



# 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. 744/2016\*, \*\*

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

1.1 The complainant is H.A., a national of the Islamic Republic of Iran of Kurdish ethnicity born in Iraq in 1989. 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. The complainant is represented by counsel.

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, acting through its Rapporteur on new complaints and interim measures, decided to examine the admissibility of the communication together with its merits.

#### Factual background

2.1 The complainant is a national of the Islamic Republic of Iran of Kurdish ethnicity, born and raised in the Kurdistan Region of Iraq, where he lived in different refugee camps.<sup>1</sup> On an unknown date after the Iranian revolution of 1979, his family fled from the Islamic Republic of Iran to Iraq because his father and grandfather belonged to the Iranian opposition party, the Democratic Party of Iranian Kurdistan. His father and grandfather

\* Adopted by the Committee at its 63rd 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.

<sup>1</sup> According to the complainant, these refugee camps are run by the Democratic Party of Iranian Kurdistan and serve as a living place for many members of the party and the Peshmerga.



were among the founders of the party, and thus among its most well-known members, and were both members of the Peshmerga.<sup>2</sup> Growing up in such a family, the complainant was very active in the party and had close relationships with some of its highest-level leaders. He has led the party's youth wing<sup>3</sup> and is also active in its choir. In that capacity, he has allegedly appeared in newspapers and on radio and television representing the party. The main reason why he fled to Sweden was his active involvement with the party in Iraq. Even since moving to Sweden, the complainant has been active within the party.<sup>4</sup>

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 Democratic Party of Iranian Kurdistan, his life would be in danger in the Islamic Republic of Iran, and that he could not return to Iraq because he had no valid permit.

2.3 On 17 May 2013, the Swedish 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 declaration, a subsidiary protection status declaration or a declaration of status as a person otherwise in need of protection. The Agency ordered his expulsion to Iraq unless he could show that another country would accept him, and gave him four weeks to leave the country. In reaching that decision, the Agency considered that the complainant had failed to prove or plausibly demonstrate his identity with the documents produced, which nonetheless proved that he had been resident in Iraq. To prove his identity, the complainant submitted *shenasnamehs* (birth certificates) for his alleged father and grandparents and an identity card issued by the Democratic Party of Iranian Kurdistan in Iraq. The Agency held that, since he had not submitted any identity documents that proved or plausibly demonstrated his identity, it could not be verified that the submitted *shenasnamehs* related to him. In any event, those documents could not prove his identity or even plausibly demonstrate it. Regarding the identity card issued by the party, the authorities noted that it lacked a data chip, fingerprints, a hologram, security features or anything else that might have guaranteed its authenticity. Nor had it been issued by a competent authority. It was therefore considered to be of a "simple nature" and was accorded limited probative value in establishing the complainant's identity. The complainant was thus deemed to have neither proved nor plausibly demonstrated his identity through the submitted documents. Furthermore, the Agency found that the complainant had not submitted any documentation to show or even imply that he was a citizen of the Islamic Republic of Iran. It therefore declared that the complainant had not shown that he was either a citizen of the Islamic Republic of Iran, an Iranian refugee in Iraq or a citizen of Iraq. In the light of the information in the file, it found that the complainant was probably resident in Iraq, which was why it examined the grounds for protection in relation to the prevailing conditions in Iraq. The Agency also noted that the complainant had not stated in what way he had been

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<sup>2</sup> The complainant submits that his grandfather, owing to his membership of the Peshmerga, spent time in prison in such conditions that he lost one leg. He also claims that Al-Jazeera made a documentary about his grandfather's key role in the Democratic Party of Iranian Kurdistan.

<sup>3</sup> A letter issued on 16 August 2012 by the leadership committee of the Democratic Youth Union of Eastern Kurdistan certifies that the complainant is a member of that Union. The complainant also provided several pictures attesting to his involvement with the party.

<sup>4</sup> A letter issued on 2 January 2013 by the party's organization department and addressed to the Swedish authorities certifies that the complainant's father and grandfather were active members of the party and were therefore subjected to "strict pressure by the Islamic Regime of Iran" and that consequently, if the complainant were to be deported, "he would, no doubt, face the danger of execution".

personally threatened by the Iranian authorities, but had simply referred to a threat of persecution on the grounds of his engagement with the Democratic Party of Iranian Kurdistan. It thus found that the complainant had not plausibly demonstrated that he had encountered any problems in Iraq on the 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 and that his mere membership of the party entailed a risk of being subjected to abuses, and also submitted evidence showing that the Kurdistan Region of Iraq did not guarantee refugees any level of security if they had certain political views, and that it was well known that the Iranian security services killed members of the opposition outside the Islamic Republic of Iran and conducted extensive infiltration activities. He also drew attention to the fact that the Migration Agency had not verified that he was a member of the Democratic Party of Iranian Kurdistan, which was a crucial question. The Migration Court heard two witnesses, who confirmed that the complainant's family had long been politically active in the party, that they were well known within the party and that their involvement was well known to the authorities in the Islamic Republic of 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 or citizenship and had not made adequate efforts to obtain documents to support his identity; that the general situation in Iraq was not sufficiently serious to entitle an applicant to a residence permit; that the evidence did not show that, through his membership of the Democratic Party of Iranian Kurdistan<sup>5</sup> alone, the complainant risked treatment constituting grounds for protection on return to Iraq; that the complainant had 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 that country, given that he had been born and had grown up in the Kurdistan Region of Iraq and attended school in Iraq for 14 years and that his parents and siblings still lived in Iraq; that the evidence was not sufficient to show that the complainant's 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 the grounds of his political views.<sup>6</sup>

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, that Court informed the complainant that his request for interim measures had been rejected and that the acting President, sitting in a single-judge formation, had decided to declare his application inadmissible. The Court's letter states that, "in 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<sup>7</sup> had not been met."

2.10 On 15 June 2016, the complainant applied for a residence permit, invoking impediments to the 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 subsequently left Sweden.

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<sup>5</sup> The court found no reason to question the fact that the complainant was a member of the Democratic Party of Iranian Kurdistan.

<sup>6</sup> Two judges submitted a dissenting opinion, considering that the complainant had plausibly demonstrated that he was a citizen of the Islamic Republic of Iran and that the case should therefore have been referred back to the Migration Agency so that it could examine whether there were grounds for ensuring his protection with respect to that country.

<sup>7</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

### The complaint

3.1 The complainant claims that his forcible return to the Islamic Republic of Iran or to 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 to be deported to the Islamic Republic of Iran or to Iraq, given that his strong connection with the Democratic Party of Iranian Kurdistan makes him of great interest to the Government of the Islamic Republic of Iran, because people such as him advance the party's agenda 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 Democratic Party of Iranian Kurdistan are particularly exposed to these kinds of threats.<sup>8</sup> The Iranian authorities refer to the party as a terrorist group and the Ministry of Foreign Affairs reports that Kurds expressing themselves politically are likely to be arrested, imprisoned and tortured.<sup>9</sup>

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

3.4 The complainant also submits that the close relations between the Governments of Iraq and the Islamic Republic of Iran and the fact that members of the Democratic Party of Iranian Kurdistan have neither Iraqi citizenship nor Iraqi residence permits denotes a lack of determination on the part of the Iraqi authorities to protect party members. Even if the complainant receives full protection within a refugee camp, which is not very likely, it is not reasonable to expect him to spend the rest of his life in the camp area. Moreover, in Iraq, the risk of refoulement to the Islamic Republic of Iran is very high, insofar as members of the Democratic Party of Iranian Kurdistan are considered to be threats to security and are treated accordingly. The complainant 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 the Islamic Republic of Iran, given that he is an Iranian citizen and that he has neither Iraqi citizenship nor an Iraqi 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 Democratic Party of Iranian Kurdistan; that members of the party face a risk of being subjected to assault and torture by the Iranian regime; and that Iranian officials have a right to reside in Iraq without a visa and have already killed and kidnapped members of the party. Therefore, the burden of proof should fall on the Swedish authorities. However, they have not presented any country information or other information that contradicts the

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<sup>8</sup> The complainant refers to Danish Immigration Service and the Danish Refugee Council, "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", p. 17, which states that low profile supporters of the Democratic Party of Iranian Kurdistan are taken to detention and kept there for few days, and that sometimes, they are tortured during the interrogation to confess. He also cites United Kingdom, Home Office, "Country Information and Guidance, Iran: Kurds and Kurdish political groups" (July 2016), p.6, which states 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".

<sup>9</sup> However, the complainant does not provide any reference relating to these allegations.

complainant's submissions. Moreover, the Swedish authorities should have assessed the vast number 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 whether his case has been examined or whether 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 Court has examined the matter in the sense of article 22 (5) (a) of the Convention. By contrast, when the Court declared other applications inadmissible, it clearly stated that those applications did not disclose any appearance of a violation of the rights and freedoms set out in the European Convention on Human Rights or its Protocols. In the complainant's case, given the sparse information in the reply by the Court, it is reasonable to assume that the matter has not been examined thoroughly because the grounds for inadmissibility may be linked either to the procedure or to the merits. Therefore, given the limited and unclear motivation for the Court's decision, the complainant concludes that it should not be used to his detriment because it is not based on an examination of the matter in the sense of article 22 (5) (a) of the Convention.

3.7 Finally, the complainant argues that when examining the admissibility of his case, the Committee should take into account the new evidence provided since his application to the European Court of Human Rights, which proves the risks he faces. In that regard, he refers to reports attesting to the growing influence of the Islamic Republic of Iran in Iraq<sup>10</sup> and the treatment of camp residents by the Government of Iraq.<sup>11</sup> He states that the security situation in Iraq has deteriorated since he left the country, and also since he applied to the European Court of Human Rights.<sup>12</sup>

#### **State party's observations on admissibility and the merits**

4.1 On 29 June 2016 and 11 July 2017 respectively, the State party submitted observations on 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<sup>13</sup> sent to the Swedish Migration Agency, the complainant lodged an application for asylum in Norway on 1 March 2017. On 7 March 2017, the Migration Agency received a request from Norway for the transfer of the complainant back to Sweden in accordance with Regulation (EU) 604/2013 of the European Parliament.<sup>14</sup> The Migration Agency accepted the request on 10 March 2017. Subsequently, according to information from Germany<sup>15</sup> sent to the 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 the transfer of the complainant back to Sweden in accordance with Regulation (EU) 604/2013. The Migration Agency accepted the request on 20 June 2017.

4.3 As far as 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 Court concerned anything other 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 therefore be considered a separate matter to his application to the Court, the State party considers that merely updated information on

<sup>10</sup> Kenneth Katzman and Carla E. Humud, *Iraq: Politics and Governance* (Congressional Research Service, 2016), pp. 35–36.

<sup>11</sup> The complainant cites Kenneth Katzman, *Iran, Gulf Security, and U.S. Policy*, (Congressional Research Service, 2016).

<sup>12</sup> The complainant refers to <https://lifos.migrationsverket.se/dokument?documentSummaryId=36927>.

<sup>13</sup> No further information is provided.

<sup>14</sup> 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 an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

<sup>15</sup> No further information is provided.

the situation in Iraq cannot be considered new circumstances distinguishing the two complaints. Therefore, the application to the Court relates to the same parties, the same facts, the same substantive rights and 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 Court.<sup>16</sup>

4.4 Turning 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 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.<sup>17</sup> After considering 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 of Human Rights did not fulfil the criteria in article 34 of the European Convention. The complainant had exhausted domestic remedies before applying to the Court; according to the 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;<sup>18</sup> and the complainant has not mentioned anything that would indicate that his application to the 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 those set out in article 35 (3) (a) and (b) of the European Convention on Human Rights, and it is clear from the wording of that Convention that an assessment of both of those grounds must involve a sufficient consideration of the merits of the case.

4.5 Therefore, the State party claims that the European Court of Human Rights must have declared the complainant's application inadmissible for reasons relating to the substance of his application, rather than solely on procedural grounds. Under these circumstances, it must be considered that the Court has examined the complaint within the meaning of article 22 (5) (a) of the Convention.<sup>19</sup> In the event that the Committee finds that the basis of the Court's decision is unclear, the State party invites the Committee to contact the Registry of the European Court of Human Rights in order to clarify the issue. The State party also deems it reasonable to request the complainant to disclose to the Committee a copy of the application to the 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 that application to the Committee, it should be presumed that an assessment of the subject matter was made by the 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 meet 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

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<sup>16</sup> See *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.

<sup>17</sup> See *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.

<sup>18</sup> The State party cites European Court of Human Rights, *P.Z. and others v. Sweden* (application No. 68194/10), judgment of 29 May 2012, paras. 27–36; and *B.Z. v. Sweden* (application No. 74352/11), judgment of 29 May 2012, paras. 24–34.

<sup>19</sup> See *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.

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 being returned 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: (a) the general human rights situation in Iraq; and (b) in particular, the personal, foreseeable and real risk of the complainant being subjected to torture following his return to Iraq.

4.8 The State party further recalls the Committee’s jurisprudence, whereby the burden of proof in cases such as the present case rests with the complainant, who must establish that he or she runs a foreseeable, real and personal risk of being subjected to torture.<sup>20</sup> 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 criteria of being highly probable, it must be “personal and present”.<sup>21</sup>

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 concerns that may legitimately be expressed with respect to the human rights situation in Iraq, recent reports and country information<sup>22</sup> do not demonstrate that the situation in Iraq is such that there is a general need for protection for asylum seekers from that country. Furthermore, 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 that he, personally, would face a real risk of being subjected to treatment in violation of article 3 of the Convention upon his 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 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 when it is 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 or punishment, or to a country in which he or she is likely to 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 the complainant’s legal counsel and an

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> The State party refers to <https://www.regeringen.se/498eea/contentassets/a9e7029ea9ad40459cc7590ecca99264/irak---manskliga-rattigheter-demokrati-och-rattsstatens-principer-2015-2016.pdf>; United States of America, Department of State, “2016 Country Reports on Human Rights Practices: Iraq” (3 March 2017); [https://landinfo.no/asset/3501/1/3501\\_1.pdf](https://landinfo.no/asset/3501/1/3501_1.pdf); 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); Human Rights Watch, “World Report 2017: Iraq”, 12 January 2017; United Kingdom, Home Office, “Country Information and Guidance – Iran: Kurds and Kurdish political groups”, July 2016; and Danish Immigration Service and the Danish Refugee Council, “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”.

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 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 fact that are made by organs of the State party concerned.<sup>23</sup> 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.<sup>24</sup> 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 significant 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 or made sufficient efforts to obtain documents to support his identity and plausibly demonstrate that he is a citizen of the Islamic Republic of Iran; that he is an Iranian refugee in Iraq registered by the Office of the United Nations High Commissioner for Refugees; or, alternatively, that he is a citizen of Iraq. It further recalls that, according to country of origin information, to which reference was made by the Swedish Migration Agency in its decision of 25 December 2013, Iranian refugees are provided with an Iraqi identity card and a residence permit.<sup>25</sup> The Office of the United Nations High Commissioner for Refugees has also issued certificates to all Iranian refugees in the Kurdistan Region of Iraq, allowing them to travel freely throughout Iraq. In addition to identity cards, Iranian refugees in Iraq hold cards for the public food ration distribution system. According to the information provided, the cards held by Iranian refugees vary between refugee camps, but there is no indication that some refugees do not hold at least one of the above-mentioned cards. The Migration Agency also noted in its decision that it was possible for Iranian citizens to receive Iraqi identity cards and Iraqi citizenship following lengthy residence in the country.<sup>26</sup> Despite that, the complainant had submitted, inter alia, an identity card issued by the Democratic Party of Iranian Kurdistan in Iraq, party membership cards and academic certificates issued by the party in support of his identity. As noted by the Migration Agency in the aforementioned decision, the identity card is of a simple nature as it lacks a data chip, fingerprints, a 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 submitted, but they have been considered as evidence of his residence in Iraq. The State party agrees with the assessments made by the Migration Agency and by the Migration Court in respect of the complainant's identity and the fact that the grounds for his protection should be assessed in relation to Iraq, a country in which he 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 owing to his and his family's membership of the Democratic Party of Iranian Kurdistan, the State party first notes that the complainant has not been subjected to any specific or personal threat by the Iranian regime.

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<sup>23</sup> 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.

<sup>24</sup> See, for example, *G.K. v. Switzerland* (CAT/C/30/D/219/2002), para. 6.12.

<sup>25</sup> See Danish Immigration Service, "Iranian Kurdish refugees in the Kurdistan Region of Iraq (KRI)".

<sup>26</sup> The State party refers to a report entitled "Concerning Iranian citizens who are long-term residents of Northern Iraq", without providing further details.



However, the State party notes the complainant's argument that he has been indirectly subjected to a threat, since other party members who left the refugee facility have been murdered by Iranian agents and terrorist organizations linked to the Iranian regime. Secondly, even though there is no reason to question the fact that the complainant is a member of the Democratic Party of Iranian Kurdistan, this alone does not imply 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 the Islamic Republic of Iran owing to the paternal grandfather's and the father's political activities, and that the family was also known to be among the active members of the Democratic Party of Iranian Kurdistan in Iraq owing to its 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 Kurdistan Region of Iraq and attended school in Iraq for a total of 14 years. His parents and siblings still reside in Iraq and his family have on several occasions been offered refugee status in Iraq by the United Nations High Commissioner for Refugees, but have declined. The Migration Court found that nothing had emerged in the case to support the complainant's claim that he did not have the right to remain in Iraq. The State party supports the Migration Court's conclusion that the complainant has not plausibly demonstrated that he is in need of protection in Iraq on the grounds 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, did not state in what way he had been personally subjected to threat by representatives of the Iranian authorities, but simply referred to a threat of persecution based on his engagement with the Democratic Party of Iranian Kurdistan. Nor was he able to describe his duties within the party. Moreover, he admitted that he had never been convicted of a crime, arrested or detained. He has thus not been subjected to any kind of persecution by 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.

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 of Human Rights had 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 Court constitutes new information that was not examined by that Court and proves the severe risk that he would face in the event of deportation. That information shows that the influence of the Islamic Republic of Iran over Iraq is increasing, and also confirms that the Islamic Republic of Iran has acted periodically against Iranian opposition groups based in Iraq and that the situation of Iranian Kurds and members of the Democratic Party of Iranian Kurdistan has deteriorated.

5.2 On the merits, and having recalled that the prohibition of torture is absolute, the complainant assumes that, even if the domestic authorities have had ample information at hand when making their decisions, he 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 mere existence of a set of rules and procedures does not always guarantee that they are applied

correctly, the complainant argues that State party's arguments are ineffectual, and that an examination of his complaint by the Committee is highly pertinent.

5.3 As far as the evaluation of evidence is concerned, the complainant declares that the value of a piece of evidence is not necessarily diminished just because the evidence is "of a simple nature". It must be seen and evaluated together with the applicant's story and other evidence, as well as known information about the country of origin. The complainant deplores the fact that the Swedish migration authorities systematically dismiss the evidentiary value of evidence such as passports, national identity cards and other forms of identification on the grounds that they are "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 Democratic Party of Iranian Kurdistan or his and his family's considerable involvement in the political sphere.

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

5.5 Referring to the State party's assertion that Iranian refugees in the Kurdistan Region of Iraq normally receive Iraqi identity cards, residence permits and cards issued by the United Nations High Commissioner for Refugees, the complainant emphasizes that he has been in the Kurdistan Region of Iraq for a very long time, that he was born there and that his family moved there during the regime of Saddam Hussein, when such documents were not issued to Iranian refugees who arrived in the region. The complainant therefore considers that country information dated 2013 does not adequately relate to his situation. Even if he was in possession of such documents in the past, the fact that he has not presented them cannot lead to the conclusion that he is not an Iranian refugee who was born in Iraq.

5.6 The complainant further insists that he has continued his political involvement as an active member of the Democratic Party of Iranian Kurdistan during his stay in Sweden and, as already stated in domestic proceedings, has 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 Kurdistan Region of Iraq are at risk of receiving unwanted attention and threats from Iranian intelligence agencies, and that the acquisition of Iraqi citizenship does not alter or decrease that risk.<sup>27</sup> The complainant also points to reports stating that the Iranian authorities have the ability and power to secretly abduct people from the Kurdistan Region of Iraq and transport them across the border to the Islamic Republic of Iran.<sup>28</sup>

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

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<sup>27</sup> 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).

<sup>28</sup> The complainant refers to Danish Immigration Service and the Danish Refugee Council, "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).

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claim submitted in a communication, 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 has already been 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 that Court, but notes that he does not specify the issues raised in that complaint. Furthermore, the Committee notes that, in letter dated 17 July 2015, the 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 on Human Rights had not been met. The Committee further notes the complainant's claim that the Court's decision dated 17 July 2015 provides very limited information and does not clarify the reasons why the Court declared the application inadmissible or whether the Court had 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.<sup>29</sup>

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 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, including whether it conducted a thorough analysis of the elements related to the merits of the case.<sup>30</sup>

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

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 the 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 and proceeds with its consideration of the merits.

### *Consideration of the merits*

7.1 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.

<sup>29</sup> 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.

<sup>30</sup> See *S. v. Sweden* (CAT/C/59/D/691/2015), paras. 7.4 and 7.5.

7.2 In the present case, 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 or she 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 the Islamic Republic of 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 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. However, the Committee recalls that the aim of such determination is to establish whether the individual 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. 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.<sup>31</sup>

7.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, 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."<sup>32</sup> Normally, the burden of proof is upon the author of the communication, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real.<sup>33</sup> The Committee gives considerable weight to findings of fact made by organs of the State party concerned, while at the same time it is not bound by such 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 Democratic Party of Iranian Kurdistan, an opposition party. It also notes his claims that he is known to the Iranian authorities for his involvement with the party; that members of the party are at risk of being subjected to assault and torture by Iranian officials, who have a right to reside in Iraq without a visa and have already killed and kidnapped members of the party; and that the Iraqi authorities lack the determination to protect party members. However, the Committee notes that, as stated by the State party, the complainant has not provided any information demonstrating that he has been subjected by the Iranian regime to any specific threat that targets him personally, but has simply referred to a threat of persecution based on his engagement with the party. 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 and educated and lived in Iraq before going to Sweden.

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<sup>31</sup> 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; *E.J.V.M. v. Sweden* (CAT/C/31/D/213/2002), para. 8.3; and *S.L. v. Sweden* (CAT/C/26/D/150/1999), para. 6.3.

<sup>32</sup> See the Committee's general comment No. 4, para. 11.

<sup>33</sup> *Ibid.*, para. 38. See also, for example, *N.T.W. v. Switzerland* (CAT/C/48/D/414/2010), para. 7.3; and *Kalonzo v. Canada* (CAT/C/48/D/343/2008), para. 9.3.

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.<sup>34</sup> 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 human rights situation 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.

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<sup>34</sup> 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; and *N.B.-M. v. Switzerland* (CAT/C/47/D/347/2008), para. 9.9.