



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

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## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 662/2015\*, \*\*

<i>Communication submitted by:</i>	M.K. (represented by counsel, Urs Ebnöther)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	4 March 2015 (initial submission)
<i>Date of the present decision:</i>	2 May 2017
<i>Subject matter:</i>	Expulsion of the complainant to the Islamic Republic of Iran
<i>Procedural issues:</i>	Non-substantiation of claims; complaint manifestly unfounded
<i>Substantive issue:</i>	Risk of torture in the event of deportation to country of origin
<i>Article of the Convention:</i>	3

1.1 The complainant is M.K., a national of the Islamic Republic of Iran born in 1969. He filed an application for asylum in Switzerland, but the application was denied. He maintains that his forced return to the Islamic Republic of Iran would constitute a violation by Switzerland of article 3 of the Convention. The complainant is represented by Urs Ebnöther.

1.2 On 9 March 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to expel M.K. to the Islamic Republic of Iran while his complaint was being considered by the Committee.

1.3 On 16 March 2015, the State party informed the Committee that, in accordance with its established procedure, the State Secretariat for Migration had requested the competent authority to refrain from taking any steps to deport the complainant, who is therefore assured of remaining in Switzerland pending consideration of his complaint by the Committee.

#### The facts as submitted by the complainant

2.1 The complainant is an Iranian national who has converted from Islam to Christianity. He states that he began to attend a Christian church (Sunday school) when he was still in

\* Adopted by the Committee at its sixtieth session (18 April-12 May 2017).

\*\* The following members of the Committee took part in the consideration of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Sapana Pradhan-Malla, Ana Racu, Sébastien Touzé and Kening Zhang.



the Islamic Republic of Iran.<sup>1</sup> In 1992, he left the Islamic Republic of Iran and travelled to India, where he came into contact with the Baptist Greater Grace Fellowship and converted to Christianity in 1996.<sup>2</sup> In 2000, he met a Swiss woman in Mumbai, and they became a couple. In 2001, the couple moved to Switzerland and subsequently had three children. In the beginning, the complainant accompanied his partner to mass each week at the Catholic church in the canton of Ticino. After the couple separated in 2006, he lost his residence permit and had to leave Switzerland.

2.2 On 31 July 2007, he filed an application for asylum with the Federal Office for Migration (now the State Secretariat for Migration), in which he claimed that he would be at risk of persecution in the Islamic Republic of Iran because of his conversion to Christianity. On 10 July 2008, his application for asylum was denied by the State Secretariat for Migration. His appeal against that decision was denied by the Federal Administrative Court on 16 December 2008. The Swiss authorities found that his scanty knowledge of Christianity showed that he did not actually hold religious convictions and that his alleged conversion was not credible.<sup>3</sup> On 1 July 2009, the complainant petitioned for a reconsideration of his case. The State Secretariat for Migration denied that petition on 11 November 2009, and the Federal Administrative Court did so on 3 March 2010.<sup>4</sup>

2.3 The complainant states that, during the course of the asylum application procedure, he has communicated with members of the Episcopalian faith who have visited the asylum centre. Since that time, he regularly attends meetings of the Charismatic Catholic church in Lucerne, where he reads the Bible and attends services and round-table discussions. He also meets from time to time with Iranian nationals who are interested in Christianity and encourages them to convert. He also states that he has participated on several occasions in political demonstrations in the State party,<sup>5</sup> has attended meetings of groups that are critical of Islam and has published articles criticizing the Islamic Republic of Iran on his website<sup>6</sup> and on social media. In addition, he manages the website of the Swiss branch of the Iranian Socialist Party and provides technical support for the websites of a number of other opposition parties and groups. As examples, he cites the Iranian Proactive Centre and the Iranian Secular Democrats Organization.<sup>7</sup>

2.4 On 15 April 2013, the complainant filed a second application for asylum. He stated that he had converted to Christianity and had attended meetings of the Charismatic Catholic church, that he had spoken with other Iranians about his decision to leave Islam and had invited them to follow the Christian faith, that he had participated in protests against the Iranian regime and that he had posted critical articles on his website.<sup>8</sup>

2.5 On 16 October 2014, the State Secretariat for Migration denied the second application for asylum. The complainant filed an appeal against that decision with the Federal Administrative Court. On 26 January 2015, the Court denied the complainant's appeal and ordered him to leave Switzerland before 26 February 2015. In their decisions, the Secretariat and the Court stated that the complainant's second application was essentially based on the same claims and that, in the course of the first asylum application process, they had both reached the conclusion that the complainant's sparse knowledge

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<sup>1</sup> The complainant states that this information was given to the Swiss authorities during his interview on 28 July 2014.

<sup>2</sup> The complainant has supplied a copy of a baptismal certificate dated 19 June 1996.

<sup>3</sup> The complaint is not accompanied by copies of the application for asylum or of these decisions. The information has been taken from an English-language summary of the decision of the State Secretariat for Migration of 16 October 2014 that was provided by the complainant.

<sup>4</sup> The complaint is not accompanied by any documentation or supplementary information in that regard.

<sup>5</sup> The complainant refers to only one demonstration in front of the Iranian Embassy in Bern in 2010, however.

<sup>6</sup> The Internet address of the site is: [www.persia2day.com](http://www.persia2day.com).

<sup>7</sup> The complainant has provided a letter dated 12 November 2014 from the Iranian Proactive Centre that confirms that he has been an active member of the Centre since 2013.

<sup>8</sup> According to the English-language summary of the decision of 16 October 2014 of the State Secretariat for Migration provided by the complainant, he submitted as evidence a confirmation of his membership in the Iranian Socialist Party (in Switzerland), screenshots of his website and a CD-ROM concerning his conversion.

about Christianity demonstrated that he did not actually hold religious convictions and that his purported conversion was not credible.

2.6 The authorities were of the view that the claim to have converted to Christianity made by the complainant in his second application for asylum had not been substantiated to a sufficient degree to justify granting him asylum. The State Secretariat for Migration and the Federal Administrative Court concluded that his conversion to Christianity was not credible and that its sole purpose was to obtain permission to stay in Switzerland. They pointed out that, during his interview of 28 July 2014, the complainant was unable to give his reasons for having converted. He made general statements such as “Christianity is a world of affection and love”; he was not able to demonstrate knowledge of the Bible and replied that he was lazy and did not like to read. In addition, he did not know the priest or the staff of the church that he attended. The Court stated that, even if his conversion were found to be credible, it would not in itself constitute a basis for persecution. As to the complainant’s claim that he would be at risk because of his political activities in the State party, the Secretariat and the Court were of the view that, even if the Iranian authorities track the opposition’s activities abroad, only persons with a high political profile are regarded as posing a danger to the current political regime. The authorities also emphasized that, although the complainant’s counsel furnished a document issued by the Iranian Socialist Party in which it attested to his membership in that party, the complainant himself had denied belonging to any political organization. Consequently, the authorities concluded that he was not at risk of persecution by reason of his political activities in Switzerland in opposition to the Iranian regime.

### **The complaint**

3.1 The complainant contends that his deportation to the Islamic Republic of Iran would constitute a violation of his rights under article 3 of the Convention. In his view, the Swiss authorities have not properly weighed the risk to which he would be exposed in the Islamic Republic of Iran owing to his conversion to Christianity and his political activities in opposition to the Iranian regime when he lived in the State party.

3.2 The complainant refers to the decision reached by the Committee in *Azizi v. Switzerland*<sup>9</sup> and asserts that reports indicate that Christians, especially Muslims who have converted, are persecuted in the Islamic Republic of Iran. They are arrested, imprisoned, subjected to torture or cruel, inhuman and degrading treatment and tried by revolutionary courts in violation of international human rights standards.<sup>10</sup> Moreover, conversion from Islam to Christianity is regarded as apostasy and can be punished by death under sharia law. While practices differ from one region to the next, there have been a number of cases in which people have been sentenced to death. In his case, he had tried to interest other Iranians in Christianity, had invited them to the Charismatic Christian church and had encouraged them to convert to Christianity. He maintains that he has a bad reputation in the Iranian Muslim community in Switzerland and that some of the Iranians with whom he spoke about Christianity have since returned to the Islamic Republic of Iran. Finally, he asserts that the Swiss authorities cannot ask him to conceal his religious beliefs and refrain from practising his religion if he is sent back to the Islamic Republic of Iran.

3.3 The complainant contends that the Iranian Government does not show tolerance towards members of the opposition. Opponents of the current regime are persecuted, arrested and tortured. Furthermore, political opposition activities are punishable under the country’s revised Criminal Code. The complainant also claims that the Government has recently set up a cyberpolice surveillance unit to track political activity on the Internet. He thinks that his website has in all likelihood been blocked and is not accessible in the Islamic Republic of Iran.<sup>11</sup>

<sup>9</sup> Communication No. 492/2012, *Azizi v. Switzerland*, decision adopted on 27 November 2014.

<sup>10</sup> The complainant refers to report A/HRC/22/48 of the Secretary-General; to a brief overview by Amnesty International on Christian converts in the Islamic Republic of Iran; and to the *Country of Origin Information Report — Iran* of the United Kingdom Home Office, dated 28 June 2011.

<sup>11</sup> The complaint is not accompanied by any documents to support this claim.

**State party's observations on the merits of the communication**

4.1 On 3 September 2015, the State party submitted its observations on the merits of the communication. It notes that the complainant left the Islamic Republic of Iran for India in 1992 to engage in gainful employment in the petroleum industry. In 2001, he arrived in Switzerland with his partner. The couple permanently separated in November 2003. The authorities subsequently decided not to renew his residence permit, which expired on 31 July 2005.<sup>12</sup> On 31 July 2007, he filed an application for asylum in Switzerland.

4.2 The State party observes that, in order to determine whether there are substantial grounds for believing that a complainant would be in danger of being subjected to torture if returned to his or her country, the Committee should take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of its examination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return.<sup>13</sup> Thus, the existence of a pattern of human rights violations, as referred to in article 3 (2) of the Convention, does not constitute sufficient reason for concluding that a particular person is likely to be subjected to torture upon returning to his or her country. Additional grounds must therefore be adduced in order for the risk of torture to qualify as "foreseeable, real and personal" for the purposes of article 3 (1) of the Convention.<sup>14</sup> As definitively established by the Committee in its general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion".

4.3 As regards the human rights situation in the Islamic Republic of Iran, the State party adds that the Committee has noted that there are ongoing reports of the use of psychological and physical torture to obtain confessions, which would indicate that such practices are in widespread and systematic use, and of cases in which political opponents of the current regime are held in detention and tortured. The Committee considers this situation to be all the more alarming because the death penalty is frequently imposed in that country on people who have not had the benefit of due process guarantees and in cases involving offences that do not meet international standards in respect of the most serious crimes.<sup>15</sup>

4.4 While the State party, too, is aware that the human rights situation in the Islamic Republic of Iran is disturbing in a number of respects, it must nonetheless point out that the country is not currently experiencing widespread violence. Accordingly, the situation in the complainant's country of origin does not constitute, in itself, sufficient grounds for concluding that the complainant would be at risk of torture if he were to be returned. According to the settled practice of the Committee, the author of a communication must demonstrate that he or she would personally become a target of measures that are incompatible with the Convention if returned. According to the State party, in the present communication, the complainant refers to a very general type of risk for all persons abroad who have been politically active in opposing the current regime in the Islamic Republic of Iran. Furthermore, the complainant claims that his conversion to Christianity would place him at personal risk of persecution if he were to be sent back. The State party is of the view that the complainant has not demonstrated that he would face a foreseeable, personal and real risk of being subjected to torture in the event that he were sent back.

4.5 The State party recalls that torture or ill-treatment suffered by the complainant in the past would be one of the elements that should be taken into consideration when assessing the complainant's risk of being subjected to torture or ill-treatment in the event that he

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<sup>12</sup> This decision was upheld at final instance by the Federal Court on 30 October 2006 (decision 2A.537/2006).

<sup>13</sup> See, among others, communication No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, para. 10.2.

<sup>14</sup> See, among others, communication No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

<sup>15</sup> See communications *Azizi v. Switzerland*, para. 8.5; No. 489/2012, *Tahmuresi v. Switzerland*, decision adopted on 26 November 2014, para. 7.5; and No. 470/2011, *X v. Switzerland*, decision adopted on 24 November 2014, para. 7.5.

returned to his country. In the course of the consideration of his first application for asylum, the complainant stated that he had had problems with the Iranian authorities before his departure for India in 1992. In his communication, he does not maintain these claims, which were found to lack credibility by the Federal Office for Migration and the Federal Administrative Court<sup>16</sup> following a thorough examination of the case. What is more, the complainant has never said that he was tortured by the Iranian authorities.

4.6 According to the State party, another element that should be taken into account when evaluating the complainant's risk of being subjected to torture if he were to return to his country is his involvement in political activities in his country of origin or elsewhere. The State party recalls that the complainant has not claimed, either to the Swiss authorities or the Committee, to have been politically active in the Islamic Republic of Iran. The State party contends that the instant case differs from several other recent cases in this respect: X had had problems in the Islamic Republic of Iran because of political activism;<sup>17</sup> Mr. Azizi had had to flee to Iraq because of his political activities;<sup>18</sup> and X and Z belonged to a family of political militants.<sup>19</sup> The State party also contends that, during the time that the complainant was in India, between 1992 and 2001, he did not engage in political activities in exile. Nor did he mention any such activities in Switzerland during the processing of his first application for asylum in 2008 or in the course of his applications for reconsideration in 2009 and 2010. It was not until he had filed his second application for asylum in 2013 that the complainant claimed to have engaged in political activities in Switzerland that would put him at risk of prosecution if he were to return to the Islamic Republic of Iran. The complainant's statements to the Committee concerning his political activities in Switzerland are very vague, and the letters confirming those statements do not provide any information that would help to substantiate his involvement.

4.7 The State party points out that the cases that have come before the Federal Administrative Court indicate that the Iranian secret service may keep track of opposition political activities abroad, but that the authorities focus their attention primarily on persons having a particular profile, whose actions fall outside the scope of the usual types of mass protests and who occupy positions or carry out activities that represent a serious and real threat to the Iranian regime. The Court is also of the view that occupying positions in opposition organizations or involvement in influential actions are what put a person at risk, not membership or involvement in typical political activities, such as participation in demonstrations, staffing a stand or distributing political material.<sup>20</sup> In view of the numerous political activities of Iranians in exile, the Court notes that, to its knowledge, the Iranian authorities are interested in persons only when they are true opponents who engage in political activities that are of such a nature as to represent a threat to the political system. They do not take any great interest in people whose activities are clearly being undertaken primarily as a means of obtaining a residence permit by advancing personal grounds for seeking asylum. The Court notes that the Iranian authorities are aware of the fact that many asylum seekers become involved in political activity in exile only once their application for asylum has been denied, which casts a great deal of doubt on the authenticity of their involvement. Those authorities are quite capable of distinguishing political activities that reflect a serious personal conviction and have a significant potential for fuelling unrest from activities that people engage in primarily for the purpose of obtaining a residence permit.

4.8 The State party maintains that, during the complainant's asylum hearing, he said that he had joined other groups that he had learned about in Lucerne, uploaded news and videos on the Internet and sent messages to compatriots in the Islamic Republic of Iran via Facebook and Twitter. He has stated that he does not belong to a political party. He had contacts with several different Iranian political groups in Switzerland and took part in two

<sup>16</sup> Judgment of the Federal Administrative Court of 16 December 2008, consid. 4.1, annex 4.

<sup>17</sup> See *X v. Switzerland*, para. 7.6.

<sup>18</sup> See *Azizi v. Switzerland*, para. 2.1.

<sup>19</sup> See *X and Z v. Finland*, communications Nos. 483/2011 and 485/2011, decision adopted on 12 May 2014.

<sup>20</sup> See, for example, the judgment of the Federal Administrative Court of 21 January 2008 (D-4902/2007). In an authoritative decision handed down on 9 July 2009 (D-3357/2006, consid. 7.4.3), the Court provided clarification on this point.

or three protest demonstrations in front of the embassy of the Islamic Republic of Iran in Bern in November 2009 and February 2010, but at present his activities are limited to attending monthly meetings of the Iranian Social Democratic Party, although he is not a member. However, in his application for asylum of 15 April 2013, he had claimed to be a member of that party.<sup>21</sup> The State party contends that the complainant does not occupy a position of importance in a political organization that opposes the Iranian regime and that his situation is clearly different from those of Mr. Azizi,<sup>22</sup> Mr. Tahmuresi<sup>23</sup> and the authors X and Z.<sup>24</sup> In the view of the State party, the foregoing facts refute the argument that the complainant has a political profile that would attract the Iranian authorities' attention.

4.9 The State party also recalls that the complainant arrived in Switzerland in 2001 and filed his first application for asylum six years later, after having separated from his partner and after the Federal Court had decided to revoke his residence permit. The fact that he waited so long to take such action in itself casts doubt on his claims that he would be at risk of persecution. In fact, the complainant himself stated, of his own accord, that he had filed an asylum application for the sole purpose of being near his three daughters, and it was only after the definitive denial of his first application for asylum (that is, seven years after his arrival in Switzerland), at a point in time when he knew that he was supposed to leave Switzerland, that he began to engage in some activities. It is therefore not credible that his political activities in Switzerland are the result of a growing awareness on his part.

4.10 The State party adds that the complainant does not appear to be a person who is moved by a deeply held political conviction to raise public awareness about the Iranian regime in the host country. Instead, he seems to be a person who wants to give the appearance of being politically committed. His "sudden" political awareness while in Switzerland indicates that he is seeking to create circumstances that will enable him to obtain asylum. Conduct of this sort is a sign that the complainant himself does not actually think that he would be in danger of being subjected to torture if he were to return.

4.11 According to the State party, the complainant also claims that his conversion to Christianity would put him in danger of being tortured if he were to return, but converting to Christianity and practising that religion abroad do not put a person at risk of prosecution in the Islamic Republic of Iran unless it is done actively and visibly. The State party recalls that, in *Azizi v. Switzerland*, the Committee found that the complainant's "conversion to Christianity and his affiliation with Kurdish political activists compound the risk that he will be persecuted if he is returned to the Islamic Republic of Iran",<sup>25</sup> after having determined that the type of political activities in opposition to the Iranian authorities in which he had engaged abroad could well attract the attention of those authorities. In *X v. Switzerland*,<sup>26</sup> the deciding factors were the complainant's involvement in demonstrations in the Islamic Republic of Iran in 2009, his exclusion from university and his illegal departure from the Islamic Republic of Iran, rather than his religious views alone.

4.12 The State party adds that, during the consideration of his first application for asylum, the complainant stated that he had converted to Christianity in 1996 and that he had informed the Iranian consulate in Milan of that fact in 2001. Nonetheless, he later obtained an Iranian passport without difficulty. During his hearings, the complainant was not able to explain why he had converted or to describe or cite any of the fundamental elements of Christianity (for example, the Ten Commandments, the structure of the New Testament or the name of even one of the Evangelists). It is true that he cited, in vague terms, some of the Ten Commandments, including the seventh ("Thou shalt not steal"), although he does not

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<sup>21</sup> Asylum application of 15 April 2013, annex 7.

<sup>22</sup> Active member of the Swiss branch of the Kurdish Democratic Party of Iran and President of the Executive Committee for several cantons (see *Azizi v. Switzerland*, para. 8.6).

<sup>23</sup> Active member of the Democratic Association for Refugees in Switzerland since 2006 and viewed as one of the leaders of that organization, which is publicly opposed to the Iranian regime, and responsible for recruiting new members (see *Tahmuresi v. Switzerland*, para. 7.6).

<sup>24</sup> Active members of the Komala Party, as are several members of their family; in addition, they had previously been imprisoned and tortured in the Islamic Republic of Iran (see *X and Z v. Finland*, para. 7.6).

<sup>25</sup> *Azizi v. Switzerland*, para. 8.8.

<sup>26</sup> *X v. Switzerland*, para. 7.6.

obey it in daily life (see the reference to legal proceedings and criminal convictions for numerous thefts in the cantons of Ticino and Lucerne in the interim decision of the Federal Administrative Court of 22 August 2011, annex 11). What is more, the complainant was said to have gone to a Baptist church only at Christmas in Ticino.

4.13 According to the State party, as noted by the Federal Administrative Court, the complainant's lack of knowledge about Christianity and his behaviour are surprising in a convert, especially if he claims to have attended Sunday school (as a child) and, later, religious services regularly (particularly in India). These factors not only fail to substantiate the presence of real religious convictions but also mean that his claim that he would be regarded as an apostate lacks credibility.<sup>27</sup> The State party maintains that, in the course of the consideration of his second application for asylum, the complainant repeated his statements regarding his conversion to Christianity but failed to dispel the serious doubts on the part of the Swiss authorities that had led them to conclude that he had not converted to Christianity at all. When asked to describe briefly his reasons for converting, he fell back on clichés. In addition, his claims have been contradictory and, in some cases, illogical. In his application for asylum of 16 April 2013, he stated that he read the Bible, but, at the hearing, he said that he was lazy and did not like to read. The complainant said that he was fond of the Gospel According to John, but, when asked to give reasons for that preference, he admitted that he did not remember what it says. Furthermore, the complainant did not know the names of the church pastors (or those of other people who work there). It follows from the foregoing that the complainant's claim that he explained the reasons for his conversion to compatriots has not been substantiated either.

4.14 The State party contends that the complainant's conduct while in Switzerland has not been such as to create a real, specific risk of being subjected to torture by the Iranian authorities. The complainant's profile as an opponent of the regime is not such as to prompt the Iranian authorities to consider him a danger, nor have his religious or other activities on his website been such as to attract the Iranian authorities' attention. In sum, nothing in his case file indicates that the Iranian authorities are aware of his activities or have taken any action against him because of those activities.

4.15 The State party concludes by noting that all the complainant's arguments concerning a risk of persecution in the Islamic Republic of Iran and, in particular, his activities in Switzerland have been thoroughly examined by the Swiss authorities. The complainant's communication provides no new information or evidence, nor does the complainant cite any procedural errors. The State party recalls that it is the Committee's practice to maintain that "it is within the purview of the courts of the States parties to the Convention to assess the facts and evidence in a case".<sup>28</sup> In particular, the Committee "must assess the facts and evidence in a given case, once it has been ascertained that the manner in which the evidence was evaluated was clearly arbitrary or amounted to a denial of justice".<sup>29</sup> However, in the instant case, the submissions of the complainant do not show that the State party's consideration of the matter has been flawed by any such irregularities.

#### **Complainant's comments on the State party's submissions**

5.1 On 4 March 2016, in response to the observations of the State party concerning his political activities in the Islamic Republic of Iran, the complainant admits that he was not politically active when he was there. Nonetheless, he affirms that his reasons for leaving the Islamic Republic of Iran were political. Because his father had worked for the Government under the Shah, the current Government distrusted his family. In fact, after the revolution, his family's home had been confiscated by the secret police. Furthermore, his father is still banned from leaving the country. In addition, in 1991, the complainant worked for Energy Venture, a United States/Canadian petroleum company. At the time, he was the only Iranian working there who spoke English, and this led the Iranian authorities to suspect that he was a spy. The complainant states that he was arrested and interrogated twice about his

<sup>27</sup> Judgment of the Federal Administrative Court of 16 December 2008, consid. 4.1, annex 4.

<sup>28</sup> Communication No. 419/2010, *Ktiti v. Morocco*, decision adopted on 26 May 2011, para. 8.7.

<sup>29</sup> Communication No. 293/2006, *J.A.M.O. v. Switzerland*, decision adopted on 9 May 2008, para. 10.5.

professional activities. After running into trouble with the Iranian regime, Energy Venture had to discontinue its operations.

5.2 The complainant recalls that the Swiss authorities have said that his statements about the Iranian authorities' suspicions of espionage and their arrests and interrogations of the complainant are not credible. However, the Swiss authorities have not contested the fact that he worked for an oil company that had to discontinue its operations, nor the fact that his father worked for the previous regime.<sup>30</sup> He explains that his claims concerning the suspicion of espionage and his arrests and interrogations were not reproduced in the communication submitted to the Committee because he was unable to provide any new evidence on those points. Moreover, those events occurred 23 years ago, and the Federal Administrative Court handed down a final decision on the matter over six years ago. As a result, the amount of time that has passed since domestic remedies were exhausted was unreasonably prolonged, so much so that the consideration of his complaint by the Committee would have been extraordinarily difficult. The complainant states that the fact that his father worked for the previous regime and is still banned from leaving the country shows that he belongs to a family that the Iranian Government considers to be part of the opposition.<sup>31</sup>

5.3 The complainant contends that the State party's objections regarding his political activities in Switzerland and his conversion are unfounded. In the first place, the complainant had no reason to apply for asylum before 2007. He fled the Islamic Republic of Iran immediately after he had problems with the secret police in 1991. Since he found employment in India, he had no need to apply for asylum there. Then, he met his former partner, who was Swiss, and obtained a residence permit in Switzerland. It is entirely understandable that the complainant preferred to take the direct route of obtaining a residence permit that would allow him to reside and work in Switzerland rather than embark on an asylum application procedure during which he would have been placed in a refugee reception centre and would not have been able to work for some time. The complainant emphasizes that, after he fled in 1991, he never returned to the Islamic Republic of Iran, even during the time, between 2002 and 2006, when he had a Swiss residence permit. The question of his returning to the Islamic Republic of Iran arose when his residence permit was not renewed in 2006. The complainant filed an application for asylum at that time, when the fear of having to return to the Islamic Republic of Iran and be exposed to persecution devastated him, so much so that he was hospitalized in a psychiatric clinic for two months.

5.4 The complainant reaffirms that, at his first hearing, on 24 September 2007, he stated that he had a well-founded fear of being persecuted in the Islamic Republic of Iran for political and religious reasons. When asked why he had fled his country, the complainant first replied that he had left because of political problems<sup>32</sup> and then mentioned his conversion to Christianity. It was only near the end of the hearing, when he was asked if he had other reasons for not wanting to return to the Islamic Republic of Iran, that he mentioned that he would like to be near his children in Ticino. This should make it clear to the Swiss authorities that there are other reasons that should preclude expulsion from Switzerland, such as a person's state of health or the fact that a person's family or social network is in Switzerland.

5.5 The complainant asserts that he did not become politically active suddenly or for no reason; rather, it was because he himself is affected by a grave human rights violation committed by the Iranian regime — the violation of freedom of religion. His political activities should therefore be considered in the light of his conversion to Christianity. In the course of his participation in demonstrations and in posts on his website, the complainant has placed emphasis on denouncing the absence of freedoms (freedom of expression, freedom of religion) in the Islamic Republic of Iran. As to the question of the authenticity of his conversion, he points out that he converted to Christianity while in India, long before

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<sup>30</sup> Decision of the Federal Office for Migration of 10 July 2008; judgment of the Federal Administrative Court of 16 December 2008, consid. 4.1.

<sup>31</sup> Thus, contrary to the opinion of the State party, this case is comparable to *X and Z v. Finland*.

<sup>32</sup> "*Ho lasciato il mio Paese per problemi politici*", transcript of the hearing of 24 September 2007.



his arrival in Switzerland and the denial of his application for asylum. Before that, he attended Sunday school in the Islamic Republic of Iran, since, even as a child, he was drawn to Christianity. At his hearings, he explained that he converted because he believes in the New Testament and in a merciful God who is forgiving. Moreover, he practises his religion by talking to other people rather than spending any great deal of time reading the Bible at home. During the hearings, he was very nervous, and understandably so, given what was at stake and the fact that the Swiss authorities subjected him to what amounted to a religious examination. His contact with the Christian religion has taken place in English, Italian and German, which is why he is not familiar with some religious expressions in Persian. In addition, few Christians in Switzerland are able to describe the structure of the Bible, list the Ten Commandments or name the four Evangelists, even if they attend church regularly. Above all, the Iranian authorities would focus on the fact that the complainant was baptized in India, that he lived with a Christian woman (who, according to the Iranian authorities, should have converted in order to marry a Muslim), that he has three daughters who are being raised as Christians, that he champions his religion on his website and that he shares his faith with other people. They would regard these facts as proof of his conversion rather than caring whether or not he can quote the Bible.

5.6 Finally, when the complainant applied for a passport at the Iranian embassy in Switzerland, he already had a residence permit, since he lived with a Swiss woman and his Swiss children. It is easy for an Iranian who has a residence permit to obtain a passport because the embassy does not ask any questions about a person's political views or religion. The embassy questions people closely and examines their file in detail only if the person does not have any permit at all, has the type of permit issued to asylum seekers or has a temporary entry visa.

5.7 The complainant states that, contrary to what the State party believes, it is highly probable that his activities on his website have been noticed by the Iranian authorities, even though he does not hold a senior position in a political party. In that connection, he refers to a news story concerning the fact that the Iranian Government has set up a police unit that specializes in Internet surveillance. In its observations, the State party failed to mention the complainant's website, where he has posted his own curriculum vitae and where he regularly comments on the problems faced by Christians and converts in the Islamic Republic of Iran.

5.8 The complainant's political activities should be viewed in the light of his conversion. It is highly probable that the Iranian authorities have found his website using a simple keyword search and have become aware of his religious and political affiliations. Because of his decades-long absence from the Islamic Republic of Iran, his political activities, his conversion to Christianity, the fact that his family is viewed as being part of the opposition and the fact that he has had three children out of wedlock with a Christian, the Iranian authorities will certainly arrest him upon his return, interrogate him and place him in custody. Since, in the Islamic Republic of Iran, the physical and psychological torture of members of the opposition is systematically used to obtain confessions,<sup>33</sup> the complainant runs a real and personal risk of being subjected to torture.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

6.1 Before considering any claim contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (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 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the

<sup>33</sup> See communications *Azizi v. Switzerland*, para. 8.5; *Tahmuresi v. Switzerland*, para. 7.5; and *X v. Switzerland*, para. 7.5.

individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party concedes that the complainant has exhausted all available domestic remedies.

*Consideration of the merits*

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

7.2 The issue before the Committee is whether the return of the complainant to the Islamic Republic of Iran would constitute a violation of the State party's obligation under article 3 (1) 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 risk being subjected to torture.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon his return to the Islamic Republic of Iran. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee recalls that the aim of that determination is to establish whether the individual concerned would personally be at a foreseeable and real risk of being tortured in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country. Additional grounds must be adduced to show that the individual concerned would personally be at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture given his or her specific circumstances.<sup>34</sup>

7.4 The Committee recalls its general comment No. 1, wherein it states that the existence of a risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to be shown to be highly probable,<sup>35</sup> the Committee recalls that the burden of proof normally falls on the complainant, who must present an arguable case establishing that he or she runs a foreseeable, real and personal risk.<sup>36</sup> 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 the organs of the State party concerned, but, at the same time, it is not bound by such findings, and instead has the power, under article 22 (4) of the Convention, of free assessment of the facts based on the full set of circumstances in each case.<sup>37</sup>

7.5 The complainant claims that, in the Islamic Republic of Iran, he could be persecuted or subjected to torture because of his conversion to Christianity and his political activities in Switzerland. He was not politically active in his home country, but nonetheless contends that political considerations were one of the reasons why he left the Islamic Republic of Iran (his father worked for the Shah's regime and is not allowed to leave Iranian territory, and, after the revolution, his family home was confiscated by the secret police). He adds that even people who are no more than sympathizers of the opposition are likely to be arrested arbitrarily and mistreated in prison. The Committee notes that the complainant claims to have had trouble with the secret police in 1991, before leaving the Islamic

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<sup>34</sup> See, for example, communication No. 490/2012, *E.K.W. v. Finland*, decision adopted on 4 May 2015, para. 9.3.

<sup>35</sup> General comment No. 1, para. 6.

<sup>36</sup> *Ibid.* See also communications Nos. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, para. 7.3; 343/2008, *Kalonzo v. Canada*, decision adopted on 18 May 2012, para. 9.3; 458/2011, *X v. Denmark*, decision adopted on 28 November 2014, para. 9.3; and 520/2012, *W.G.D. v. Canada*, decision adopted on 26 November 2014, para. 8.4.

<sup>37</sup> See general comment No. 1, para. 9; and communications Nos. 375/2009, *T.D. v. Switzerland*, decision adopted on 26 May 2011, para. 8.7; and 466/2011, *Alp v. Denmark*, decision adopted on 14 May 2014, para. 8.3.

Republic of Iran in 1992. It also notes that he has never returned to the Islamic Republic of Iran, even in the period between 2002 and 2006, when he had a Swiss residence permit.

7.6 In the case at hand, the Committee notes that the complainant left the Islamic Republic of Iran in 1992, legally, and went to India, where he worked in the petroleum industry. The Committee also notes that he submitted his first application for asylum six years after he entered Switzerland and that, according to the State party, the simple fact that he waited so long to do so could cast doubt on his claim that he is at risk of persecution. The Committee further notes that, according to the State party, the complainant, of his own accord, said that his reason for submitting his first application for asylum was that he wanted to stay near his three daughters. The Committee takes note of the fact that the complainant began his political activities in Switzerland after his first asylum application and his petition for reconsideration had been rejected and, in particular, that, according to statements that he made in 2008, he did not belong to a political party, but, on the occasion of his second application for asylum, on 15 April 2013, he claimed to be a member of the Iranian Social Democratic Party. The Committee notes that, according to the State party, the complainant's profile is "insignificant" and his activities have not been founded on a growing awareness on his part. The Committee also notes that, according to the State party, the complainant's political activities in Switzerland, insofar as it has been verified that they occurred, will not have attracted the Iranian authorities' attention because, even though the Iranian secret service keeps political activities conducted abroad in opposition to the regime under surveillance, that service focuses its attention on people having a particular profile who occupy positions or carry out activities that represent a serious and real threat to the current regime.

7.7 With regard to the complainant's conversion, the Committee notes that he was unable to give his reasons for converting or to describe or cite basic elements of Christianity, such as the Ten Commandments, the structure of the New Testament or the names of the Evangelists, even though he claims to have attended Sunday school regularly as a child and, later on, religious services, in particular in India. The Committee also notes that the complainant did not know the names of the pastors or other persons who worked at the churches that he said that he had attended in Switzerland. The Committee notes that, according to the State party, the Swiss authorities' serious doubts about his conversion led them to conclude that he has actually not converted at all. Furthermore, the Committee notes that the complainant obtained an Iranian passport while he was in Switzerland, without difficulty, despite the fact that, according to the State party, he informed the Iranian consulate in Milan of his conversion in 2001; this contention has not been refuted by the complainant.<sup>38</sup>

7.8 The Committee recalls that it must ascertain whether the complainant would currently run a risk of being subjected to torture if he were returned to the Islamic Republic of Iran.<sup>39</sup> It notes that the complainant has had ample opportunity to provide supporting evidence and more details about his claims at the national level to the Federal Office for Migration and the Federal Administrative Court, but that the evidence provided was not such as to allow the national authorities to conclude that his conversion or his participation in political activities, insofar as it has been verified that they occurred, would place him at risk of being subjected to torture upon his return. The Committee is aware that numerous aspects of the human rights situation in the Islamic Republic of Iran remain problematic. It refers to the conclusions of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (see A/HRC/34/65, para. 78), in which the Special Rapporteur expresses concern over the targeting and harsh treatment of Christians from Muslim backgrounds and members of other religions, which are considered "deviant faiths" by the authorities and some members of the clerical establishment. These groups continue to face arbitrary arrest, harassment and detention and are often accused of national security crimes, such as "acting against national security" or "propaganda against the State". Under Iranian law, individuals, including Christians from Muslim backgrounds (of Muslim origin), can be

<sup>38</sup> See para. 4.12 above.

<sup>39</sup> See, for example, communication No. 435/2010, *G.B.M. v. Sweden*, decision adopted on 14 November 2012, para. 7.7.

prosecuted for apostasy, although it is not specifically codified as a crime in the Islamic Criminal Code.

7.9 Nevertheless, the Committee recalls that the occurrence of human rights violations in the complainant's country of origin is not, of itself, sufficient for it to conclude that a complainant is personally at risk of being tortured. On the basis of the information before it, the Committee concludes that the complainant has not provided proof that his conversion and his political activities are important enough to attract the interest of the authorities of his country of origin and concludes that the information that has been provided does not demonstrate that he would personally be at risk of torture if he were to return to the Islamic Republic of Iran.<sup>40</sup>

8. In the light of the above, the Committee considers that the information submitted by the complainant is insufficient to substantiate his claim that he would face a foreseeable, real and personal risk of torture if he were returned to the Islamic Republic of Iran.

9. The Committee against Torture, acting under article 22 (7) of the Convention, concludes that the complainant's return to the Islamic Republic of Iran would not constitute a breach of article 3 of the Convention by the State party.

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<sup>40</sup> See, for example, communications No. 243/2004, *S.A. v. Sweden*, decision of inadmissibility adopted on 6 May 2004, para. 4.2; and *W.G.D. v. Canada*, para. 8.7.