant: (i) the general human rights situation in Iraq and, in particular, (ii) the personal, foreseeable and real risk of the complainant being subjected to torture, following his return there.

4.8 The State party further recalls the Committee's jurisprudence, whereby the burden of proof in cases such as the present rests with the complainant, who must establish that he or she runs a foreseeable, real and personal risk of being subjected to torture.[21] In addition, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable, it must be "personal and present."[22]

4.9 As far as the general human rights situation in Iraq is concerned, the State party submits that since Iraq is a party to the Convention, it is assumed that the Committee is well aware of the general human rights situation in the country. The State party holds that, while it does not wish to underestimate the concerns that may legitimately be expressed with respect to the human rights situation in Iraq, recent reports and country information[23] do not

[20] *M.T. v. Sweden*, paras. 8.3-8.5; *A.A. v. Azerbaijan*, paras. 6.6-6.9; and *E.E. v. Russian Federation*, paras. 8.2-8.4.

[21] The State party refers to *H.O. v. Sweden* (CAT/C/27/D/178/2001), para. 13, and *A.R. v. the Netherlands* (CAT/C/31/D/203/2002), para. 7.3.

[22] The State party refers to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, paras. 5-7.

[23] The State party refers to UD, *Mänskliga rättigheter, demokrati och rättsstatens principer i Irak 2015-2016*, 26 April 2017 (http://www.regeringen.se/rapporter/2017/04/manskliga-rattigheter-demokrati-och-rattsstatens-principer-i-irak/); US Department of State, *Country Report on Human Rights Practices 2016 – Iraq*, 3 March 2017 (https://www.state.gov/j/drl/rls/hrrpt/2016/nea/265498.htm); Norge, Landinfo, Respons: *Iran: Økt kurdisk militæraktivitet i Iran*, 13 February 2017 (http://landinfo.no/asset/3501/1/3501_1.pdf); Swedish Migration Agency, Lifos, *Iranian Kurdish Refugees in the Kurdistan Region of Iraq (KRI) Report* (Lifos 25720,

demonstrate that the situation in Iraq is such that there is a general need of protection for asylum seekers from that country. Further, the current lack of respect for human rights in Iraq cannot in itself be sufficient to conclude that the complainant's forced return to Iraq would entail a violation of article 3 of the Convention. Accordingly, the complainant has to show the he personally would face a real risk of being subjected to treatment in violation of article 3 of the Convention upon return to Iraq.

4.10 As to the complainant's allegation that he would run a personal risk of being subjected to torture in Iraq, the State party submits that the Swedish migration authorities apply the same test in assessing the risk of being subjected to torture when considering an asylum application under the Swedish Aliens Act, as the Committee applies when examining a communication under the Convention. The State party adds that the expulsion of an alien may never be enforced to a country where there is fair reason to assume that the person would be in danger of receiving the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment of punishment, or to a country in which he or she would be in such danger. Moreover, the national authorities are in a very good position to assess the information submitted by an asylum seeker and to appraise his or her statements and claims. In the present case, the Migration Agency and the Migration Court conducted thorough examinations of the complainant's case. The extensive interviews with the complainant undertaken by the Migration Agency and the oral hearings held by the Migration Court were conducted in the presence of his legal counsel and an interpreter, whom the complainant confirmed that he understood well. The complainant had several opportunities to explain the relevant facts and circumstances in support of his claim and to argue his case, orally as well as in writing, before the Migration Agency and the Migration Court. The Migration Agency and the Migration Court therefore had sufficient information, facts and documentation in the case, to ensure that they had a solid basis for making a transparent and reasonable risk assessment of the complainant's need for protection in Sweden.

4.11 The State party further argues that the Committee is not an appellate, quasi-judicial or administrative body and that considerable weight should be given to findings of facts that are made by organs of the State party concerned.[24] By referring to the Committee's jurisprudence, it submits that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice.[25] The State party contends that such allegations of arbitrariness or denial of justice do not apply to the outcome of the domestic proceedings in the present case. Accordingly, the State party considers that great weight must be attached to the opinions of the national migration authorities, as expressed in their decisions ordering the expulsion of the complainant to Iraq. The State party concludes that the return of the complainant to Iraq would not amount to a violation of article 3 of the Convention.

4.12 The State party reiterates the position of the migration authorities, that the complainant has not plausibly demonstrated his identity or citizenship and has also not made sufficient efforts to obtain documents to support his identity and plausibly demonstrate that he is a citizen of Iran, that he is an Iranian refugee in Iraq registered by the UNHCR or, alternatively, that he is a citizen of Iraq. It further recalls that, according to

http://lifos.migrationsverket.se/dokument?documentSummaryId=33477); Human Rights Watch, *World Report 2017 – Iraq*, 12 January 2017 (https://www.hrw.org/world-report/2017/country-chapters/iraq); UK Home Office, *Country Information and Guidance – Iran: Kurds and Kurdish political groups*, July 2016 (http://www.refworld.org/pdfid/578f67c34.pdf); and Danmark, Udlændingestyrelsen, *Iranian Kurds; On Conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran; 30 May to 9 June 2013*, 30 September 2013 (https://www.nyidanmark.dk/NR/rdonlyres/D82120CB-3D78-4992-AB57-4916C4722869/0/fact_finding_iranian_kurds_2013.pdf).

[24] See, for example, *N.Z.S. v. Sweden* (CAT/C/37/D/277/2005), para. 8.6, and *S.K. and others v. Sweden* (CAT/C/54/D/550/2013), para. 7.4.

[25] See, for example, *G.K. v. Switzerland* (CAT/C/30/D/219/2002), para. 6.12.

country of origin information, to which reference has been made by the Swedish Migration Agency in its decision of 25 December 2013, Iranian refugees are provided with an Iraqi ID card and a residence permit.[26] The UNHCR has also issued a certificate to all Iranian refugees in the KRI with which the refugees are free to travel throughout Iraq. In addition to ID cards, Iranian refugees in Iraq hold a Public Distribution System (the food ration distribution system) card. According to that information, the cards held by Iranian refugees vary between different refugee camps, but there is no indication that some Iranian refugees would not having received at least one of the abovementioned cards. The Migration Agency also noted in its decision that it has been possible for Iranian citizens to receive Iraqi ID cards and Iraqi citizenship following long residence in the country.[27] Nonetheless, in that case, the complainant had, inter alia, submitted an ID card issued by the KDPI in Iraq, membership cards of the KDPI and certificates of studies from the KDPI, in support of his identity. As noted by the Migration Agency in the aforementioned decision, the ID card is of a simple nature as it lacks a data chip, fingerprints, hologram, security features or any other element that might guarantee its authenticity. Nor is the document issued by a competent authority. According to the Migration Agency, the complainant has neither proved nor plausibly demonstrated his identity through the documents he submitted, but they have been considered as evidence of his residence in Iraq. The State party shares the assessments made by the Migration Agency and by the Migration Court in respect of the complainant's identity and also the fact that his grounds for protection should be assessed in relation to Iraq, a country where the complainant has resided throughout his life.

4.13 As to the allegations that the complainant risks being subjected to torture by the Iranian authorities, which can easily find him in Iraq due to his and his family's membership of KDPI, the State party first notes that the complainant has not been subjected to any specific or personal threat by the Iranian regime. The State party however notes the complainant's argument that he has been indirectly subjected to a threat since other KDPI members who left the refugee facility have been murdered by Iranian agents and terrorist organisations linked to the Iranian regime. Secondly, even though there is no reason to question that the complainant is a member of the KDPI, this does not alone entail that he risks treatment constituting grounds for protection upon return to Iraq. Thirdly, when witnesses heard by the Migration Court declared that the complainant and his family were known to the authorities in Iran due to the paternal grandfather's and the father's political activities, and that the family was also known among active members of the KDPI in Iraq due to their longstanding political activities, the Migration Court did not contest the credibility of that information, but noted that the witnesses only described a threat to party members in Iraq in general terms. Finally, the complainant was born and grew up in the Iraqi Kurdistan, and attended school in Iraq for a total of fourteen years. His parents and siblings still reside in Iraq and his family have on several occasions been offered refugee status in Iraq by UNHCR, but have refused. The Migration Court found that nothing had emerged in the case to support the complainant's claim that he does not have a right to remain in Iraq. The State party shares the Migration Court's conclusion that the complainant has not plausibly demonstrated that he is in need of protection in Iraq on the ground that he does not have a legal right to remain in the country.

4.14 The State party further notes that the complainant, during the domestic asylum proceedings, has not stated in what way he has been personally subjected to threat by representatives of the Iranian authorities, but simply referred to a threat of persecution based on his engagement within the party. He was also not able to describe his duties within the party. Moreover, he admitted that he has never been convicted of a crime, arrested or detained. He has thus not been subjected to any kind of persecution on the part of the authorities. The State party therefore agrees with the conclusion of the domestic authorities that the complainant has not sufficiently demonstrated that his fear of being subjected to treatment that would constitute grounds for protection, in the form of persecution for his political views, is well-founded.

[26] *Iranian Kurdish Refugees in the Kurdistan Region of Iraq (KRI)* Report, cited above.

[27] The State party refers to *Concerning Iranian citizens who are long-term residents of Northern Iraq* Report, without providing further details.

4.15 The State party concludes that the complainant has failed to demonstrate that there are substantial grounds for believing that he would personally be at a foreseeable and real risk of being subjected to torture within the meaning of the Convention upon return to Iraq. Since the complainant's claim fails to attain the basic level of substantiation, the communication should be declared inadmissible as being manifestly unfounded. Should the Committee consider the communication admissible, the State party submits that an enforcement of the expulsion order against the complainant would not constitute a violation of article 3 of the Convention.

Complainant's comments on the State party's observations

5.1 On 4 August 2016 and 6 September 2017, the complainant submitted comments on the State party's observations. As to the State party's argument that the communication should be declared inadmissible because the European Court has already examined the same matter, the complainant reiterates that the Committee should examine the case because the information adduced after the inadmissibility decision issued by the European Court constitutes new information which was not examined by that Court and which proves the severe risk that he would face in the event of deportation. That information shows that Iran's influence over Iraq is increasing and also confirms that Iran has acted periodically against Iranian opposition groups based in Iraq and that the situation of the Iranian Kurds and members of the KDPI has deteriorated.

5.2 On the merits, after reminding that the prohibition of torture is absolute, the complainant assumes that it is less important that domestic authorities have had ample information at hand when making their decisions if the complainant is still at risk of being subjected to ill-treatment in breach of article 3 of the Convention upon return to Iraq. Considering that the very existence of a set of rules and procedures does not guarantee that their application is always correct, the complainant argues that State party's arguments are ineffectual, and that an examination of his complaint by the Committee is highly relevant.

5.3 As far as the evaluation of evidence is concerned, the complainant declares that a piece of evidence is not necessarily of less value just because it is "of a simple nature." The evidence must be seen and evaluated together with the applicant's story and other evidence, as well as known information about the country of origin. He deplores that it is somewhat symptomatic for the Swedish migration authorities to dismiss the evidentiary value of evidence such as passports, national ID cards and other forms of identification on the grounds of being "of a simple nature." He considers that evidence must be attributed a cumulative value, especially in cases where an applicant's credibility is not questioned, and recalls that neither the domestic migration authorities nor the State party have questioned his credibility regarding his membership of the KDPI or his and his family high involvement within the political sphere.

5.4 The complainant then highlights the evidence supporting his claims: a documentary by Al-Jazeera that focuses on his grandfather and his commitment as a political figure to the KDPI, and mentions the complainant by his name, making it clear that he is related to his grandfather; several certificates from the KDPI relating to his grandfather which, taken together, clearly establish an indisputable connection between the complainant and his well-known grandfather, and his connection with Iran. There is therefore little reason to question the authenticity of those documents, as well as his claim of need for protection.

5.5 Referring to the State party's assertion that Iranian refugees in the KRI normally receive Iraqi ID cards, residence permits and UNHCR cards, the complainant highlights that he has been in the KRI for a very long time, he was born there and his family moved there during the regime of Saddam Hussein, when such documents were not delivered to Iranian refugees who arrived in that region at that time. The complainant therefore considers that country information dated 2013 does not address his situation adequately. Even if he was in possession of such documents at some point, the fact that he has not presented them cannot lead to the conclusion that he is not a refugee from Iran, born in Iraq.

5.6 The complainant further insists that he has continued his political involvement as an active member of the KDPI during his stay in Sweden and, as already stated in domestic proceedings, he appeared on various occasions in the media. He must therefore be considered at risk of being subjected to ill-treatment based on his political affiliation and

status if forced to return to Iraq. This is corroborated by country information stating that politically active Iranian refugees in the KRI are at risk of receiving unwanted attention and threats from Iranian intelligence agencies, and that obtaining Iraqi citizenship does not change or decrease that risk.[28] The complainant also points to reports stating that Iranian authorities have the ability and power to secretly abduct people from the KRI across the border to Iran.[29]

5.7 In conclusion, the complainant claims that his need for protection stems from a well-founded fear of being subjected to treatments in breach of article 3 of the Convention. He submits that he must therefore be allowed to stay in Sweden.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a complaint, the Committee must decide whether it is admissible under article 22 of the Convention.

6.2 The Committee notes the State party's argument that the communication should be held inadmissible because it was already reviewed by another procedure of international investigation or settlement, the European Court of Human Rights. The Committee also notes the complainant's confirmation that he submitted an application to the European Court, but that he does not specify the issues raised in that complaint. The Committee also notes that, by letter dated 17 July 2015, the European Court informed the complainant that the acting President of the section in charge of reviewing his application, sitting in a single judge formation, had decided not to grant the requested interim measures, and had declared his application inadmissible insofar as the admissibility criteria established in articles 34 and 35 of the European Convention had not been met. The Committee further notes the complainant's claim that the European Court's decision dated 17 July 2015 provides very limited information and does not enable to identify the reasons why the Court, sitting in a single judge formation, declared the application inadmissible or to assess whether the Court conducted an examination of the substance of the complainant's case. The Committee also notes that, according to the author, this demonstrates that such examination did not take place.

6.3 The Committee considers that a complaint has been or is being examined by another procedure of international investigation or settlement if the examination by the other procedure related or relates to the same matter within the meaning of article 22 (5) (a) of the Convention, which must be understood as relating to the same parties, the same facts and the same substantive rights.[30]

6.4 The Committee notes that on 17 July 2015, the European Court of Human Rights, sitting in a single judge formation, declared inadmissible the application submitted by the complainant against the State party. The Committee also notes that in its decision, the European Court indicates only that the admissibility criteria set out in articles 34 and 35 of the European Convention on Human Rights had not been met, without providing any specific reason that had led the Court to reach its conclusion.

6.5 The Committee considers that in the present case, the succinct reasoning provided by the European Court of Human Rights in its decision of 17 July 2015 does not allow the Committee to verify the extent to which the Court examined the complainant's application,

[28] The complainant refers to Danish Immigration Service, *Iranian Kurdish Refugees in the Kurdistan Region of Iraq (KRI): Report from Danish Immigration Service's fact-finding mission to Erbil, Suleimaniyah and Dohuk, KRI, 7 to 24 March 2011*, June 2011, available at http://www.refworld.org/docid/4ece0db12.html, p. 18.

[29] The complainant refers to Danish Immigration Service, *Iranian Kurds: On Conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran - 30 May to 9 June 2013*, September 2013, available at http://www.refworld.org/docid/528dc7a74.html, p. 56.

[30] See, for example, *A.A. v. Azerbaijan*, para. 6.8; *E.E. v. Russian Federation*, para. 8.4; and *M.T. v. Sweden*, para. 8.3.

including whether it conducted a thorough analysis of the elements related to the merits of the case.[31]

6.6 Consequently, the Committee considers that it is not precluded from reviewing the present communication by virtue of article 22 (5) (a) of the Convention.

6.7 Finally, the Committee notes the State party's argument that the complaint should be held inadmissible as manifestly ill-founded. The Committee, however, considers that the complaint has been sufficiently substantiated for purposes of admissibility, because the complainant's allegations of a risk of torture or ill-treatment in case of his forced removal to Iraq raise issues under article 3 of the Convention. As the Committee finds no further obstacles to admissibility, it concludes that the communication is admissible.

Consideration of the merits

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

7.2 The issue before the Committee is whether the forced removal of the complainant to Iraq would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In that connection, the Committee notes that the complainant invokes a danger with respect to both Iraq and Iran. However, given that the Swedish authorities have ordered his removal to Iraq, the Committee will consider the present communication only in respect to that country.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon his return to Iraq. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[32]

7.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention, in which it states that "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation exist whenever the risk of torture is "foreseeable, personal, present and real."[33]. Normally, "the burden of proof is upon the author of the communication who has to present an arguable case – i.e. to submit circumstantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real."[34]. The Committee gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such

[31] See *S. v. Sweden* (CAT/C/59/D/691/2015), paras. 7.4 and 7.5.

[32] See, for example, *Y.B.F., S.A.Q. and Y.Y. v. Switzerland* (CAT/C/50/D/467/2011), para. 7.2; *R.S.M. v. Canada* (CAT/C/50/D/392/2009), para. 7.3; and *E.J.V.M. v. Sweden* (CAT/C/31/D/213/2002), para. 8.3.

[33] See the Committee's general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 11.

[34] Ibid., para. 38. Also see, for example, *N.T.W. v. Switzerland* (CAT/C/48/D/414/2010), para. 7.3, and No. 343/2008, *Kalonzo v. Canada* (CAT/C/48/D/343/2008), para. 9.3.

findings and instead has the power, provided by article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.5 The Committee notes the complainant's claim that his expulsion to Iraq would amount to a violation of article 3 of the Convention, as he would be exposed to a risk of torture or other ill-treatment by the Iranian authorities who are active in Iraq, based on his engagement with the KDPI, an opposition party. It also notes his claims that he is known to the Iranian authorities for his involvement with the KDPI; that there is a risk for members of the KDPI to be subjected to assaults and torture by the Iranian authorities, who have a right to reside in Iraq without a visa and have already killed and kidnapped members of the KDPI; and that the Iraqi authorities lack determination in protecting KDPI members. However, the Committee notes that, as stated by the State party, the complainant does not provide any information demonstrating that he has been subjected to any specific threat by the Iranian regime targeting him personally, but simply referred to a threat of persecution based on his engagement with the KDPI. It further notes the State party's conclusion that the complainant has failed to demonstrate that there are substantial grounds for believing that he would personally be at a foreseeable and real risk of being subjected to torture within the meaning of the Convention upon return to Iraq. Finally, the Committee takes note of the fact that the complainant has not plausibly demonstrated his identity or citizenship, but also that he does not contest that he was born, educated and lived in Iraq before coming to Sweden.

7.6 The Committee recalls its jurisprudence whereby the risk of torture must be assessed on grounds that go beyond mere theory, and indicates that it is generally for the complainant to present an arguable case.[35] In the light of the considerations above, and on the basis of all the information submitted by the complainant and the State party, including on the general situation of human rights in Iraq, the Committee considers that the complainant has not adequately demonstrated the existence of substantial grounds for believing that his return to Iraq would expose him to a real, specific and personal risk of torture, as required under article 3 of the Convention. Moreover, his claims do not establish that the evaluation of his asylum application by the Swedish authorities was clearly arbitrary or amounted to a denial of justice.

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

9. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Iraq by the State party would not constitute a breach of article 3 of the Convention.

[35] See, for example, *C.A.R.M. et al. v. Canada* (CAT/C/38/D/298/2006), para. 8.10; *Zare v. Sweden* (CAT/C/36/D/256/2004), para. 9.3; *M.A.K. v. Germany* (CAT/C/32/D/214/2002), para. 13.5; *S.L. v. Sweden* (CAT/C/26/D/150/1999), para. 6.3; and *N.B.-M. v. Switzerland* (CAT/C/47/D/347/2008), para. 9.9.