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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Decision adopted by the Committee under article 5 of the Optional Protocol, concerning Communication No. 60/2019[*,**,***]

Communication submitted by:	N.L. (represented by counsel Ms. Linnea Midtsian)
Alleged victim:	The author
State party:	Sweden
Date of communication:	10 May 2019 (initial submission)
Document references:	Special Rapporteur's rules 64 and 70 decision, transmitted to the State party on 21 May 2019 (not issued in document form)
Date of adoption of views:	28 August 2020
Subject matter:	Deportation to Iraq
Procedural issues:	Substantiation of claims; admissibility *ratione materiae*
Substantive issues:	Right to life; freedom from cruel, inhuman or degrading treatment; discrimination based on gender; equal recognition before the law
Articles of the Convention:	6, 10, 12 and 15
Articles of the Optional Protocol:	1, 2 (e)

[*] Adopted by the Committee at its twenty-third session (17 August – 4 September 2020).

[**] The following members of the Committee participated in the examination of the communication: Ahmad Al Saif, Danlami Umaru Basharu, Monthian Buntan, Imed Eddine Chaker, Gertrude Oforiwa Fefoame, Mara Cristina Gabrilli, Amalia Gamio Ríos, Jun Ishikawa, Samuel Njuguna Kabue, Miyeon Kim, László Gábor Lovaszy, Robert George Martin, Dmitry Rebrov, Jonas Ruskus, Markus Schefer, Risnawati Utam.

[***] An individual opinion by Committee member László Gábor Lovaszy (dissenting) is annexed to the present Views.

GE.20-08174(E)

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1.1 The author of the communication is N.L., a national of Iraq born in 1961. Her application for asylum has been rejected by the State party. She claims that, by deporting her to Iraq, the State party will violate her rights under articles 6, 10, 12 and 15 of the Convention. The Optional Protocol entered into force for the State party on 14 January 2009. The author is represented by counsel.

1.2 On 21 May 2019, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, issued a request for interim measures under article 4 of the Optional Protocol to the Convention, requesting the State party to refrain from deporting the author to Iraq pending the examination of the communication by the Committee.

A. Summary of the information and arguments submitted by the parties

The facts as submitted by the author

2.1 The author notes that she has been diagnosed with depression with psychotic features. She has been committed twice under the Swedish Compulsory Psychiatric Care Act[1], after experiencing hallucinations and suicidal ideation. She claims that there would be a serious risk to her life and health if she were to be removed to Iraq, as she would be unable to access essential medical care. She further notes that she has been diagnosed with diabetes and high blood pressure.

2.2 The author arrived in Sweden on 13 March 2013. In her claim for asylum, she stated that she was in need of international protection, as she had had a relationship in Iraq with a man of whom her family disapproved and she had received death threats from her relatives because of said relationship. The Migration Agency denied her application for asylum on 14 February 2017, finding her statements to be lacking in credibility. The Migration Court rejected her appeal on 28 April 2017. The Migration Court of appeal rejected her application for leave to appeal on 29 June 2017.[2]

2.3 After the expulsion order against the author became final, she applied for impediment of enforcement of the deportation order against her to the Migration Agency. She stated that her health had deteriorated as she was diagnosed with diabetes and high blood pressure. She also claimed that she suffered from a sleeping disorder and anxiety and that she had "started to think that death was the only solution". The Migration Agency denied her application on 15 January 2018. The Agency found that it had not been substantiated that the author suffered from severe and life-threatening mental or physical illness. The author appealed the decision to the Migration Court, which dismissed the appeal on 12 February 2018. The Migration Court of Appeal decided not to grant leave to appeal on 16 March 2018.

2.4 On 25 April 2018, the author submitted a second application for impediment of enforcement of the deportation order against her to the Migration Agency. In her application, she stated that her mental health had deteriorated further. She submitted a medical certificate from a psychologist, dated 29 January 2018, according to which she was undergoing treatment for "severe depressive- and anxiety problems, sleeping disorders, nightmares, flashbacks, suicidality and signs of incipient apathy". It was noted in the report that the triggering factor for her severely deteriorating mental health was that she had received negative decisions on her asylum applications from the Migration Agency. The author stated that she had initially been able to handle her underlying traumatic experiences from Iraq when arriving in Sweden, as she had felt relieved to be in a more secure environment. She had learned Swedish quickly and was looking forward to working as a teacher. However, after the expulsion decisions her mental illness became worse and acute. She notes that, according to a medical certificate dated 31 January 2018, her condition was "assessed to decrease further and lead to severe life-threatening complications" if she were to be removed

[1] The author notes that a person may be committed under the Compulsory Psychiatric Care Act if a senior psychiatrist makes the assessment that the person in question: "(1) suffers from a serious mental disorder; (2) has an essential need for psychiatric care, and (3) opposes offered psychiatric care or is assessed not to be able to receive care with consent."

[2] The author notes that the claims she raised in her initial application for asylum is not the subject matter of her complaint before the Committee.

to Iraq. In an additional medical certificate dated 4 April 2018, the author was noted to have been diagnosed with a severe depressive episode with psychotic features, following which she was admitted for psychiatric care under the Compulsory Psychiatric Care Act on 2 March 2018, as it was suspected that she suffered from depression with a high risk of suicide.

2.5 On 16 October 2018, the Migration Agency denied the author's second application for impediment of enforcement of the deportation order against her. It noted that in order to grant an adult a residence permit on medical grounds, the medical condition needed to be severe and satisfactorily documented. In cases where it is stated that a suicide risk exists, an assessment has to be made as to whether this is due to "self-destructive acts" or whether such statements have been made because of "severe mental illness shown in a psychiatric evaluation." The Agency noted that severe self-destructive acts or statements made by a person can lead to the granting of a residence permit. It noted that acts or statements of that kind can however in some cases be seen more as expressions of disappointment or despair after a received expulsion decision, rather than an indication of severe mental illness. The Agency concluded that, in those kinds of cases, the acts or statements could not be given the same weight when assessing an application for a residence permit. The Migration Agency further noted that the author did not invoke mental illness when her case was assessed in her initial asylum process, but only after the expulsion order against her had become final. The Migration Agency also noted that the author herself linked her mental illness to her fear of returning to Iraq. It made the assessment that the author had not been able to prove that her illness was caused by "a severe mental illness that was not temporary in nature". The Agency did not question that the author had a mental illness, but it found that that the medical documentation submitted by her did not support the assumption that her illness was serious enough to grant her a residence permit.

2.6 The author appealed the decision to the Migration Court. She referred to additional medical certificates, dated 31 October and 11 November 2018, in which it was noted that she was diagnosed with diabetes and high blood pressure. She had her first contact with psychiatric services in Sweden in 2017 and a psychiatric investigation for depression was started in January 2018. It was found that the author was diagnosed with "a deep depression with serious suicide attempts" following which she was committed to hospital. She was treated at the hospital for almost two months. While committed, she made another suicide attempt. It was further noted in the certificates that the author had "shown serious signs of deep depression where she has visual, oral and tactical hallucinations and becomes borderline-psychotic". After having been released from the hospital, the author was treated with 13 different drugs, five of which are psychotropic and it was further noted in the medical certificate of 11 November 2018 that the author's condition was seen as directly life-threatening without said treatment. In a further medical certificate dated 4 December 2018, the author was noted to have been admitted for psychiatric care due to her depression with psychotic features. She was described as having oral hallucinations from the age of 25, however she had not received adequate medical care for her condition in Iraq. She was assessed to be very ambivalent towards getting treatment and was therefore admitted under the Compulsory Psychiatric Care Act. Her condition was described as being "life-threatening and the treatment given necessary to keep her alive" with her risk of relapse assessed to be grave without adequate care. In her appeal to the Migration Court the author argued that her condition was life-threatening and that she would not be able to receive adequate treatment for it in Iraq.

2.7 The Migration Court denied the author's appeal on 21 December 2018. It did not question that author had been diagnosed with physical and mental illness but noted that her condition seemed to have been decreasing after a crisis reaction following the negative decision from the Migration Agency. It found that in order to be granted a re-evaluation of an asylum decision based on health conditions it must be established as plausible that the condition is severe and lasting. The Migration Court concluded that the documents presented in the author's case did not support the assumption that the author's mental condition was lasting. The author claims that the Court did not assess whether it would be possible for her to receive medical treatment in Iraq. As concerns the author's diabetic condition, the Court concluded that the author had not established that she would not be able to receive care for that condition in Iraq. The decision was upheld by the Migration Court of Appeal on 21 January 2019.

The complaint

3.1 The author claims that, by deporting her to Iraq, the State party would violate her rights under articles 10 and 15 of the Convention, as her removal would lead to a grave risk of suicide, as well as other risks to her life and health. She claims that the medical certificates submitted by her before domestic authorities establish that she is diagnosed with long-term mental illness and she claims that the probability that she would be able to receive treatment for her disabilities in Iraq is very low.[3] She further claims that her mental illness constitutes a long-term mental impairment and that her mental health has deteriorated during her stay in the State party. She notes that her condition has been described as life-threatening in the medical certificates she submitted before State party authorities. She further notes that she has also been diagnosed with diabetes and high blood pressure, which aggravate the risk to her life and health.

3.2 The author further argues that, as the proceedings before the State party was more focused on the reasons behind her condition rather than what real risk of treatment in violation of the Convention her disability poses, it can be questioned if she has received equal recognition before the law, in accordance with her rights under article 12 of the Convention. She also argues that, as a woman without a family network in Iraq, her special vulnerability as a woman with disabilities is to be recognized under article 6 of the Convention.

State party's observations on admissibility and the merits

4.1 On 14 February 2020, the State party submitted its observations on the admissibility and merits of the communication. It submits that: the communication should be declared inadmissible as being manifestly ill-founded under article 2 (e) of the Optional Protocol as the author has not substantiated that she suffers from a long-term mental impairment for which care is unavailable to her in Iraq; that the part of the communication relating to the author's claims under articles 6 and 12 and of the Convention should be declared inadmissible *ratione materiae* and *ratione loci* under article 1 of the Optional Protocol; and that the Committee should consider whether the author's claims under articles 10 and 15 of the Convention are inadmissible *ratione materiae* under article 1 of the Optional Protocol. Should the Committee find the communication admissible, the State party submits that it is without merits.

4.2 The State party notes that when the author initially applied for asylum in Sweden, the Migration Agency made a search of her fingerprints in the database Visa Information System, which showed that she was granted a French visa before entering Sweden. On 13 March 2013, the Agency informed her that it would request French authorities to assume responsibility for the examination of her asylum application in accordance with EU Regulation 604/2013 ('the Dublin Regulation'). Upon acceptance by French authorities of the Agency's request, the Agency accordingly decided on 5 June 2013 to reject the author's application for asylum and to transfer her to France in accordance with the Dublin Regulation. However, the stipulated timeframe for enforcing the transfer order expired on 7 November 2014 without the complainant having been transferred to France. After the transfer order had expired, the author applied for asylum in the State party on 27 February 2015. This application was rejected by a final decision of 29 June 2017.

4.3 After the expulsion order against the author had become final, she applied on three occasions for a residence permit citing impediments to the enforcement of the expulsion order. The Migration Agency rejected the first application on 15 October 2018 concluding, although not questioning the author's described state of health, that she had not substantiated that she was suffering from of a severe or life threatening mental or physical illness. The decision was upheld by the Migration Court and the Migration Court of Appeal on 12 February and 16 March 2018, respectively. The author thereafter submitted a second application for impediment to enforcement of the expulsion order which was rejected by the Migration Agency on 16 October 2018. The Agency noted that the author had not previously, before the expulsion order became final, cited mental ill health. It was further noted that she herself

[3] The author refers to, 'Iraq´s Quiet Mental Health Crisis', the Education for Peace in Iraq Center, 5 May 2017 and 'Healing Iraqis: The challenges of providing mental health care in Iraq', Medecins sans Frontieres, 29 April 2013.

connected her cited health status to her fear of returning to Iraq. The Agency found that it had not been substantiated that the author's cited ill health was caused by a severe mental illness that was not of a temporary nature. Upon appeal to the Migration Court the complainant submitted three new medical certificates in support of her cited impaired state of health and she claimed that the medical treatment she was receiving in the State party was vital for her and that she would not receive adequate care in Iraq. According to the medical certificates her mental health condition was stated to have been exacerbated by psychotic symptoms and increased suicidal thoughts and plans. Without adequate care she was deemed to be at risk of serious deterioration in her health status that could be life-threatening. Her condition was also considered to be life-threatening due to the high risk of suicide. The Migration Court rejected the author's appeal on 21 December 2018 and found that the submitted medical evidence did not provide sufficient support for the assumption that the author's mental health condition was of a permanent nature and therefore found no reason to further assess her possibilities of receiving psychiatric care in Iraq. Regarding the author's cited state of physical health, the court concluded that no such circumstances had been put forward that led to the assumption that she would not be able to receive care in Iraq. The decision was upheld by the Migration Court of Appeal on 21 January 2019.

4.4 The author subsequently submitted a third application for a residence permit claiming that there were impediments to the enforcement of the expulsion order due to her ill health. The Migration Agency rejected the application on 7 August 2019 and stated that the submitted medical certificates showed that author was mentally unwell and that she needed medical treatment and professional psychiatric contact. It however concluded that it did not follow from the medical certificates that it would be practically impossible for the author to travel and thus to return to her country of origin. It further noted that according to the medical certificates the author's state of health had improved by the medication and the continued psychiatric care she had received, and that she had therefore not plausibly demonstrated that her state of health was caused by severe mental illness that could be deemed to be of a lasting nature. It considered her ill health and suicidal ideation to be primarily linked to her disappointment at her asylum process, her unclear situation and her fear of being expelled and that it did not follow from the submitted material that she would be in need of such care that would not be available to her in Iraq.

4.5 The State party also provides information on the pertinent domestic legislation and notes that a residence permit may be issued under Chapter 5, Section 6 of the Aliens Act in cases where an overall assessment of the person's situation reveals such exceptionally distressing circumstances that he or she should be allowed to stay in the State party. In making this assessment, particular attention is to be paid to the person's state of health, their adaptation to the State party and the situation in their country of origin. One ground for a residence permit in these circumstances is that the person in question has a life-threatening somatic or mental illness or suffers from a particularly serious disability. The State party notes that in order to grant a residence permit on grounds of mental ill health, a medical examination must support the view that the mental health condition is sufficiently severe that it could be regarded as life-threatening. Regarding a claim of suicide risk, the starting point is that each individual is primarily responsible for their own life and actions. In some cases, however, serious self-destructive acts or statements of intent to carry out such acts by a "seriously and non-temporarily mentally disturbed person" have led to residence permits being granted. In such cases, the Migration Agency have assessed the extent to which these self-destructive acts or statements of intent to carry out such acts have been made because of severe mental ill health that has been demonstrated in a psychiatric examination.

4.6 The State party notes the author's claims that her removal to Iraq would amount to a violation of her rights under articles 10 and 15 of the Convention, since expulsion would lead to a grave risk of her committing suicide, as well as other risks to her life and health. It also notes her claim that her vulnerability, as a woman with disabilities with no male network in Iraq, is to be recognised under article 6 of the Convention. The State party argues that its responsibility under the Convention for acts or omissions contrary to the Convention on another State's territory is to be considered an exception to the main rule that a State party's responsibility for Convention obligations is limited to its territory, thus requiring certain exceptional circumstances. It notes that although treatment contrary to articles 10 and 15 of the Convention in another State could give rise to such exceptional circumstances, acts or

omissions contrary to other articles cannot. Accordingly, it submits that the author's claims under articles 6 and 12 should be declared inadmissible *ratione materiae* and *ratione loci*.

4.7 The State party questions that articles 10 and 15 of the Convention invoked by the author encompass the principle of *non-refoulement*. In considering whether this is the case, it invites the Committee to take into account that claims relating to the *non-refoulement* principle can already be lodged with several international human rights institutions, such as the Human Rights Committee, the Committee against Torture and the European Court of Human Rights. If the Committee takes the view that article 15 of the Convention includes an obligation on *non-refoulement*, the Government considers that this obligation should apply only to claims relating to an alleged risk of torture.

4.8 As concerns the author's access to health care in Iraq, the State party notes that the International Diabetes Federation stated in 2017 that diabetes was prevalent in 7.5 per cent of Iraq's adult population[4] and that treatment centres for diabetes are available in Iraq.[5] It further notes that the Office of the High Commissioner for Human Rights and the United Nations Assistance Mission for Iraq noted the following in December 2016 in its 'Report on the Rights of Persons with Disabilities in Iraq': "The psycho-social health sector in particular is perceived to lack specialized and trained staff and is under-resourced. This is the result of increased poverty, due to the conflict, the international sanctions regime during the 1990s, as well as the targeting of medical and paramedical professionals during 2003-2008, which led to a 'brain-drain' of specialized health professionals, including in this particular field. […] Very limited psycho-social support services seem to be available, and are mostly offered by private institutes, although at a cost that is prohibitive for many families."[6] The State party however notes that some examples of hospitals and clinics that provide treatment and medication for mental health conditions can be found on the MedCOI website.[7]

4.9 The State party submits that a return of the author to Iraq would not entail a violation of her rights under articles 10 or 15 of the Convention. It submits that there is no reason to conclude that the domestic decisions were inadequate or that the outcome of the proceedings was in any way arbitrary or amounted to a denial of justice. It argues that its domestic authorities have conducted a thorough examinations of the author's case and have examined the author's cited impediments to enforcement of the expulsion order on three occasions, during which through her public counsel, the author was invited to make written submissions and appeals. It argues that the author has not shown that her medical condition is of such an exceptional nature that her removal to Iraq would violate her rights under article 15, and that no separate issue arises under article 10 of the Convention.

4.10 The State party notes that the question of whether an expulsion can be seen as contravening articles 2 or 3 of the European Convention on Human Rights and Fundamental Freedoms based on a person's ill health has been examined on several occasions by the European Court of Human Rights. It refers to the Court's judgment in *Paposhvili v. Belgium*[8] in which the Court found that only very exceptional circumstances may raise an issue under article 3 in this context. In the present case the State party argues that its domestic migration authorities have, on several occasions, assessed whether enforcement of the expulsion order against the author would violate her rights under article 3 of the European Convention due to her cited ill health and have concluded that it would not, as her mental health condition has been found to not be of a permanent nature.

[4] The State party refers to International Diabetes Federation, 'IDF Mena Members; Iraq,' https://www.idf.org/our-network/regions-members/middle-east-and-north-africa/members/36-iraq.html

[5] The State party notes that locations of hospitals or clinics that treat diabetes mellitus and pharmacies and clinics of available medication was found on the MedCOI website, with examples are listed in the United Kingdom Home Office Country Policy and Information Note, *Iraq: Medical and healthcare issues* from May 2019.

[6] OHCHR and UNAMI, 'Report on the Rights of Persons with Disabilities in Iraq', p. 11, December 2016.

[7] The State party refers to the United Kingdom Home Office Country Policy and Information Note 'Iraq: Medical and healthcare issues', May 2019.

[8] European Court of Human Rights, application no. 41738/10, 13 December 2016.

Author's comments on the State party's submission

5.1 On 27 April 2020, the author submitted her comments on the State party's observations on the admissibility and merits of the communication. She maintains that the communication is admissible.

5.2 The author notes the State party's argument that the migration authorities in their decisions found that she had not substantiated that she suffers from any long-term mental impairment or that care is not available to her in Iraq. She argues that she has presented several medical certificates that substantiate that she suffers from long-term mental impairment. She notes that in the domestic proceedings the migration authorities did not assess whether she would be able to access health care if removed to Iraq. She refers to the European Court of Human Rights judgement in *Paposhvili v. Belgium* and notes that the Court has found that if an applicant has brought forward evidence showing that there are substantial grounds for believing that he or she would be exposed to a real risk of being subjected to treatment contrary to article 3 of the European Convention on Human Rights and Fundamental Freedoms, then it is for the authorities of the returning state to dispel any doubts raised by the applicant. She further notes that in *Paposhvili v. Belgium* the Court concluded that as the applicant in that case had been able to substantiate the serious impacts on his health a removal to his country of origin would entail, the burden of proof for showing that he would have actual access to health care shifted to the State.

B. Committee's consideration of admissibility and the merits

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 2 (c) of the Optional Protocol that the same matter has not already been examined by the Committee, and has not been and is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State party's submission that: the communication should be declared inadmissible as being manifestly ill-founded under article 2 (e) of the Optional Protocol; that the part of the communication relating to author's claims under articles 6 and 12 and of the Convention should be declared inadmissible *ratione materiae* and *ratione loci* under article 1 of the Optional Protocol; and its submission that the Committee should consider whether the author's claims under articles 10 and 15 of the Convention are inadmissible *ratione materiae* under article 1 of the Optional Protocol.

6.4 The Committee refers to its jurisprudence in *O.O.J v. Sweden*[9] in which it noted that the removal by a State party of an individual to a jurisdiction where he or she would risk facing violations of the Convention may, under certain circumstances, engage the responsibility of the removing state under the Convention. The Committee considers that the principle of *non-refoulement* imposes a duty on a State party to refrain from removing a person from its territory when there is a real risk that the person would be subjected to serious violations of Convention rights amounting to a risk of irreparable harm, such as - but not limited to - those enshrined in articles 10 and 15 of the Convention.[10] The Committee therefore considers that the principle of extraterritorial effect would not prevent it from examining the present communication under article 1 of the Optional Protocol. In this connection, the Committee further notes the author's claims that her removal to Iraq would lead to a grave risk to her life and health, as she would be unable to access necessary and life-saving medical care in that country. The Committee considers that the author has sufficiently

[9] CRPD/C/18/D/28/2015, para. 10.3.

[10] See also, Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

substantiated these claims raised under articles 10 and 15 of the Convention for purposes of admissibility.

6.5 The Committee further notes the author's claim that her right to equal recognition before the law under article 12 of the Convention was violated as the proceedings before the State party domestic authorities were focused on the reasons for her health condition, rather than the risk her removal to Iraq would entail. It also notes her argument that her special vulnerability as a woman with disabilities and without a family network in Iraq was not recognized by the State party authorities in violation of her rights under article 6 of the Convention. The Committee however notes that the author has not provided any additional specific information or argumentation to justify her claims under articles 6 and 12 of the Convention, or explained how these claims would amount to a real and personal risk of irreparable harm if she were to be removed to Iraq. It therefore finds that the author has failed to substantiate, for purposes of admissibility, her claims under articles 6 and 12 of the Convention and finds these claims inadmissible under article 2 (e) of the Optional Protocol.

6.6 In the absence of any other challenges to the admissibility of the communication, the Committee declares the communication admissible insofar as it concerns the author's claims under articles 10 and 15 of the Convention, and proceeds with their consideration on the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of the Committee's rules of procedure.

7.2 The Committee recalls that article 10 of the Convention stipulates that States parties have the obligation to reaffirm that every person has the inherent right to life and that States parties shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others. The Committee further recalls that under article 15 of the Convention State parties have the obligation to ensure that they take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

7.3 The Committee further notes the findings of the Human Rights Committee in its general comment No. 31, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.[11] It notes that the Human Rights Committee has indicated in its jurisprudence that the risk must be personal[12] and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.[13] Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.[14] The Human Rights Committee has emphasized in its jurisprudence that considerable weight should be given to the assessment conducted by the State, and that it is generally for the organs of States to review or evaluate the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.[15]

7.4 The Committee further notes the findings of the Human Rights Committee in *Abdilafir Abubakar Ali and Mayul Ali Mohamad v. Denmark* where that Committee recalled that States parties should give sufficient weight to the real and personal risk that a person

[11] Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.
[12] See communication *X v. Denmark*, (CCPR/C/110/D/2007/2010), para. 9.2.
[13] See communications *X v. Denmark*, (CCPR/C/110/D/2007/2010), para. 9.2; and No. *X. v. Sweden*, (CCPR/C/103/D/1833/2008), para. 5.18.
[14] Ibid.
[15] See, inter alia, *K. v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.4; and *Z.H. v. Australia*, (CCPR/C/107/D/1957/2010), para. 9.3.

might face if deported and its finding that it was incumbent upon the State party to undertake an individualized assessment of the risk that the authors in that case would face if removed, including access to adequate medical care.[16] The Committee further notes the findings of the Committee against Torture in *Adam Harun v. Switzerland* in which that Committee found that the failure by the State party authorities to undertake an individualized assessment of the personal and real risk the complainant would face if removed, taking due account of his particular vulnerability including his health status, constituted a violation of article 3 of the Convention against Torture.[17]

7.5 The Committee further notes the jurisprudence of the European Court of Human Rights in *Paposhvili v. Belgium*[18] in which the Court noted that the removal of a person in need of ongoing medical care may in "very exceptional cases" raise an issue under article 3 of the European Convention on Human Rights and Fundamental Freedoms. The Court noted that this should be understood to refer to situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy. The Court noted that it is for the applicant to adduce evidence capable of demonstrating that there are substantial grounds for believing that he or she would be exposed to a real risk of ill-treatment if removed. Where such evidence is adduced, it is for the authorities of the returning State, in the context of domestic procedures, to dispel any doubts raised in the course of which the authorities in the returning State must consider the foreseeable consequences of removal for the individual concerned in the receiving State, in the light of the general situation there and the individual's personal circumstances. The assessment of the risk must therefore take into consideration general sources such as reports of the World Health Organisation or of reputable non-governmental organisations and the medical certificates concerning the person in question.[19] As regards the factors to be taken into consideration, the Court noted that the authorities in the returning State must verify on a case-by-case basis whether the care generally available in the receiving State is sufficient and appropriate in practice for the treatment of the applicant's illness. The authorities must also consider the extent to which the individual in question will actually have access to care and facilities in the receiving State.[20]

7.6 In the present case the Committee notes the author's claims that by deporting her to Iraq the State party would violate her rights under articles 10 and 15 of the Convention, as her removal would lead to a grave risk of suicide, as well as other serious risks to her life and health. It notes her information that she has been diagnosed with severe depression with psychotic features and that she has twice been committed for treatment under the Compulsory Psychiatric Care Act, after experiencing hallucinations and suicidal thoughts and attempts. It notes her argument that she has submitted several medical certificates before domestic authorities establishing that she has been diagnosed with long-term mental illness for which she would be unable to receive treatment if removed to Iraq. The Committee further notes her argument that in the medical certificates submitted by her, her health condition has been described as life-threatening without treatment and with her risk of relapse assessed to be grave without adequate care.

7.7 The Committee further notes the State party's argument that its domestic authorities have conducted a thorough examination of the author's claims with there being no reason to conclude that the domestic decisions were inadequate or that the outcome of the proceedings

[16] *Abdilafir Abubakar Ali and Mayul Ali Mohamad v. Denmark* (CCPR/C/116/D/2409/2014), para. 7.8.

[17] *Adam Harun v. Switzerland*, (CAT/C/65/D/758/2016), paras. 9.7-9.11.

[18] European Court of Human Rights, Application no. 41738/10, 13 December 2016, paras. 173-174. *See also* European Court of Human Rights, *Savran v. Denmark*, Application no. 57467/15, 1 October 2019 in which the Court held that that removing the applicant to Turkey without the Danish authorities receiving sufficient and individual assurances on his care in Turkey would violate article 3 of the European Convention on Human Rights.

[19] *Paposhvili v. Belgium*, paras. 183-187

[20] *Paposhvili v. Belgium*. paras. 189-190.

was in any way arbitrary or amounted to a denial of justice. It notes the State party's submission that the author has not shown that her medical condition is of such a severe and lasting nature that her removal to Iraq would amount to a violation of her rights under the Convention.

7.8 The Committee must therefore determine in the present case, taking into account the factors set out above, whether there are substantial grounds for believing that the author would face a real risk of irreparable harm as contemplated by articles 10 and 15 if she were to be removed to Iraq. The Committee notes that it is undisputed between the parties that the author has been diagnosed with depression. It notes that in several medical certificates submitted by the author before the domestic authorities she was noted as undergoing treatment for severe depression which was assessed to include a risk of severe or life-threatening complications[21], with the medical treatment she was undergoing described as essential and the risk of relapse assessed to be grave without adequate care[22]. The Committee notes that the parties disagree on the severity of the author's health condition and whether it is lasting in nature, and it notes the State party's argument that the domestic authorities assessed her ill health and suicidal ideation to be primarily linked to her disappointment at her asylum process, her unclear situation and her fear of being expelled. The Committee however considers that taking into account that the author submitted several medical certificates before domestic authorities in which her health condition was assessed as severe and life-threatening without the treatment she is receiving in the State party, the State party authorities should, in light of the information available during the domestic proceedings, have assessed whether the author would in fact be able to access adequate medical care if removed to Iraq. The Committee further observes that it is undisputed between the parties that the domestic authorities did not assess whether the author would be able to access such medical care in Iraq. The Committee therefore considers that the failure by the domestic authorities to assess this risk facing the author in the light of the information available to them concerning the author's state of health amounted to a violation of her rights under article 15 of the Convention.

7.9 In light of these findings the Committee considers it not necessary to separately consider the author's claims under article 10 of the Convention.[23]

C. Conclusion and recommendations

8. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under article 15 of the Convention. The Committee therefore makes the following recommendations to the State party:

(a) Concerning the author, the State party is under an obligation to:

(i) Provide her with an effective remedy, including compensation for any legal costs incurred in filing the present communication;

(ii) Review the author's case, taking into account the State party's obligations under the Convention and the Committee's present Views;

(iii) Publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population.

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future. In that regard, the Committee requires the State party to ensure that the rights of persons with disabilities, on an equal basis with others, are properly considered in the context of asylum decisions.

9. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit to the Committee, within six months, a

[21] Medical certificate, dated 29 and 31 January 2018 (see para. 2.4).

[22] Medical certificate of 4 December 2018 (see para 2.6).

[23] See European Court of Human Rights, *Paposhvili v. Belgium,* para. 207 and *D. v. the United Kingdom*, a*pplication no. 30240/96*, 2 May 1997, para 59.

written response, including information on any action taken in the light of the present Views and recommendations of the Committee.

Annex

Individual opinion of Committee member László Gábor Lovaszy (dissenting)

I am unable to join the Committee's decision as I do not share the position of the Committee that it has been substantiated that the State party has failed to fulfil its obligations under article 15 of the Convention based on the adopted argument in the Committee's decision at 5.2.

From a general perspective, the overall and full application of the Refugee Convention (1951) for all parties seems to have been neglected by the Committee. It is also problematic that the Committee, by referring to the ECHR's judgement in *Paposhvili v. Belgium*, found that the notion of a significant reduction in life expectancy shall be applied without clear and reasonable restriction.

1.) When it comes to article 2 (d) of the OP, in terms of the abuse of the right of submission of communication, the medical documentation submitted by the author did not support the assumption that her illness was serious enough to grant her a residence permit and she did not mention any symptoms of her illness at the beginning of the asylum seeking process, either. The author later notes that her condition had been described as life-threatening in the medical certificates she submitted to the State party's migration authorities. The Committee is not in the position to evaluate whether these medical certificates are professionally validated or relevant, however, the State party had not questioned them either. The author claimed that she had provided these documents, but the relevant Authority did not consider them as decisive and made their final decisions, which were not challenged by the author in terms of domestic remedies. In relation to this final decision, there is no reasonable doubt that the application of the remedies would be unreasonably prolonged or unlikely to bring effective relief in the State party of Sweden. Hence, the author failed to exhaust all available domestic remedies.

2.) When it comes to article 2 (b) and (e) of the OP, it is crucial to record that the author was granted a French visa before entering Sweden. On 13 March 2013, the Swedish Agency informed her that it would request the French authorities to assume responsibility for the examination of her asylum application in accordance with EU Regulation 604/2013 ('the Dublin Regulation') which was not disputed by the author. Upon acceptance by the French authorities of the Agency's request, the Agency accordingly decided on 5 June 2013 to reject the author's application for asylum and to transfer her back to France in accordance with the Dublin Regulation. This argument and facts were not challenged by the author. However, the stipulated timeframe for enforcing the transfer order expired on 7 November 2014 without the complainant traveling to France. By violating and not respecting the decisions of the French and Swedish authorities' decisions and legal provisions, it would seem that the author did not have the intention of leaving for France to undergo the examination of her asylum application. The author has failed to explain why she did not leave, which also means that it seems that she intended to remain in Sweden by violating the Dublin Regulation. Based on the neglected argument, it shall be evident that the applicant must cooperate with the State party in accordance with Refugee (Geneva) Convention (1951), articles 2, 31 and 32 in particular, since Sweden was not the first country the applicant entered the European Union in accordance with the Dublin Regulation. Hence, the author violated the Refugee Convention and international law.

3.) When it comes to article 2 (b) of the OP, in terms of the abuse of the right of submission in particular, as well as given the fact that the author accepted the final decision of the Swedish authority, it is also crucial to record that at the beginning of her procedure she claimed that she was even eligible and fit for teaching in Sweden. Even though the Committee notes that the parties were in disagreement on the severity of the author's health condition and whether it is lasting in nature (Point 7.8), she only challenged the procedure of expulsion by citing the mentioned HRC and ECHR decisions. The author further claims that her health illness had worsened since her application was turned down in Sweden and also indicated that sending her back would cause her 'irreparable harm'

by possibly committing suicide. Hence, the author failed to prove her credibility during the process and used a personal threat to derail the procedure.

4.) Finally, when it comes to the interpretation of being exposed to a serious, rapid and irreversible decline in someone's state of health resulting in intense suffering or to a significant reduction in life expectancy in particular, without clear standards it can be imagined that, theoretically, even a poorer State Party might be responsible for protecting the citizens of richer and more developed countries with lower standards of general social and health care schemes. A State party cannot overtake the responsibility of other State party's in terms of the quality of social and health care services in general. For reference, even EU citizens shall be deported to their country of origin if they do not have social coverage due to a lack of employment or wealth to maintain themselves, it is also important to note that there are countries in the EU where one can find at least 7 years difference in terms of average life expectancy.