



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

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Item 6 of the provisional agenda

**Consideration of communications submitted under
Article 22 of the Convention**

Communication No. 691/2015**

Draft Recommendation proposed by the Rapporteur***

Submitted by: S (represented by counsel Viktoria Nystrom)

Alleged victim: The complainant

State party: Sweden

Date of complaint: 1 June 2015 (initial submission)

Date of present Decision: ... 2016

Subject matter: Admissibility of complaint

Substantive issues: Risk of torture or ill treatment in case of
deportation, non- refoulement

Procedural issues: Communication under another procedure of
international investigation or settlement;

Articles of the Convention: 3

* All persons handling this document are requested to respect and observe its confidential nature.

** The present document is being issued without formal editing.

*** The present report was submitted after the deadline in order to reflect the most recent information.



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

[*Note:* Explanatory footnotes in square brackets will be removed from the text of the final decision.]

Background

1.1 The communication was submitted on 1 June 2015 on behalf of S, an Iranian national born in March 1981.¹ Her claim for asylum in Sweden was rejected by the Swedish Migration Board on 27 June 2014. She claims that the State party would violate her rights under article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) if she is deported to Iran. The complainant is represented by counsel, Ms. Viktoria Nystrom.

1.2 On 28 July 2015, 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 to refrain from returning the complainant to Iran while her complaint is under consideration 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

The facts presented by the complainant²

2.1 The complainant married her now former husband in Iran on 7 October 2010. As the husband was already living in Sweden,³ he was not present during the ceremony and the marriage was conducted with a power of attorney. Shortly after, the complainant moved to Sweden, where she arrived on 30 October 2011 and got a temporary residence permit. The complainant indicates that after her arrival, her husband showed a “controlling side”, and that together with his sister, he subjected her to regular mental and physical abuse, including by beating and insulting her. She was also threatened to be sent back to Iran. On one occasion,⁴ the abuse was so severe⁵ that the complainant had to flee to one of her relatives in Uppsala. She talked to a lawyer but decided not to file a complaint.⁶

2.2 In June 2013, the complainant’s husband filed for divorce but later withdrew his application. In November 2013, he filed again for divorce without informing the complainant, and this time, the divorce was pronounced.⁷ After the divorce, the complainant’s temporary residence permit was not renewed by the Swedish authorities.

¹ Further information was provided on 21 July 2015.

² [This section has been prepared based on the original complaint and further submissions by the complainant, as well as the submissions of the State party].

³ The complainant does not indicate since when her former husband has been living in Sweden.

⁴ The complainant does not provide any details concerning the abuse.

⁵ The complainant does not provide any details concerning the abuse.

⁶ Pictures showing bruises on her arms are attached to the complaint.

⁷ The complainant does not indicate a specific date.

2.3 Given the consequences of the divorce and taking into account the threats that she was still receiving from her former husband, the complainant decided to apply for asylum in Sweden. The day she went to the National Migration Board to get information on the asylum application, a lawyer was appointed to represent her. The husband got very distressed about this fact and locked her in their bedroom during the night. She was so afraid of him that the next day, she went to the police⁸ and contacted her lawyer, who helped her move to a women's shelter.⁹ The former husband then started to send her messages saying that he loved her and wanted her back. As she didn't reply, he threatened her by phone and through friends, indicating that he would spread intimate pictures of her in Iran and would spread the rumor that she had close relationships with men while in Sweden. The family of the complainant's former husband visited her family in Iran saying that she had "dishonored" them and that she would be punished.

2.4 The complainant further claims to be a member of the Democratic Party of Iranian Kurdistan (KDPI) that is considered to be a terrorist group by the Iranian authorities. She submits two letters dated 29 April 2014 and 15 July 2015 by the KDPI's Office of International Relations in Europe which indicate that the complainant is a sympathizer of the KDPI and that if she is returned to Iran her life would be in danger¹⁰ She submits that she has been a member of the KDPI since she was 18 years old; that her brothers are also members of the party,¹¹ and that two of them are now living in Denmark where they were granted asylum because of the threats they suffered from the Iranian authorities as a consequence of their political affiliation.¹² The complainant further claims that her third brother was killed due to his affiliation with the KDPI.¹³

2.5 The complainant applied for asylum on 11 December 2013. On 27 June 2014, the Swedish Migration Board rejected her application.¹⁴ The Board considered that her story was lacking credibility and that she did not demonstrate that she would face a well-founded risk of honour-related violence upon her return to Iran, either by her family or her former husband's family. The Swedish Migration Board did not question her membership of the KDPI, but considered that she did not provide a reliable account of the persecution she would face in case of return to 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,¹⁵ considering that she had provided conflicting information regarding her relationship with her former husband, thus failing to show that she was exposed to such a level of violence that

⁸ [The complainant indicates that a copy of the decision to close the investigation related with this incident is attached to the complaint. However, such copy is not attached].

⁹ [The complainant indicates that she lived there for several months].

¹⁰ The KDPI's Office of International Relations in Europe is located in Paris. Copy of the letters is provided with the complaint.

¹¹ The complainant submits a letter dated 7 June 2001 by the KDPI's Office of International Relations in Europe in which it is indicated that her brother S. S is a sympathizer of the KDPI and that if he is returned to Iran her life would be in danger.

¹² The complainant provides copies of the passport, drivers licence and residence permits of her two brothers, S.S. and K.S., in Denmark. She also provides a copy of a certificate issued by UNHCR indicating that her brother S.S. was recognized as a refugee in 2001.

¹³ The complainant a copy of a list of "victims of terrorism by the Iranian State" issued by the KDPI's Office of International Relations in Europe in which her brother, K.S. is listed as a martyr. She also provides photos of her brother's funeral.

¹⁴ [Copy of the decision is in Swedish. A short summary in English has been provided].

¹⁵ [Copy of the decision is in Swedish. A short summary in English has been provided].

she could be granted a residence permit. Furthermore, it considered that one of the letters submitted by the complainant to prove her membership to the KDPI was of “low quality”. The Court further considered that the complainant had not proven that she risked being harmed by Iranian authorities, her family, or her former husband’s family. On an unspecified date, the complainant appealed this decision to the Migration High Court of Appeal. The Court denied a “review permit” (i.e. a leave to appeal) on 18 December 2014.¹⁶ The expulsion order therefore became executory. The complainant 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, the Court, through the Acting President sitting in a single judge formation, decided not to prevent the complainant’s expulsion and to declare the application inadmissible as “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 European Convention of Human Rights had not been met”.¹⁷

The complaint

3.1 The complainant claims that her deportation to 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, the complainant submits that she is afraid to be tortured or killed as, first, she fears to be ill-treated by her former husband’s family because he accused her of infidelity and of living with another man in Sweden. In this connection, the complainant alleges that her former husband’s family has declared that the family honor has been disrespected and that she must be punished; and that her former husband has intimate pictures of the complainant, which may be considered as evidence to accuse her of ‘promiscuous living’ and prostitution. The complainant also submits that she fears her own family, as they have declared that they are intending to punish her when she returns to Iran and that they would 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 contact with the authorities, and his testimony will therefore have more value than her own. A guilty verdict is therefore very likely if the complainant is arrested and charged in Iran. The complainant recalls that adultery is punishable under the Islamic Penal Code,¹⁸ and that the penalty is whipping, stoning, or even death. Honor killings and public punishment happen daily in the Kurdish areas in Iran.¹⁹ The complainant further submits that people who commit honour crimes in Iran are not punished.

¹⁶ [No summary in English of this decision was provided].

¹⁷ A copy has been provided by the complainant.

¹⁸ The complainant refers to articles 63- and 102 of the Islamic Penal Code. [Article 63 of the Code establishes that “Adultery is the act of intercourse, including anal intercourse, between a man and a woman who are forbidden to each other, unless the act is committed unwittingly”. Article 102 establishes that “The stoning of an adulterer or adulteress shall be carried out while each is placed in a hole and covered with soil, he up to his waist and she up to a line above her breasts].

¹⁹ No further information is provided in this regard. [However, according to the 2014 United States Department of State report on Iran provided by the complainant, women have received death sentences as a punishment for crimes such as adultery. See US Department of State, Iran 2014 Human Rights Report, available at <http://www.state.gov/documents/organization/236810.pdf>].

3.2 She further indicates that the Iranian authorities are not aware of her membership of the KDPI, as KDPI's members hide their militancy in order to avoid persecution. However, her husband or her husband's family would reveal her KDPI's membership to the authorities as a revenge for having "dishonoured" them. She further indicates that once the authorities are aware that she is a member of the KDPI, she would be arrested²⁰ or at least, interrogated, which means that she would face torture or sexual abuse, as it is a common practice in Iran.²¹ The complainant also maintains that given that Iranian authorities have extensive intelligence operations abroad, they may be aware of her militancy in the KDPI, as she has openly attended KDPI's meetings in Sweden.²² In this context, the complainant refers to a report of "the Ministry of Foreign Affairs" which states that Kurds expressing themselves politically are likely to be arrested, imprisoned or tortured in Iran. According to the UK Home Office report, a person who can show that he/she is a member or supporter of KDPI is at risk of persecution and should be granted a residence permit and international protection.²³ Furthermore, the complainant cites the 2014 US Department of State's country report on Human Rights practices in Iran,²⁴ which contains information on the human rights violations suffered by women in 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 the author has previously lodged an application with the European Court of Human Rights (ECHR), and that her complaint should therefore be held inadmissible under article 22 (5) (a) of the Convention. In this regard, the State party notes the complainant's claims that such application was merely a request for interim measures regarding the decision ordering her expulsion, pursuant to Rule 39 of the ECHR's Rules of Procedure. The State party further notes the complainant's argument that as the ECHR did not take "the matter to trial", it cannot be considered that the communication has been subject to judicial review by the ECHR. 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 ECHR did not examine the substance of her application since it declared her application inadmissible.

²⁰ [The complainant states that belonging to forbidden political movements is a crime in Iran. However, she does not provide further information on this matter].

²¹ No further details are provided on this matter.

²² The complainant attaches pictures of her with "very well known" representatives of the KDPI taken in meetings held in Sweden.

²³ No further information has been provided on the report referred to [In the 2016 UK Home Office report on Iran it is stated that "According to Amnesty International, levels of harassment of many Kurds, notably those active in civil society, has, in recent years, increased. Reports appear to suggest that officials from the Ministry of Intelligence (sometimes called Ministry of Information, in Farsi, Vezarat-e Ettela'at) may harass and intimidate activists in order simply to gain information which could be used against the individual at a later date, whether in respect to the individual targeted, or others that s/he may know, depending on the nature of their activities", UK Home Office, Country Information and Guidance Iran, July 2016. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539351/CIG_-_Iran_-_Background_Information_-_v3_0_-_July_2016.pdf].

²⁴ See US Department of State, Iran 2014 Human Rights Report, available at <http://www.state.gov/documents/organization/236810.pdf>.

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 relating to the same parties, the same facts, and the same substantive rights.²⁵ In this 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 Iran. It further points out that from the ECHR's letter to the complainant dated 10 February 2015, it is clear that she had submitted an application to the ECHR, including a request that the Court prevent her expulsion to Iran.

4.3 The State party indicates that according to the ECHR's Practice Directions concerning interim measures requests, the complainant must state the reasons on which his or her particular fears are based, the nature of the alleged risks, and the European Convention provisions alleged to have been violated.²⁶ Given that on 10 February 2015, the ECHR 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 the ECHR. The State party therefore finds it evident that the application to the ECHR and the request for interim measures submitted by the complainant must, like the present communication to the Committee, have concerned the risks that she would allegedly face if returned to Iran. The State party therefore concludes that the present communication concerns the same matter as the application previously lodged by the complainant to the ECHR.²⁷

4.4 With regard to the issue whether the ECHR 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 in 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.²⁸ The State party further notes that according to the complainant's submissions and the ECHR's letter, the ECHR 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 of 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 ECHR did not fulfill the criteria established by article 34 of the European Convention on Human Rights,²⁹ as it is evident from the

²⁵ The State party quotes Communication 642/2014, *M.T. vs. Sweden*, Decision adopted on 7 August 2015 and "the Committee's Decisions on the communications cited therein".

²⁶ [The State party provides a copy of the Practice Directions related to the request of interim measures by virtue of Rule 39 of its Rules of Procedure. Available at http://www.echr.coe.int/Documents/PD_interim_measures_ENG.pdf].

²⁷ The State party quotes Communication 642/2014, *M.T. vs. Sweden*, Decision adopted on 7 August 2015; Communication 305/2006, *A.R.A. vs. Sweden*, Decision adopted on 30 April 2007, paras 6.1 – 6.2; Communication 140/1999, *AG. Vs. Sweden*, Decision adopted on 2 May 2000, paras. 6.2 and 7.

²⁸ The State party quotes Communication 642/2014, *M.T. vs. Sweden*, Decision adopted on 7 August 2015; Communication 247/2004, *A.A. vs. Azerbaijan*, Decision adopted on 25 November 2005, paras. 6.6-6.9 and Communication 479/2011, *E.E. vs. Russian Federation*, Decision adopted on 23 May 2013, paras. 8.2-8.4.

²⁹ [Article 34 of the European Convention of Human Rights states: "The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective

facts of the case, that the decision concerning the complainant's expulsion had gained legal force and that she had exhausted the domestic remedies in 2014 before she submitted the application to the ECHR. In addition, according to the ECHR'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.³⁰ Therefore, in the State party's view, it is clear that the ECHR 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 further submits 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,³¹ and that the only remaining admissibility grounds to be considered are those established in article 35(3) (a) and (b).³² The State party submits that from the wording of the European Convention on Human Rights, it is clear that an assessment of both these grounds must involve a sufficient consideration of the merits of the case. Therefore the State party considers that the ECHR must have declared the complainant's application inadmissible for reasons relating to the substance of her application, rather than solely on mere procedural grounds. Therefore, the State party contends that the ECHR has already examined the same matter raised before the Committee in the present case, and concludes that the communication should be declared inadmissible pursuant to article 22 (5) (a) of the Convention.

Complainant's comments on the State party's observations

5.1 On 4 January 2016, the complainant submitted its comments to the State party's observations on the admissibility of the communication. She confirmed that she had applied to the ECHR and had requested to stop her deportation. She further 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 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.

exercise of this right"].

³⁰ [The State party quotes ECHR, Application 68194/10, P.Z. and others vs. Sweden, 29 May 2012; ECHR, Application 74352/11, B.Z vs. Sweden, 29 May 2012. In both cases the Court has decided to strike out the cases from the list, as the complainants did not risk expulsion and therefore there was not risk of a breach of article 3 of the European Convention on Human Rights. The Court further indicated that should a new asylum request by the applicants be rejected by the domestic authorities and courts, they have the opportunity to lodge a new application before the Court].

³¹ [Article 35(2)(a) and (b) of the European Convention of Human Rights state: "The Court shall not deal with any application submitted under Article 34 that (a) is anonymous; or (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information].

³² [Article 35(3)(a) and (b) of the European Convention of Human Rights state: "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that: (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].

5.2 With regard to the ECHR's decision of 10 February 2015, the complainant submits that it is unclear whether the single judge has examined the case, or on what reasons he/she based his/her decision to declare the application inadmissible. She further considers that, in light of the limited information provided in the ECHR's letter dated 10 February 2015, it cannot be assumed that the ECHR has examined the matter within the meaning of article 22 of the Convention. She also submits that given the limited information provided in the ECHR's letter, it is very likely that the ECHR 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.³³

5.3 The complainant further 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 ECHR, that demonstrate the risk she would face if returned to Iran. She indicates that her former husband remarried without divorcing her in Iran, and that this demonstrates that he is still interested in her. She submits that by not divorcing her, he remains her "owner" and 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 independent way of living will have negative consequences upon her return to her country of origin,³⁴ which make her complaint to the Committee different to the one she submitted to the ECHR, and should be considered as such by the Committee.

Further submissions by the parties

6.1 On 9 February 2016, the complainant informed the Committee that in the application 60300/14, *Yakunova and others vs. Sweden*,³⁵ the ECHR, sitting in single judge formation, found that no violation of the rights established in the European Convention of Human Rights had taken place, and declared the application inadmissible. The complainant notes that in *Yakunova and others vs. Sweden*, the ECHR indeed examined the substance of the case before declaring it inadmissible. She indicates that the ECHR 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 ECHR does not preclude the Committee to review the present communication.

6.2 On 23 March 2016, the State party indicates that it had no knowledge of the ECHR's decision referred to by the complainant - *Yakunova and others vs. Sweden* - and that it had not seen the letter issued by the ECHR in such decision. The State party notes that the ECHR can formulate its decision regarding the inadmissibility of an application in different ways, and reiterates that in the complainant's case, it remains obvious that the ECHR declared the application inadmissible for reasons related to the substance of the claim and not solely on procedural grounds. The State

³³ [The complainant states: "if the documents in the case show that S.S. would actually be subject to torture on her return, (...) should rule out article 22. If not the prohibition is only absolute as long as no other court has tried the case. The court therefore is obliged to investigate and examine the circumstances of the case before using article 22". It is unclear if the complainant refers to the Committee when she says "court"].

³⁴ No further information has been provided on this matter.

³⁵ [No more details were provided on this ECHR's decision. It was not possible to find such decision in the ECHR's website].

party invites the Committee to contact the ECHR's Secretariat in order to clarify this issue.³⁶

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a complaint, the Committee must decide whether or not 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 ECHR. The Committee notes that the complainant has confirmed that she had submitted an application to the ECHR, in which she had referred, as she does in the present communication, to the risk of torture or/and ill treatment that she would face if returned to Iran, in breach of article 3 of the European Court of Human Rights. The Committee also notes that by letter dated 10 February 2015, the ECHR informed the complainant that the Acting President of the Section in charge of reviewing her application, decided not to grant the requested interim measures that she is not deported to Iran, and that the Acting President sitting in a single judge formation decided to declare the application inadmissible, in so far as the admissibility criteria established in articles 34 and 35 of the European Convention of Human Rights had not been met. The Committee further notes the complainant's claim that the ECHR's decision dated 10 February 2015 provides very limited information that does not identify on what reasons the Court, sitting in a single judge formation, based its decision to declare 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 such examination had not 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), which must be understood as relating to the same parties, the same facts, and the same substantive rights.³⁷

7.4 The Committee notes that on 10 February 2015, the ECHR sitting in a single judge formation, declared inadmissible the application submitted by the complainant against the State party, and that such application referred to similar facts as those raised in the present communication. The Committee also notes that in its decision, the ECHR only indicates that the admissibility criteria set out in articles 34 and 35 of the European Convention of Human Rights had not been met, without providing any concrete reason that had led the Court to reach such conclusion.

7.5 The Committee considers that in the present case, the succinct reasoning provided by the ECHR in its decision of 10 February 2015, does not allow the Committee to verify to what extent it examined the complainant's application,

³⁶ [The Secretariat contacted the ECHR's Secretariat and was informed that it was not possible to obtain any information regarding the grounds of the inadmissibility decision in the complainant's case].

³⁷ See, for example, communications No. 247/2004, A.A. v. Azerbaijan, decision adopted on 25 November 2005, para. 6.8; No. 479/2011, E.E. v. Russian Federation, decision adopted on 24 May 2013, para. 8.4 and No. 642/2014, M.T. vs. Sweden, decision adopted on 7 August 2015, para. 8.3

including if it conducted a sufficient analysis of the elements related to the merits of the case.³⁸

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

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

³⁸ See communication 584/2014, Boris Mozer vs. Switzerland, decision adopted on 13 May 2016, paras. 9.4-9.5.