



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

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**Committee against Torture**  
**Forty-sixth session**  
9 May–3 June 2011

**Decision**

**Communication No. 357/2008**

<i>Submitted by:</i>	Fuad Jahani (represented by counsel, Mr. Urs Ebnöther)
<i>Alleged victim:</i>	Fuad Jahani
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	9 October 2008 (initial submission)
<i>Date of decision:</i>	23 May 2011
<i>Subject matter:</i>	Deportation from Switzerland to the Islamic Republic of Iran, with alleged risk of torture and other cruel, inhuman or degrading treatment or punishment
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Risk of torture following deportation; risk of cruel, inhuman or degrading treatment or punishment following deportation
<i>Article of the Convention:</i>	3

[Annex]

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\* Made public by decision of the Committee against Torture.

## Annex

### **Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-sixth session)**

concerning

#### **Communication No. 357/2008**

*Submitted by:* Fuad Jahani (represented by counsel, Mr. Urs Ebnöther)

*Alleged victim:* Fuad Jahani

*State party:* Switzerland

*Date of complaint:* 9 October 2008 (initial submission)

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

*Meeting on 23 May 2011,*

*Having concluded* its consideration of complaint No. 357/2008, submitted to the Committee against Torture by Mr. Fuad Jahani under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all the information made available to it by the complainant, his counsel and the State party,

*Adopts* the following:

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

1.1 The complainant, Fuad Jahani, is a national of the Islamic Republic of Iran, was born in 1981 and is facing deportation from Switzerland to his country of origin. He claims that his deportation would constitute a violation by Switzerland of article 3 of the Convention. He is represented by counsel, Urs Ebnöther.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention on 15 October 2008. At the same time, the Committee, pursuant to rule 108, paragraph 1, of its rules of procedure, requested that the State party refrain from deporting the complainant to the Islamic Republic of Iran while his complaint was being considered. The State party acceded to this request on 20 October 2008.

1.3 On 14 April 2009, the State party provided its observations on the admissibility and merits of the case.

### The facts as submitted by the complainant

2.1 The complainant is an Iranian national belonging to the Kurdish minority. He claims that, because of his activities as a member of the Communist Workers' Party, he had to leave his country of origin and apply for asylum in Switzerland, where he arrived on 11 July 2005.<sup>1</sup> Shortly after he arrived in Switzerland, the complainant applied for asylum and has become an active member of the Iranian opposition movement in Switzerland.

2.2 On 26 November 2007, the Federal Office for Migration decided not to consider the merits of the complainant's application. However, on 25 January 2008, an appeal lodged by the complainant against that decision was upheld by the Federal Administrative Tribunal, which instructed the Federal Office for Migration to consider the merits of the case.

2.3 On 25 March 2008, the Federal Office for Migration rejected the complainant's asylum application. An appeal against that decision was rejected by the Tribunal on 6 May 2008, as it had not been filed before the deadline.

2.4 On 3 June 2008, the complainant lodged a new asylum application on the basis of his political activities in Switzerland. The Federal Office for Migration, in its decision of 18 June 2008, decided not to consider the merits of the application. On 14 July 2008, the Tribunal rejected the complainant's appeal against that decision. On 18 July 2008, the Federal Office for Migration ordered the complainant to leave the territory of the State party by 30 July 2008 at the latest. The complainant has been residing illegally in Switzerland since that date.

2.5 According to the complainant, the Federal Administrative Tribunal, in its decision of 14 July 2008, wrongly considered that his activities as the cantonal representative of the Democratic Association for Refugees (which is part of the Iranian opposition movement in Switzerland), his regular attendance at meetings of that movement, his close contact with the President of the Democratic Association for Refugees and his regular involvement in radio broadcasts did not demonstrate the existence of a risk of persecution in the event of his return to the Islamic Republic of Iran. The complainant considers that, the Tribunal has failed to take into account the many credible reports which demonstrate that the Iranian authorities closely monitor the Iranian diaspora and keep records on its members' political activities.<sup>2</sup> He adds that, for these reasons, Iranian political activists in exile are exposed to a real risk of arrest and torture in the event of being forcibly returned to their country of origin. According to the complainant, a detailed report of the Swiss Refugee Council confirms that Iranian citizens living in Switzerland who hold a position of importance within the Democratic Association for Refugees face such a risk.

2.6 The complainant contends that he has participated in many events and meetings organized by the Iranian opposition movement in Switzerland and that the Swiss authorities have not disputed this fact. He also claims that numerous photographs of him at such events have been posted on Internet sites<sup>3</sup> and have appeared in newspapers. Furthermore, the complainant has allegedly participated regularly in radio broadcasts in Switzerland. He emphasizes that, as the leader of the cantonal branch of the Democratic Association for Refugees, he holds a position of importance within the Iranian opposition movement in Switzerland as defined in the recent jurisprudence of the Tribunal.<sup>4</sup> For these reasons, the

<sup>1</sup> The initial decision of the Federal Office for Migration gives 9 July 2005 as the complainant's date of entry.

<sup>2</sup> In support of his claim, the complainant refers to a report entitled *Verfassungsschutzbericht* (issued by the German Federal Ministry of the Interior), 2007, p. 297.

<sup>3</sup> The complainant mentions, as an example, the website [www.k-d-panahandegan.org](http://www.k-d-panahandegan.org).

<sup>4</sup> The complainant invokes decision No. D-6849/2006 of the Federal Administrative Tribunal of 26

complainant reiterates that it is highly likely that he has attracted the attention of the Iranian authorities and that his political activities would be perceived by them not only as having defamed the current regime — which is a crime in itself in the Islamic Republic of Iran — but also as a threat to national security.

2.7 Given the deplorable human rights situation in the Islamic Republic of Iran and the regime's notorious repression of any form of opposition to it in the country, the complainant claims his fears of suffering acts of torture in the event of a forcible return to the Islamic Republic of Iran are well founded. He adds that the Federal Administrative Tribunal has recently decided that a person who performs the duties of a cantonal representative of the Democratic Association for Refugees runs a real risk of persecution in the event of returning to the Islamic Republic of Iran,<sup>5</sup> and he argues that the same reasoning should therefore be applied to his case.

2.8 The complainant adds that he belongs to the Iranian Kurdish minority, which considerably increases the risk of persecution in the event of forcible return. He asserts that political actions taken against the ruling regime by members of ethnic minorities are even more likely to attract the attention of the authorities and result in even more severe penalties than those committed by Iranians of Persian descent.

### **The complaint**

3. The complainant claims that his expulsion from Switzerland to the Islamic Republic of Iran would be in violation of article 3 of the Convention, as there are substantial grounds for believing that he would be in danger of being subjected to torture if sent back.

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

4.1 On 14 April 2009, the State party presented its observations on the admissibility and merits of the complaint. It argues that the complainant has failed to establish that he faces a personal, real and foreseeable risk of torture if sent back to the Islamic Republic of Iran. While noting the worrisome human rights situation in the Islamic Republic of Iran and referring to general comment No. 1 of the Committee,<sup>6</sup> the State party recalls that this situation is not in itself a sufficient basis for concluding that the complainant would be in danger of being subjected to torture if returned. It contends that he has failed to demonstrate that he faces a foreseeable, personal and real risk of torture if returned to the Islamic Republic of Iran.

4.2 According to the State party, the complainant declared, during the domestic judicial proceedings, that he had been arrested and detained for two weeks in 2002 for having taken part in a demonstration in support of the separatist leader Öcalan. However, the complainant did not claim to have been tortured during his detention. The State party adds that the complainant's allegations concerning the reasons that precipitated his departure from the Islamic Republic of Iran had not been considered plausible by the Federal Office for Migration, which announced its decisions on 26 November 2007 and 25 March 2008. The State party notes, in addition, that the complainant has not exhausted all domestic remedies with regard to his first asylum application, since the appeal that he had lodged against the decision of the Federal Office for Migration of 25 March 2008 was rejected on 6 May 2008 by the Federal Administrative Tribunal because it had been submitted after the

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August 2008.

<sup>5</sup> *Ibid.*, pp. 12–13, para. 4.2.2.2.

<sup>6</sup> General comment No. 1, A/53/44, annex IX of 21 November 1997. The State party also refers to communications No. 94/1997, *K.N. v. Switzerland*, decision adopted on 19 May 1998, and No. 100/1997, *J.U.A. v. Switzerland*, decision adopted on 10 November 1998.

legal deadline. The decision of the Federal Office for Migration therefore came into force. The State party notes, however, that the complainant's communication before the Committee focuses on his second asylum application, which is based on his political activities after he left the Islamic Republic of Iran, and that he has exhausted all remedies for that application.

4.3 With regard to the complainant's political activities in the Islamic Republic of Iran as outlined during his first asylum procedure, the State party notes that the Federal Office for Migration substantiated, in detail, the reasons why it did not consider them to be credible. It also reiterates that the complainant has not exhausted all the domestic remedies with regard to that procedure. In the State party's view, the same is true of the claims made by the complainant during his second asylum procedure, according to which he had attracted the attention of the Iranian authorities as a result of his political activities as the representative of the Democratic Association for Refugees for the Canton of Schaffhausen. These claims have been examined in detail by different national judicial authorities, who have concluded that the complainant would not be in danger if returned to the Islamic Republic of Iran. In many decisions concerning the removal of unsuccessful asylum-seekers to the Islamic Republic of Iran, the Federal Administrative Tribunal has found that the Iranian secret service may carry out surveillance of political activities in opposition to the regime undertaken abroad, but only when those involved in such activities fit a certain profile, take action that falls outside the usual scope of the mass opposition movement, and hold office or carry out activities of such a nature that they represent a serious and real threat to the Government.<sup>7</sup> The State party adds, referring to various sources of information, that those suspected of being involved in a serious crime or of acting on behalf of specific political groups also risk being arrested.

4.4 The State party asserts that the report of the Swiss Refugee Council cited by the claimant does not state that people who hold a particular position within the Democratic Association for Refugees would be exposed to a specific risk if they were to return. According to the same report, even repeated support for actions in opposition to the current Iranian regime would not lead to an increased risk of reprisals. The report does note, however, that such actions might be taken if a person were to commit acts of violence or hold a particularly senior post in certain opposition groups.<sup>8</sup> The State party suggests that the Democratic Association for Refugees is not one of the main opposition groups in exile referred to in the report of the Swiss Refugee Council.<sup>9</sup> It adds that the Democratic Association for Refugees has been described by some members of the press as an organization whose primary purpose is to provide its members with evidence of political activity so that they can remain in Switzerland.<sup>10</sup> Therefore, if the Iranian authorities are monitoring the activities of this association, they are also likely to be aware of these reservations and to be taking them into account.

4.5 The State party notes that the complainant's second application was based entirely on his political activities from 25 March 2008 to 14 July 2008 (date of the last decision of the Federal Administrative Tribunal). It was therefore rejected on the basis of his alleged activities, namely, his role as a representative of the Democratic Association for Refugees, his participation in three demonstrations and his recruitment by a local radio station. The State party observes that his role as a representative of the Democratic Association for

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<sup>7</sup> The State party refers to decision No. D-6849/2006 of the Federal Administrative Tribunal of 26 August 2008, para. 4.2.2.1; see footnote 6 above.

<sup>8</sup> The State party refers to the aforementioned report of the Swiss Refugee Council; see footnote 3 above.

<sup>9</sup> The State party is referring to the report of the Swiss Refugee Council cited above.

<sup>10</sup> The State party refers here to an article in the weekly *Die Weltwoche* of 25 April 2007.

Refugees had already been considered during the first asylum procedure and that there have been no new developments in this connection since then. It reaffirms that it cannot be inferred from the information put forward by the complainant regarding his various activities that he would be perceived as a leader of an opposition organization representing a potential threat to the Iranian regime and that he would, therefore, be at risk of being tortured if returned.

4.6 When considering the complainant's first asylum application, the Federal Office for Migration<sup>11</sup> had carefully examined a newspaper article which he had written and had concluded that, although it seemed to use a call for the overthrow of the Mullahs' regime as a catchphrase, it did not give the impression that the complainant held clearly delineated political beliefs or that he represented a potential danger to the regime in the Islamic Republic of Iran. The article rather seemed to have been intended to serve as grounds for asylum following the complainant's flight from the Islamic Republic of Iran, and the Iranian authorities would be able to see that.

4.7 Regarding the complainant's participation in radio broadcasts with political content, the State party notes that the Federal Office for Migration concluded that the complainant had not demonstrated that the Iranian authorities had been aware of this or that they would consider him as dangerous on this basis. Finally, the State party maintains that the complainant has not provided any evidence to demonstrate that the fact that he belongs to the Kurdish minority would increase his risk of being persecuted if returned.

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

5.1 On 16 June 2009, the complainant contended that the fact that the Democratic Association for Refugees is not included in the list of the most prominent Iranian opposition organizations is explained by the fact that this list is only indicative in nature. He further states that, when the report of the Swiss Refugee Council was published, the Democratic Association for Refugees was still a young association that was not well known enough to be classed with other, older opposition movements. However, several court decisions of the State party have recognized the existence of the Democratic Association for Refugees. The complainant objects to the fact that the State party is echoing newspaper articles that describe the political activism of the Democratic Association for Refugees as nothing more than an alibi for asylum-seekers and asserts that such a point of view is marginal and inaccurate.

5.2 With regard to the decision of the Federal Administrative Tribunal of 16 August 2008 to grant asylum to a member of the Democratic Association for Refugees, the complainant maintains that the person concerned was, like him, a cantonal representative of the Democratic Association for Refugees, and that this person's name also appeared, along with his contact details, in *Kanoun* magazine. According to the complainant, the Federal Administrative Tribunal has therefore explicitly recognized that holding a position as a representative of the Democratic Association for Refugees at the cantonal level and having one's name and contact details published should be considered as an indication that such a person would be perceived to be a danger to the regime in Tehran. He adds that, in a more recent decision, the Tribunal also granted refugee status to an asylum-seeker who was a member of the Democratic Association for Refugees and whose political profile was lower than that of the complainant, as he was simply responsible for security during demonstrations.<sup>12</sup> The complainant adds that the Federal Office for Migration has accorded

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<sup>11</sup> Decision of 26 November 2007.

<sup>12</sup> The complainant refers to decision No. D-4581/2006 of 19 February 2009, para. 4.3.

refugee status to several individuals who were cantonal representatives for the Democratic Association for Refugees.<sup>13</sup>

5.3 With regard to the newspaper article which he had written and which had been examined by the Federal Office for Migration during his first asylum application procedure, the complainant emphasizes that it is similar to other articles published in *Kanoun* magazine. The members of the Democratic Association for Refugees who have been recognized as political refugees by the State party on the basis of such articles did not employ a notably different style or make more strongly supported political remarks. Furthermore, the complainant has continued to publish other articles in *Kanoun* and to participate in demonstrations against the Iranian regime and in radio broadcasts.

#### **Additional observations by the State party**

6.1 On 24 August 2009, the State party responded to the complainant's claims that some members of the Democratic Association for Refugees had been granted asylum in Switzerland further to a decision of the Federal Office for Migration or the Federal Administrative Tribunal. It reiterates that these bodies consider each individual case on the basis of its specific elements. It adds that the Federal Administrative Tribunal has issued 40 decisions since the beginning of 2007 in cases in which applicants have adduced political activities as members of the Democratic Association for Refugees. Asylum has only been granted in a certain number of cases after due consideration of all of the circumstances involved.<sup>14</sup> Even if they have undertaken similar activities within the same organization, two individuals may be exposed to a different level of risk if returned to the Islamic Republic of Iran because other factors influence how much attention the Iranian authorities focus on them. The State party reiterates that the Iranian authorities are able to distinguish between political activities deriving from a serious, personal conviction, which thus represent a significant subversive potential in their eyes, and activities aimed primarily at providing those involved with a residence permit in a third country.

6.2 The State party adds that the Democratic Association for Refugees systematically seeks to provide its members with personal grounds for asylum by setting up stalls on an almost weekly basis at which the Association photographs its members carrying pamphlets in ways that ensure that they are recognizable and publishes the photographs on its website. After the Federal Administrative Tribunal ruled that simply being a member of the association did not in itself constitute personal grounds for asylum after having fled from another country, the Democratic Association for Refugees began to establish different roles for its members, such as logistics or security manager, etc. Since then, the majority of cases involving its members have had to do with persons who play a "leading role" within the Association. In conclusion, the State party reiterates that the risk of being subjected to torture must be assessed on the basis of the particular circumstances of each case and that the complainant in this case has not established that he would face such a danger if returned to the Islamic Republic of Iran.

<sup>13</sup> The complainant refers to decision Nos. N 440 341 of July 2006, N 409 182 of November 2006, N 397 027 of February 2007, and N 404 499 of February 2009 of the Federal Office for Migration.

<sup>14</sup> The State party refers to the decisions of the Federal Administrative Tribunal of 2 July 2007 concerning the logistics manager of the Democratic Association for Refugees, of 21 January 2008 and 18 September 2008 concerning two other members of the Association, of 16 January 2009 concerning a security manager of the Association, and of 19 March 2009 concerning a cantonal manager of the Association.

**Additional observations by the complainant**

7.1 On 11 June 2010, the complainant referred to a decision by the European Court of Human Rights,<sup>15</sup> which held that the forcible return to the Islamic Republic of Iran of a complainant who had been arrested and tortured in that country in the past constituted a violation of article 3 of the European Convention on Human Rights, given, inter alia, the general situation in the Islamic Republic of Iran, particularly after the elections held in the country in June 2009. The complainant notes in particular that in this decision, the Court accepted that the Iranian authorities frequently arrest and torture individuals participating in peaceful demonstrations in the country, not only when they hold a leading political role, but also when they are simply opponents of the regime. The Court also noted that the situation was particularly risky for complainants who had left the country illegally.

7.2 In the same submission, the complainant claims that he left the Islamic Republic of Iran illegally for political reasons. He reiterates that since his arrival in Switzerland in 2005, he has been active in exile opposition movements against the regime. Not only has he participated in many demonstrations, but he also runs a radio show called “The Voice of the Resistance”, in addition to being the regional leader of the Democratic Association for Refugees. Given that the Iranian authorities closely monitor all activities of political dissent, which according to them includes participation in peaceful demonstrations, there are substantial grounds for believing that the complainant would be detained and questioned if he were deported to the Islamic Republic of Iran. The fact that he would not be able to prove he had left the country legally would make his situation even worse.

7.3 On 28 February 2011, the complainant informed the Committee that he has continued to host a radio broadcast on a local station called *Lora* for the past several months. In a weekly broadcast called “The Voice of the Resistance” on that radio station, he has been able to read poems he has written reflecting his opinions on the current situation in the Islamic Republic of Iran.<sup>16</sup> He adds that he remains an active member of the Democratic Association for Refugees and is still the representative of that association for the Canton of Schaffhausen. Moreover, he continues to participate in demonstrations and other public events organized by the Iranian opposition in exile throughout Switzerland.

7.4 In the same submission, the complainant also notes that the human rights situation in the Islamic Republic of Iran has seriously deteriorated over the past few months. He claims that at least 66 persons, including many political activists, were executed in the month of January 2011 alone. The complainant encloses, inter alia, a press release from the International Federation for Human Rights dated 6 January 2011, reporting some 70 executions in the Islamic Republic of Iran in one month, including an execution by public hanging. At least 18 of the 70 persons mentioned were said to have been executed for political reasons, facing the vague charges of moharebeh (“fighting God”) and “corruption on earth”. He also mentions a European Parliament resolution dated 18 January 2011 expressing concern about, inter alia, the persecution of certain religious and ethnic groups, and about the recent allegations of extrajudicial executions carried out in the Islamic Republic of Iran since June 2009. The complainant further claims that the Iranian Government recently established a “cyber police” unit responsible for tracking and gauging the extent of “espionage and riots” on opposition social networks on the Internet.<sup>17</sup> The complainant also notes that as an ethnic Kurd belonging to the Sunni denomination, his risk of persecution if he was returned would be threefold: as a political activist, as a member of an ethnic minority, and as a member of a religious minority.<sup>18</sup> According to the

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<sup>15</sup> *R.C. v. Sweden*, application No. 41827/07 of 9 March 2010.

<sup>16</sup> The complainant encloses two of his poems.

<sup>17</sup> The complainant encloses an article from the *Boston Globe* dated 24 January 2011 reporting on the establishment of such a police unit, as announced by Iranian State television.

<sup>18</sup> He refers to a report by Minority Rights Group International entitled “State of the World’s Minorities

complainant, several Kurds have been executed in the past year, or are currently on death row for supporting the armed Kurdish resistance.<sup>19</sup> In conclusion, the complainant reiterates that, given the highly alarming human rights situation in the Islamic Republic of Iran, a situation that has seriously deteriorated over the past few months, particularly for human rights activists and political opponents, and given that he himself left the country illegally and is a member of a double ethnic and religious minority and an active political opposition figure on the Internet and radio, he would undoubtedly be arrested if returned. He adds that there is an extremely high risk that he would be subjected to torture or other inhuman or degrading acts, including the death penalty following an unfair trial.<sup>20</sup>

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

8.1 Before considering any claims contained in a complaint, the Committee against Torture 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, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The State party asserts that the complainant had not exhausted domestic remedies with regard to his first asylum application, since his appeal before the Federal Administrative Tribunal against the decision of the Federal Office for Migration of 25 March 2008 was rejected on 6 May 2008 because it was submitted after the legal deadline. Consequently, the aforementioned decision of the Federal Office for Migration came into force. The Committee notes, however, as the State party itself has pointed out, that the complainant's communication before the Committee is based on his second asylum application, which he initiated on 3 June 2008 and which was rejected on 18 June 2008 by the Federal Office for Migration. On 14 July 2008, the Federal Administrative Tribunal rejected the appeal lodged by the complainant against that decision. The complainant has therefore exhausted all domestic remedies in respect of his second asylum application. Accordingly, the Committee finds that the complaint is admissible and proceeds to its consideration on the merits.

#### **Consideration of the merits**

9.1 The issue before the Committee is whether or not the complainant's removal to the Islamic Republic of Iran would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

9.2 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to the Islamic Republic of Iran,

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and Indigenous Peoples 2010 – Iran” of 1 July 2010, which points out that non-Shiite Muslims face social discrimination and that many Sunni mosques have been destroyed in various parts of the country. The report also emphasizes that Sunnis are politically underrepresented in the provinces where they make up the majority of the population, such as Kurdistan and Khuzestan.

<sup>19</sup> The complainant refers to a report by Human Rights Watch entitled “Iran: Deepening Crisis on Rights” from 26 January 2011, which claims that there were many irregularities in the trials of these individuals, such as credible allegations of torture, forced confessions, and violations of the right to have access to a lawyer.

<sup>20</sup> The complainant refers to the decision of the European Court of Human Rights in the case of *Öcalan v. Turkey*, application No. 46221/99 of 12 March 2003.

the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned.

9.3 The Committee recalls its general comment on the implementation of article 3 of the Convention, that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable, the Committee recalls that the burden of proof normally falls to the complainant, who must present an arguable case establishing that he runs a “foreseeable, real and personal” risk.<sup>21</sup> Furthermore, in its general comment the Committee states that it must also determine whether the complainant has engaged in political activity within or outside the State concerned which would appear to make him particularly vulnerable to the risk of being placed in danger of torture.<sup>22</sup> The Committee also recalls that, while it gives considerable weight to the findings of fact of the State party’s bodies, it is entitled freely to assess the facts of each case, taking into account the circumstances.

9.4 The Committee notes first of all, that the actual human rights situation in the Islamic Republic of Iran is extremely worrisome, particularly after the elections held in the country in June 2009. The Committee has seen many reports describing, in particular, the repression and arbitrary detention of many reformers, students, journalists and human rights defenders, some of whom have been sentenced to death and executed.<sup>23</sup> The State party itself has recognized that the human rights situation in the Islamic Republic of Iran is worrisome on many levels.

9.5 The Committee also recalls that although the complainant did not mention the fact before the Committee, it appears that he, a member of the Kurdish minority, was detained in the Islamic Republic of Iran for two weeks in March 2002 for participating in a demonstration in support of the separatist leader Öcalan. Since his arrival in Switzerland, he has been active within the Democratic Association for Refugees, for which he is the cantonal representative for the canton of Schaffhausen. The Committee notes that the complainant has participated in several demonstrations organized by the Democratic Association for Refugees and in radio broadcasts where he has expressed his political opinions against the Iranian regime. The State party has not contested these activities. The Committee also notes that the complainant has written several articles published in *Kanoun*

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<sup>21</sup> See general comment No. 1 of the Committee, footnote 8 above, and communication No. 203/2002, *A.R. v. The Netherlands*, decision adopted on 21 November 2003, para. 7.3.

<sup>22</sup> See general comment No. 1, *ibid.*, para. 8 (e).

<sup>23</sup> For example, on 7 July 2009, six special procedures mandate holders of the Human Rights Council (arbitrary detention; extrajudicial, summary or arbitrary executions; right to freedom of opinion and expression; torture and other cruel, inhuman or degrading treatment or punishment; situation of human rights defenders; and enforced or involuntary disappearances) expressed their concern regarding the protests linked to the Iranian presidential elections of 2009, following which at least 20 people were killed and hundreds of others seriously injured in clashes with security forces, who allegedly used live ammunition and rubber bullets. The same experts have also expressed their concern about reports of arrests and detention without charge and ill-treatment of detainees. See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=8383&LangID=E> (accessed on 17 March 2010); see also the documents prepared by OHCHR for the universal periodic review in respect of the Islamic Republic of Iran: A/HRC/WG.6/7/IRN/2 (25 November 2009), e.g. paras. 28, 31 and 56; and A/HRC/WG.6/7/IRN/3 (30 November 2009), paras. 28–29. See also the statement made by the High Commissioner for Human Rights on 2 February 2011 on the execution of at least 66 persons in the month of January 2011, including at least 3 political prisoners, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10698&LangID=E> (accessed on 22 February 2011).

magazine, in which his name and telephone number were published. Under these circumstances, the Committee considers that the complainant's name could have been identified by the Iranian authorities. The Committee also takes note of the decision of the Federal Administrative Tribunal cited by the complainant, in which it granted asylum to a member of the Democratic Association for Refugees who held, like him, a position as a cantonal representative for the Association.<sup>24</sup>

9.10 Consequently, and in the light of the general human rights situation in the Islamic Republic of Iran that particularly affects human rights defenders and members of the opposition seeking to exercise their right to freedom of expression, and in view of the complainant's political opposition activities in Switzerland, which could suggest that he has attracted the attention of the Iranian authorities, the Committee considers that there are substantial grounds for believing that the complainant risks being subjected to torture if returned to the Islamic Republic of Iran.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to the Islamic Republic of Iran would amount to a breach of article 3 of the Convention.

11. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

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

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<sup>24</sup> Decision No. D-6849/2006 of the Federal Administrative Tribunal of 26 August 2008; see footnote 6 above.