



**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 present decision:</i>	25 November 2016
<i>Subject matter:</i>	Admissibility
<i>Procedural issues:</i>	Communication under another procedure of international investigation or settlement
<i>Substantive issues:</i>	Risk of torture or ill-treatment in case of deportation, non-refoulement
<i>Article of the Convention:</i>	3

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 the State party would violate her rights under article 3 of the Convention if she was deported to the Islamic Republic of Iran. The complainant is represented by counsel, Ms. Viktoria Nystrom.

1.2 On 28 July 2015, pursuant to rule 114, paragraph 1, of its rules of procedure and in the light of the information provided by the complainant, 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 communication was being considered by the Committee.

1.3 On 28 January 2016, at the request of the State party, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication separately from the merits.

* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Claude Heller Rouassant, Jens Modvig, Sébastien Touzé and Kening Zhang.

The facts as presented by the complainant

2.1 The complainant married her now former 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 regular mental and physical abuse, including by beating and insulting her. They also threatened to send her back to the Islamic Republic of Iran. On one occasion, the abuse was so severe that she had to flee to one of her relatives in Uppsala.¹ She talked to a lawyer but decided not to file a complaint.

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 pronounced. 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 former husband, she decided to apply for asylum in Sweden. The day she went to the office of the National Migration Board to obtain information on the asylum application, a lawyer was appointed to represent her. Her former 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 former husband then started to send her messages saying that he loved her and wanted her back. As she did not reply, he threatened her by telephone and through friends, indicating that he would disseminate intimate pictures of her in the Islamic Republic of Iran and would spread the rumour that she had close relationships with men while in Sweden. Her former husband’s family visited her family in the Islamic Republic of Iran and said that she had dishonoured them and would be punished.

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 indicate that she is a sympathizer of the party and that if she was returned to the Islamic Republic of Iran, her life would be in danger.² She submits that she has been a member of the party since she was 18 years old, that her two brothers are also members of the party,³ and that they are both currently living in Denmark. They were granted asylum there because of the threats they received from the Iranian authorities as a consequence of their political affiliation.⁴ She claims that her third brother was killed as a result of his affiliation with the party.⁵

¹ No specific date is provided.

² The Democratic Party of Iranian Kurdistan office of international relations in Europe is located in Paris. A copy of the letters is provided.

³ 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, her life would be in danger.

⁴ The complainant provides copies of the 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.

⁵ 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.

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 former husband's family. The Board did not question her membership of 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 of Appeal rejected her appeal, considering that she had provided conflicting information regarding her relationship with her former 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 of 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 former husband's family. On an unspecified date, she appealed that decision before the Migration High Court of Appeal. The Court denied her a "review permit" (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 2015, that Court, through the acting President, sitting in a single judge formation, decided not to prevent her expulsion. It 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, the Court 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 former husband's family because he accused her of infidelity and of living with another man in Sweden. Indeed, she alleges that her former husband's family has declared that the family honour has been disrespected and that she must be punished, and that her former husband has intimate pictures of her, which may be considered 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 former husband comes from a very influential and powerful family. His father is an imam and has good contacts with the authorities, and his testimony will therefore 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,⁶ 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.⁷ She submits that people who commit honour crimes in the Islamic Republic of Iran are not punished.

⁶ The complainant refers to arts. 63 and 102 of the Islamic Penal Code.

⁷ No further information is provided in that regard.

3.2 The complainant indicates that the Iranian authorities are not aware of her membership of the Democratic Party of Iranian Kurdistan, as party members hide their militancy in order to avoid persecution. However, her husband or her husband's family would reveal her membership to the authorities as revenge for having "dishonoured" them. She also indicates that once the authorities were aware that she was a member of the party, she would be arrested or at least interrogated, which means that she would 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 be aware of her militancy in the party, as she has openly attended party meetings in Sweden.⁸ In that context, she refers to a report of the Ministry of Foreign Affairs, which states that Kurds who express themselves politically are likely to be arrested, imprisoned or tortured in the Islamic Republic of Iran.⁹ 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 granted residence permits and international protection.¹⁰ Furthermore, the complainant cites the Islamic Republic of Iran 2014 human rights report of the Department of State of the United States of America,¹¹ which contains information on the human rights violations suffered by women in the Islamic Republic of Iran.

State party's observations on admissibility

4.1 On 25 September 2013, the State party submitted its observations on the admissibility of the communication. It submits that, as the author has previously lodged an application with the European Court of Human Rights, her complaint should be held inadmissible under article 22 (5) (a) of the Convention. In that regard, the State party notes the complainant's claims that her application was merely a request for interim measures regarding the decision ordering her expulsion, pursuant to rule 39 of the European Court's rules of procedure. The State party also notes the complainant's argument that, as the European Court of Human Rights did not take "the matter to trial", it cannot be considered that the communication has been subject to judicial review by that Court. The State party therefore assumes that, according to the complainant, her application did not concern the same matter as the communication submitted to the Committee and that the European Court did not examine the substance of her application since it declared it inadmissible.

4.2 The State party recalls the Committee's jurisprudence wherein 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.¹² 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.

4.3 The State party indicates that, according to the Court's directions 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 European Convention provisions

⁸ The complainant attaches pictures of her with "very well known" representatives of the Democratic Party of Iranian Kurdistan taken at meetings held in Sweden.

⁹ No further information is provided on the report.

¹⁰ No further information is provided on the report.

¹¹ See www.state.gov/documents/organization/236810.pdf.

¹² The State party quotes communication No. 642/2014, *M.T. v. Sweden*, decision adopted on 7 August 2015, and the Committee's decisions on the communications cited therein.

alleged to have 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 to the European Court of Human Rights.¹³

4.4 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 solely based on mere procedural grounds, but on reasons that indicate a sufficient consideration of the merits of the case.¹⁴ The State party notes that, according to the complainant's submissions and the European Court's letter, 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 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 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.¹⁵ Therefore, in the State party's view, it is clear that the European Court of Human Rights 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.

4.5 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 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. Therefore, the State party considers that the European Court of Human Rights must have declared the complainant's application inadmissible for substantial rather than mere procedural grounds. Therefore, the State party contends that the European Court of Human Rights has already examined the same matter raised before the Committee, and concludes that the communication should be declared inadmissible pursuant to article 22 (5) (a) of the Convention.

¹³ The State party quotes *M.T. v. Sweden*; communications No. 305/2006, *A.R.A. v. Sweden*, decision adopted on 30 April 2007, paras. 6.1 and 6.2; and No.140/1999, *A.G. v. Sweden*, decision adopted on 2 May 2000, paras. 6.2 and 7.

¹⁴ The State party quotes *M.T. v. Sweden*; communications No. 247/2004, *A.A. v. Azerbaijan*, decision adopted on 25 November 2005, paras. 6.6-6.9; and No. 479/2011, *E.E. v. Russian Federation*, decision adopted on 23 May 2013, paras. 8.2-8.4.

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

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. She confirmed that she had applied to the European Court of Human Rights and had requested it to stop her deportation. She notes that the prohibition of torture is absolute and if the materials submitted in the context of her communication show that she would actually be subjected to torture upon return to the Islamic Republic of Iran, article 22 of the Convention should be ruled out, taking into account that no other procedure of international investigation or settlement has examined her case.

5.2 With regard to the European Court's decision 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 European Court's letter 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 European Court's letter, 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.

5.3 The complainant submits that, even if the Committee considers that the circumstances presented before both international mechanisms are the same, new circumstances arose in her case 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. She indicates that her former husband remarried without divorcing her, which demonstrates that he is still interested in her. She submits that by not divorcing her, he remains her "owner" and he can control her upon her return. Furthermore, the complainant is no longer living in a women's shelter, without the support of her husband or any other male. Such an independent way of living will have negative consequences upon her return to her country of origin,¹⁶ 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.

Additional submissions by the parties

6.1 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 taken place, 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 indicates 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.

6.2 On 23 March 2016, the State party indicated that it had no knowledge of the decision of the European Court referred to by the complainant (*Yakunova and others v. Sweden*) and that it had not seen the letter issued by the Court in that decision. The State party notes that the European Court of Human Rights can formulate its decision regarding the inadmissibility of an application in different ways, and it reiterates that in the complainant's case, it remains obvious that the European Court declared the application

¹⁶ No further information is provided on that matter.

inadmissible for reasons related to the substance of the claim and not solely on procedural grounds. The State party invites the Committee to contact the secretariat of the European Court of Human Rights in order to clarify that issue.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 The Committee notes that the State party contested the admissibility of the communication on the grounds that it had already been reviewed by another procedure of international investigation or settlement, the European Court of Human Rights. The Committee notes that the complainant confirmed that she had submitted an application to the European Court, in which she referred to the risk of torture and ill-treatment that she would face if she was returned to the Islamic Republic of Iran, in breach of article 3 of the European Convention on Human Rights. The Committee also notes that, by letter dated 10 February 2015, the European Court informed the complainant that the acting President of the section in charge of reviewing her application, sitting in a single judge formation, had decided not to grant the requested interim measures to prevent her removal to the Islamic Republic of Iran, and had declared her 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 10 February 2015 provides very limited information and does not enable the reader 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, which leads the complainant to assume that no such examination had taken place.

7.3 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.¹⁷

7.4 The Committee notes that on 10 February 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, and that the application referred to similar facts as those raised in the present communication. 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.

7.5 The Committee considers that in the present case, the succinct reasoning provided by the European Court of Human Rights in its decision of 10 February 2015 does not allow the Committee to verify the extent to which the Court examined the complainant's application, including whether it conducted a thorough analysis of the elements related to the merits of the case.¹⁸

¹⁷ 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.

¹⁸ See communication No. 584/2014, *Mozer v. Switzerland*, decision adopted on 13 May 2016, paras. 9.4 and 9.5.

7.6 Consequently, the Committee considers that it is not precluded by article 22 (5) (a) of the Convention from examining the present communication and concludes that it is admissible.

8. The Committee therefore decides:

(a) That the communication is admissible insofar as it raises issues under article 3 of the Convention;

(b) That the State party will be requested to provide supplementary observations on the merits of the communication within two months of the date of the present decision;

(c) That the State party's observations will be transmitted to the complainant for comments;

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