



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

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Committee against Torture

Communications Nos. 483/2011 and 485/2011

**Decision adopted by the Committee at its fifty-second session
(28 April–23 May 2014)**

<i>Submitted by:</i>	Mr. X and Mr. Z, both represented by Marjaana Laine of the Refugee Advice Centre
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Finland
<i>Date of complaint:</i>	14 November 2011 (initial submissions)
<i>Date of decision:</i>	12 May 2014
<i>Subject matter:</i>	Deportation to the Islamic Republic of Iran
<i>Procedural issues:</i>	–
<i>Substantive issues:</i>	Non-refoulement
<i>Articles of the Convention:</i>	3



Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-second session)

concerning

Communications Nos. 483/2011 and 485/2011

Submitted by: Mr. X and Mr. Z, both represented by Marjaana Laine of the Refugee Advice Centre

Alleged victims: The complainants

State party: Finland

Date of complaint: 14 November 2011 (initial submissions)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 May 2014,

Having concluded its consideration of complaints No. 483/2011 and No. 485/2011, submitted to the Committee against Torture by Mr. X and Mr. Z under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants and the State party,

Adopts the following:

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

1.1 The authors of the complaints dated 14 November 2011 and 16 November 2011 are siblings — Mr. X and Mr. Z, both Iranian nationals of Kurdish origin born in 1983 and 1984, respectively. Their asylum applications in Finland have been rejected and they risk deportation to the Islamic Republic of Iran. They claim that their deportation to the Islamic Republic of Iran would constitute a breach by Finland of article 3 of the Convention against Torture. The complainants are both represented by counsel, Marjaana Laine.

1.2 On 15 November 2011, the State party was requested, under rule 114, paragraph 1, (former rule 108, paragraph 1) of the Committee's rules of procedure (CAT/C/3/Rev.5), not to expel the complainants while their complaint was under consideration by the Committee. On 12 January 2012, the State party informed the Committee that it had taken the necessary steps to comply with the Committee's request for interim protection measures.

1.3 On 12 May 2014, pursuant to rule 111, paragraph 4, of its updated rules of procedure (CAT/C/3/Rev.6), the Committee decided to consider the present two communications jointly.

The facts as presented by the complainants

2.1 The complainants are brothers and are both Iranian nationals from Mahabad, belonging to the Kurdish minority. They both claim to have been politically active in the Islamic Republic of Iran, Iraq and Finland. They come from a politically active and high-profile family; their father and uncles have been members of the Komala party and have been persecuted because of their political opinions and activities. One uncle has been a *peshmerga* (armed Kurdish fighter) and another uncle has been a member of the Central Committee of the Komala party. Their father and one of their uncles are now Finnish citizens and have received residence permits in Finland because they needed international protection.

2.2 The complainants submit that, in 1999, when they were adolescents, they had to flee from the Islamic Republic of Iran with their family. The family sought asylum in Turkey. In 2003, their father travelled to Finland and received protection status there. The authors of both complaints and the rest of their family were returned to the Islamic Republic of Iran in 2004. Upon return, they were questioned by the Iranian authorities about the father's whereabouts and about their asylum application in Turkey. They were imprisoned for one month and had to pay fines because they had left the Islamic Republic of Iran illegally without obtaining prior authorization from the authorities.

2.3 The complainants claim that after their release they started their political activities in the Islamic Republic of Iran, also joining the illegal Komala party. Their tasks within the party consisted of distributing the party's leaflets and other materials.

2.4 On 23 June 2007, the complainants were arrested by the Ettela'at intelligence forces in the city of Mahabad. They were blindfolded and taken to a detention centre. They were kept there for about two months and were continuously interrogated about their father's and their relatives' political activities. The complainants were forced to confess that they belonged to the Komala party, provide information about the party's activities and reveal the names of other members. Between interrogations, they were both kept in solitary confinement for prolonged periods.

Alleged mistreatment of Mr. X

2.5 During his detention, Mr. X was constantly subjected to torture and was physically and verbally abused. His clothes were removed and he had cold water thrown on him. He was also burned with a hot implement to the point that he lost consciousness. The complainant was also suspended both from his hands and legs. The officers mistreated and tortured him, especially on the left part of his body, saying that, as he was a communist, he had to lose the left side of his body.

Alleged mistreatment of Mr. Z

2.6 During his detention, Mr. Z was beaten extensively on his head. He was also threatened with rape and death. At one point, he was tied to a stick, his legs were raised higher than the rest of his body, and he had water poured into his nose. The fingers of his left hand were injured and he was taken to hospital for surgery before being returned to the detention centre.

2.7 Both complainants further submit that, during their detention, they appeared three times before a court.¹ They were both charged and prosecuted for their membership and activities in the Komala party, for being communists and opponents of Islam, and for being so-called *mohareb* (enemies of God). After their third court appearance, they were taken to Mahabad prison, where they were detained for about a week. Thereafter they were released

¹ It is not clear from the submissions to which court the complainants are referring.

on bail, after their uncle had paid the equivalent of €45,000, until the next court hearing. After their release they fled to Iraq, where they stayed in a Komala *peshmerga* camp for one year and 16 days.

2.8 The complainants arrived in Finland on 4 October 2008 and applied for asylum the next day.² They submitted their original identity cards to the Immigration Service in order to prove their identities and provided a statement from the Komala representation abroad in support of their claim to have taken part in political activities. A medical certificate dated 8 December 2008 was also submitted by the complainants to the Immigration Service.³

2.9 On 5 May 2010, the Finnish Immigration Service rejected both asylum applications on the grounds that the accounts of the facts provided by the complainants were not credible and that the complainants had failed to produce any evidence in support of their allegations. The Immigration Service stated that the complainants had not provided any evidence to support their stories about their activities in the Komala party. On 2 July 2010, both complainants appealed to Helsinki Administrative Court.

2.10 In July 2010, Mr. X learned, via the Internet, that his friend and liaison person in the Komala party in the Islamic Republic of Iran, O. N., had been executed in the Islamic Republic of Iran the same month.⁴ Afraid, the complainants decided to flee from Finland, where their asylum applications had been rejected. They applied for asylum in Denmark. However, after having received information on the European Union Dublin Regulation procedure,⁵ they both returned voluntarily to Finland in November 2010.

2.11 Mr. X also submits that, on 4 February 2011 and 19 October 2011, two psychiatrists examined him and concluded that he continued to suffer from post-traumatic stress disorder and had symptoms consistent with severe depression. On 31 October 2011, a physiotherapist found that he suffered from pains in the right side of his groin and his left foot. According to the physiotherapist's statement, the pains could be attributable to the torture methods described by the complainant. Mr. Z submitted a statement from a general practitioner which indicates that, "overall, while the injuries seen now are very slight ... there is no reason to doubt that they could have been caused during a period of incarceration between April and May 2007, and torture suffered during the same period".

2.12 Both complainants have continued their political activities while in Finland. They have regularly attended demonstrations against the regime in the Islamic Republic of Iran, repeatedly demonstrating in front of the Iranian Embassy in Helsinki, including on 20 June 2011. They have carried banners, actively organized demonstrations and disseminated information about the Komala party's activities. Those clarifications were made available, on appeal, to Helsinki Administrative Court.

2.13 On 17 May 2011, Helsinki Administrative Court held an oral hearing and considered the complainants' case. Their appeal was rejected by three votes to one on 23 June 2011.

² It is not clear from the submission how the complainants ended up in Finland.

³ According to the medical report, Mr. X complained of pain in his left knee, particularly when it was bent. A scar was also discovered in the middle of the middle finger on his left hand and the author mentioned that, as a result, making a fist was painful. The doctor also noticed a large area of red skin at the base of Mr. X's big toe on his left foot and on his left knee, and stated that they were consistent with, for example, exposure to hot/icy water. According to the doctor, the author appeared to be in good mental health. Although the doctor concluded that the author's injuries were slight, he found no reason to doubt that they were the result of torture inflicted on the author in the way he described.

⁴ Mr. X claims that he mentioned O. N.'s name during his asylum interview with the Finnish Immigration Service.

⁵ Council Regulation (EC) 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

On 8 July 2011, the complainants applied to the Supreme Administrative Court for leave to appeal, with a request for interim protection measures. On 15 July 2011, the Supreme Administrative Court adopted a separate decision and suspended their deportation. However, the Supreme Administrative Court rejected their leave to appeal in a final decision of 26 October 2011. The complainants contend that all available domestic remedies have thus been exhausted. In the meantime, their deportation orders have entered into effect and could be enforced at any time.

The complaint

3. The complainants claim that their deportation to the Islamic Republic of Iran, where they have been tortured in the past and where, in their opinion, there are substantial grounds to believe that they would be subjected to torture again, would constitute a violation by Finland of their rights under article 3 of the Convention. They consider their claims credible and submit that their allegations are supported by documentary evidence, including regarding their political involvement with the Komala party, and by recent reports on the current human rights situation in the Islamic Republic of Iran.⁶

State party's observations on the merits

4.1 On 15 May 2012, the State party submitted its observations on the merits of the case. It recalls the facts of the case and also provides excerpts from relevant domestic legislation. The Aliens Act of the State party provides for the protection of the applicant if there is a "real risk of being subjected to serious harm".⁷ The law further defines "serious harm" as the death penalty or execution; torture or other inhuman or degrading treatment or punishment; and serious and individual threat as a result of indiscriminate violence in situations of international or internal armed conflicts.

4.2 The State party submits that protection from removal from the country is offered if the authorities are "convinced of the veracity of the application".⁸ The authorities make such a finding by taking into account the applicant's statements as well as "real time information of the circumstances ... obtained from various sources".⁹

4.3 The State party, after considering all the facts of the case, contends that its Immigration Service rejected the complainants' asylum applications as it found that the

⁶ The complainants refer to communication No. 357/2008, *Jahani v. Switzerland*, decision adopted on 23 May 2011, and to *R.C. v. Sweden*, European Court of Human Rights judgment of 9 June 2010. They also refer to several international sources on the situation of human rights in the Islamic Republic of Iran, such as *Country Advice: Iran 2009* published by the Australian Government Refugee Review Tribunal on 19 August 2010, available from www.refworld.org/publisher,AUS_RRT,,IRN,4ec4d1d72,0.html; a report of the Iranian Intelligence Service; *B.A. (Demonstrators in Britain - risk on return) Iran v. Secretary of State for Home Department*, CG [2011] UKUT 36 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 1 February 2011, available from www.refworld.org/docid/4d5a8c7d2.html; and United Kingdom: Home Office, "Operational guidance note – Iran", (IRAN OGN v6), 15 March 2011, available from www.refworld.org/docid/4d7f54a42.html. According to the reports, members and supporters of Kurdish opposition groups, such as Komala, are in real danger of being persecuted. Kurdish opposition groups suspected of separatist aspirations are brutally suppressed and individuals suspected of being members of those groups are arrested and imprisoned and some of them sentenced to death. Although the Iranian Constitution prohibits arbitrary arrest and detention, the prohibition is not respected. Suspected dissidents are frequently held in unofficial detention centres, and there are numerous credible reports alleging that members of the security forces and prison personnel torture detainees and prisoners.

⁷ Aliens Act (301/2004, amendments up to 549/2010 included) sect. 88 (1).

⁸ *Ibid.*, sect. 98 (3).

⁹ *Ibid.*, sect. 98 (2).

political activities of the complainants were described only superficially, without any supporting evidence. Similarly, regarding the accounts of torture, the judicial proceedings, the sentence and the complainants' release on bail, the complainants provided no evidence except their own account of events.

4.4 The State party concedes that there are major issues with the human rights situation in the Islamic Republic of Iran. It contends that members of the Komala party, which is illegal in the Islamic Republic of Iran, can be subject to strict measures. It submits, however, that the complainants failed to provide evidence of their membership of Komala. They provided a certificate of membership from the party's representative in Sweden, but the certificate does not in itself enable conclusions to be drawn about the complainants' position and activities, or the level of potential threat if their membership became known to the authorities in the Islamic Republic of Iran. Even if the information provided by the complainants is considered to be true, they cannot be regarded as high-profile members of the party and would not attract attention from the Iranian authorities if returned home.

4.5 The State party further submits that the medical statements the complainants presented to the authorities provide evidence of only minor injuries and do not definitively indicate whether the injuries resulted from torture or ill-treatment. The State party claims that the complainants in fact travelled to Finland to reunite with their family only, not because they were concerned about being tortured in the Islamic Republic of Iran.

4.6 It further notes that, under article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing 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. With reference to the Committee's general comment No. 1 (1996) on the implementation of article 3, the State party adds that the complainants must establish the existence of a personal, present and real risk of being subjected to torture upon return to the country of origin. The existence of such a risk must be assessed on grounds that go beyond mere theory or suspicion. Additional grounds must exist for the risk of torture to qualify as real.¹⁰ The following elements must be taken into account to assess the existence of such a risk: evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of origin; allegations of torture or ill-treatment sustained by the author in the recent past and independent evidence thereof; political activity of the author within or outside the country of origin; evidence as to the credibility of the author; and factual inconsistencies in the claim of the author.¹¹

4.7 The State party refers to the jurisprudence of the European Court of Human Rights, which also refers to the personal nature of risk necessary to trigger protection under the European Convention on Human Rights.¹² The State party submits that there is no indication in the present case that the complainants are currently wanted by the Iranian authorities.

4.8 As to the statements from the two psychiatrists and the physiotherapist who treated Mr. X, the State party recalls that the statements were not made available to the Supreme Administrative Court. Mr. X provided the court with one medical statement only, dated 8 December 2008. According to that statement, the cause of his injuries cannot be definitively determined, and, in any event, the new medical statements do not add any new or significant evidence warranting a different assessment of the case.

¹⁰ General comment No. 1 (1996) on the implementation of article 3, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr. 1)*, annex IX, paras. 6 and 7.

¹¹ *Ibid.*, para. 8.

¹² The State party refers to *Vilvarajah and Others v. the United Kingdom*, European Court of Human Rights, judgment of 30 October 1991.

Complainants' comments on the State party's observations

5.1 On 21 August 2012, in their comments on the State party's observations, the complainants submitted that there are no contradictions between the statements from the medical doctors and those of the complainants themselves. They also claim that they both made every effort to provide and clarify all the necessary evidence to corroborate their accounts.

5.2 The complainants agree that they cannot be regarded as high-profile members of the Komala party. However, they refer to the "Operational guidance note – Iran" published by the United Kingdom Home Office, which states that "applicants who are able to demonstrate that they are members or supporters of ... Komala ... and who are known to the authorities as such, will be at real risk of persecution".¹³

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the present case, the State party has recognized that the complainants have exhausted all available domestic remedies. Accordingly, the Committee finds no further obstacles to admissibility, it declares the communication admissible and proceeds with its examination on the merits.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all the information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the complainants to the Islamic Republic of Iran would violate the State party's obligation under article 3 of the Convention not to expel or 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. The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture upon return to the Islamic Republic of Iran. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not of itself constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country. The aim of such a 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 return.

¹³ See note 6 above.

7.3 The Committee notes that the State party itself has recognized that the human rights situation in the Islamic Republic of Iran constitutes a matter of concern and that prominent political opponents of the regime are at risk of torture there. The Committee recalls its own findings regarding the extremely worrisome human rights situation in the Islamic Republic of Iran, particularly for individuals of Kurdish ethnicity, since the elections held in the country in June 2009.¹⁴ In that regard, the Committee takes into consideration the 2014 report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (A/HRC/25/61), which cites the persecution, imprisonment and execution of members of the Kurdish minority “in the absence of fair trial standards” (paras. 45, 47, 51, 82 and 83). The Committee also notes the 2014 report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran (A/HRC/25/26), which states that several Kurdish prisoners were allegedly executed after having been sentenced to death for charges including *moharebeh* (enmity against God) and for alleged links to political parties, including Komala (para. 9).

7.4 The Committee also recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being “highly probable” (para. 6), the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.¹⁵ The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case (para. 9).

7.5 The Committee takes note of the conclusions of two psychiatric examinations as well as the physiotherapist’s statement regarding Mr. X, who, according to a medical doctor’s conclusion, suffers from post-traumatic stress disorder. The second complainant, Mr. Z, adduced a statement from a general practitioner who finds that “while the injuries seen now are very slight ... there is no reason to doubt that they could have been caused during a period of incarceration between April and May 2007” as described by Mr. Z. The Committee takes note of the submission by the State party that the injuries indicated in the medical statements are only minor and that the medical documentation in question does not establish, beyond reasonable doubt, whether the injuries were the consequence of torture or ill-treatment. The Committee observes, however, that the medical certificate provided by Mr. X states that the complainant’s medical symptoms are “compatible with the symptoms” of someone who has suffered torture. It also considers that the State party, in the light of those doubts, could have ordered an additional examination of the complainant in order to reach a fully informed conclusion on the matter.

7.6 The Committee notes that both complainants provided certificates of membership of the Komala party, issued by the party’s office in Sweden. It also notes that the State party is not disputing the fact that the complainants are part of a politically active and high-profile family, as their father and uncles have also been active in the Komala party and have been persecuted by the Iranian authorities for their political views. The Committee observes that, owing to the complainants’ political activities, their family connections to political opposition activists, as well as their previous imprisonment, and notwithstanding the time elapsed since their departure from their country of origin, they are most likely to attract the

¹⁴ See communications No. 357/2008, *Jahani v. Switzerland*, decision adopted on 23 May 2011, para. 9.4, and No. 381/2009, *Faragollah et al v. Switzerland*, decision adopted on 21 November 2011, para. 9.4.

¹⁵ See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

attention of the authorities upon return to the Islamic Republic of Iran, thus significantly increasing the risk of them being arrested, tortured and sentenced to death, if returned.

7.7 Consequently, and in the light of the general human rights situation in the Islamic Republic of Iran, which particularly affects members of the opposition, and in view of the complainants' political activities in both the Islamic Republic of Iran and abroad, their previous imprisonment and detailed description of torture and ill-treatment suffered there, supported by substantiating elements adduced as proof thereof by the complainants, such as medical documentation, the Committee considers that the material before it is sufficient to conclude that there are substantial grounds for believing that the complainants risk being subjected to torture if returned to the Islamic Republic of Iran.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that there are substantial grounds for believing that the complainants would face a foreseeable, real and personal risk of being subjected to torture by government officials if returned to the Islamic Republic of Iran. The Committee therefore concludes that the deportation of the complainants to the Islamic Republic of Iran would amount to a breach of article 3 of the Convention.

9. The Committee is of the view that the State party has an obligation to refrain from forcibly returning the complainants to the Islamic Republic of Iran or to any other country where they run a real risk of being expelled or returned to the Islamic Republic of Iran. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken in response to the present decision.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
