



# 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. 822/2017\*, \*\*

<i>Communication submitted by:</i>	Y.G. (represented by counsel, Urs Ebnöther)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	22 April 2017 (initial submission)
<i>Date of present decision:</i>	26 November 2018
<i>Subject matter:</i>	Expulsion to the Islamic Republic of Iran
<i>Procedural issues:</i>	None
<i>Substantive issue:</i>	Risk of torture upon return to country of origin
<i>Article of the Convention:</i>	3

1.1 The complainant is Y.G., a national of the Islamic Republic of Iran born on 21 September 1981. He applied for asylum in Switzerland, but his application was rejected. He is facing deportation to the Islamic Republic of Iran and claims that his forced repatriation would constitute a violation by Switzerland of article 3 of the Convention. He is represented by counsel.

1.2 On 25 April 2017, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the complainant to the Islamic Republic of Iran while the complaint was being considered.

#### The facts as submitted by the complainant

2.1 The complainant became interested in politics as a teenager, and his interest led him to study international relations. He took part in a demonstration 10 days before the Iranian presidential elections of 13 June 2009. He then participated in another demonstration that was part of the Green Movement in Shiraz, on 8 February 2011. When the participants were surrounded by civil servants and a unit of the Basij militia, the complainant lost his wallet while trying to escape. When he realized what he had lost, he turned and saw police officers behind him who had probably picked up his wallet. Subsequently, he was arrested on 12 February 2011 and held prisoner in an underground cell. On 15 February 2011, he was

\* Adopted by the Committee at its sixty-fifth session (12 November–7 December 2018).

\*\* The following members of the Committee participated in the examination of the communication:  
Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu,  
Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

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interrogated for an hour by the court.<sup>1</sup> A day later, he was released on bail. To prevent further persecution, he left the Islamic Republic of Iran on 9 April 2011.

2.2 The complainant arrived in Switzerland on an unspecified date and filed his first asylum request on 4 July 2011, which was dismissed by the State Secretariat for Migration on 23 September 2011 because he did not produce identity papers or credible reasons for not being able to procure such documents. His appeal was dismissed on 13 October 2011 by the Federal Administrative Court.

2.3 In September 2011, the complainant became a member of the Democratic Association for Refugees. Given his educational background, he was soon assigned more responsibilities within the association. In 2012, he started to write communications and publicize news on the association's Persian web page,<sup>2</sup> as a part of a five-person team. Since September 2013, he has been the sole person responsible for this web page.

2.4 On 23 July 2012, the complainant lodged a second asylum request, in which he argued that he had been politically active as a member of the Democratic Association for Refugees since September 2011, before the first decision on asylum had been issued. On 7 February 2014, the State Secretariat for Migration dismissed his request. The complainant's appeal was also dismissed by the Federal Administrative Court on 9 April 2014. The Court held that the level of his exposure as a member of the Democratic Association for Refugees was not sufficient to put him at risk of persecution in case of return to the Islamic Republic of Iran, as his activity was not significantly different from the activity of other Iranians in exile.

2.5 Since September 2014, the complainant has been the main person responsible for the web page of the radio programme "Voice of the Resistance" (*Stimme des Widerstandes*) and as an anchor for its weekly broadcast. Every six months, he prepares a report for the executive committee of the Democratic Association for Refugees. The complainant is listed as the only other contributor next to the editor. On the equivalent Persian website, it is stated that the complainant is the person responsible for it. He also makes political statements against the Iranian regime on his Facebook page,<sup>3</sup> where his full name and photograph are public, and takes part in numerous demonstrations and rallies to take a stand against oppression in the Islamic Republic of Iran and advocate adherence to human rights.<sup>4</sup> He signed a petition on 17 October 2012 to the former President of the Swiss Federal Council, demanding the closure of the Iranian embassy in Bern due to known espionage by embassy staff.

2.6 On 6 January 2015, the complainant lodged a third asylum request on the basis of his ongoing political activity. On 30 January 2015, the State Secretariat for Migration rejected his request. It had first dismissed the complainant's request for a further hearing, given that in this third application for asylum he had substantiated the facts in writing, with the assistance of a lawyer. On the merits, the State Secretariat for Migration acknowledged that the Iranian authorities monitored political activity abroad, but that they focused on individuals perceived as being serious and dangerous opponents to the Government. The Iranian authorities could distinguish between committed opponents and exile activists such as the complainant, who were not politically active in the Islamic Republic of Iran and as such were not a target for the authorities. The State Secretariat for Migration considered that according to the documents produced by the complainant in support of his alleged high level of political commitment to his activities, he focused on generally known developments and events in the Islamic Republic of Iran, without distinguishing his opposition from the usual forms of political opposition in exile. The State Secretariat for Migration also observed that the complainant started to develop his political profile only after the negative conclusion to his first asylum request, thus seeking to obtain a residence

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<sup>1</sup> No further details provided.

<sup>2</sup> <http://farsi.kanoun.ch>.

<sup>3</sup> He claims that his Facebook page contains a clear political statement, where he listed five reasons for his dissident opinions against the Iranian regime. He provides some copies of his Facebook posts.

<sup>4</sup> He submits that in the monthly magazine *Kanoun*, produced by the Democratic Association for Refugees, he appears in numerous photographs, whether as a speaker, as the person responsible for technical service or simply as a participant.

permit. Therefore, in the absence of political activities in the Islamic Republic of Iran, the State Secretariat for Migration doubted the complainant's political commitment. It also doubted that the Iranian authorities were able to monitor the vast amount of data available on the Internet; they would focus only on opponents who, contrary to the complainant, held a firm belief and as such were perceived as opponents who posed a serious threat to the State. The State Secretariat for Migration did not find any specific indications to suggest that the Iranian authorities were aware of the complainant's alleged activities, and concluded that the complainant was not portraying the necessary political profile to attract the attention of the Iranian authorities.

2.7 The complainant appealed, insisting that he had been persecuted in the Islamic Republic of Iran for having participated in a demonstration. He had become an active member of the Democratic Association for Refugees in September 2011, before the end of his first asylum proceedings, and his commitment had only increased progressively. He considered that the assessment by the State Secretariat for Migration amounted to a generalization, because he now occupied a function with different responsibilities and exhibited a clear political profile. Several Iranians had been granted refugee status based only on their activities in exile. Had the State Secretariat for Migration really considered the substance of the complainant's statements and granted him a fair hearing, it would have noted his pathos and intricacy when criticizing the Iranian regime.

2.8 On 23 February 2017, the Federal Administrative Court upheld the decision of the State Secretariat for Migration. It found that the complainant's allegations of having been persecuted in the Islamic Republic of Iran following his participation in a demonstration were not credible; that his position as the main person responsible for the website of the Democratic Association for Refugees did not seem to differ substantially from the work that he had performed previously as a simple member of the team; that he did not have the authority to make important decisions within the association; that his position as a news anchor did not constitute evidence of an intensification of his political profile; that reading the news did not qualify as exposed political activism; that his Facebook activity represented generally formulated dissident posts that were limited to accounts of events or denouncements of abuses in the Islamic Republic of Iran; and that the photographs showing him taking part in a demonstration did not portray him as a serious opponent to the Government of the Islamic Republic of Iran. The Court concluded that the complainant had not reached the level of exposure necessary to put him at risk of persecution in the Islamic Republic of Iran as a serious and dangerous opponent to the Government.

2.9 In a letter dated 19 April 2017 to the Committee, the Democratic Association for Refugees certified that the complainant had been an active member since September 2011 and a hostile opponent to the Iranian regime. Given his involvement with the association, he would be exposed to a high probability of persecution if returned to the Islamic Republic of Iran.

### **The complaint**

3.1 The complainant maintains that he is the victim of a violation of article 3 of the Convention by the State party, whose authorities have ordered his expulsion to a country where he will certainly be at risk of being subjected to treatment contrary to the Convention.

3.2 The complainant refers to the threat of serious harm faced by those who maintain even a low-profile opposition to the Iranian regime.<sup>5</sup> In its judgments in *R.C. v. Sweden* and *M.A. v. Switzerland*, the European Court of Human Rights noted that anyone who demonstrated or in any way opposed the current Iranian regime could be at risk of being detained and ill-treated or tortured.<sup>6</sup> The Committee stated in *Tahmuresi v. Switzerland* (CAT/C/53/D/489/2012) that recent reports indicated that even low-level opposition was closely monitored in the Islamic Republic of Iran and that the Iranian authorities effectively monitored Internet communications and regime critics both within and outside the country

<sup>5</sup> Human Rights Watch, *World Report 2010*, pp. 497 ff.

<sup>6</sup> European Court of Human Rights, *R.C. v. Sweden* (application No. 41827/07), judgment of 9 March 2010, para. 54; and European Court of Human Rights, *M.A. v. Switzerland* (application No. 52589/13), judgment of 18 November 2014, para. 56.

(para. 7.6). The Committee also expressed concern about the frequent use of detention and torture of political opponents in the Islamic Republic of Iran (para. 7.5).

3.3 The complainant contests the findings of the Federal Administrative Court that his political activities in Switzerland are not indicative of a high political profile. He invokes decisions in other cases, where the Court ruled that members of the Democratic Association for Refugees in high positions had a level of exposure sufficient to put them at risk of persecution in case of forced return to the Islamic Republic of Iran,<sup>7</sup> or that Iranian claimants who were politically active in exile and took part in demonstrations would most likely be subjected to persecution due to their political activity if sent back to the Islamic Republic of Iran.<sup>8</sup> In those cases, the Court inferred from the facts known to the Swiss asylum authorities that the Iranian authorities systematically monitored activities and protests by its citizens abroad, collected those data and took rigorous action against deviants. The complainant submits that even if he does not formally have the title of a leading position, his activities speak for themselves. He occupies an important position in the association and is essential to the activities pertaining to it. His work as an anchor does not represent a simple transmission of political news, but is a personal statement regarding the situation in the Islamic Republic of Iran. He will not be perceived as a “messenger” by the Iranian authorities, but as an activist who shows an earnest commitment to the cause and, as such, as a risk to the regime. His involvement in political activities shows a political profile similar to that of other activists who are or were members of the Democratic Association for Refugees and were granted asylum. The complainant does not only occupy an administrative position or participate passively in demonstrations,<sup>9</sup> but rather acts at the forefront of activities concerning the association as well as outside the association. He is responsible for two websites, on which his name and telephone number and a photograph of him are made public so that anybody can contact him or send comments.

3.4 The Swiss authorities have ignored the fact that reliable reports confirm that the Iranian authorities thoroughly observe and record the political activities of the Iranian diaspora.<sup>10</sup> A report by the Danish Immigration Service reveals evidence that asylum seekers and refugees are kept under strict surveillance by Iranian embassies and their networks of informers.<sup>11</sup> A detailed report by the Swiss Refugee Council confirms that Iranian citizens living in Switzerland who hold a high position in the Democratic Association for Refugees face a real risk of persecution in case of expulsion to the Islamic Republic of Iran.<sup>12</sup>

3.5 It is therefore extremely likely that he has attracted the attention of the Iranian authorities, which will perceive his political activities not only as a defamation of the regime – which in itself constitutes a crime in the Islamic Republic of Iran – but also as an external threat to the internal security of the country. Taking into account the deplorable human rights situation in the country and the notorious repression by the current regime of any kind of opposition, the complainant has a well-founded fear that he would be subjected to torture if he were sent back to the Islamic Republic of Iran.

<sup>7</sup> Federal Administrative Court, *A. et al. v. Federal Migration Office*, Decision No. D-6849/2006, 26 August 2008.

<sup>8</sup> Federal Administrative Court, *A. v. Federal Migration Office*, Decision No. E-7110/2006, 25 July 2007; confirmed by Federal Administrative Court, *A. v. Federal Migration Office*, Decision No. E-2077/2012, 28 January 2014.

<sup>9</sup> He refers to *Jahani v. Switzerland* (CAT/C/46/D/357/2008).

<sup>10</sup> He cites the 2015 report of the Federal Ministry of the Interior, Building and Community (available at [www.verfassungsschutz.de/de/oeffentlichkeitsarbeit/publikationen/verfassungsschutzberichte](http://www.verfassungsschutz.de/de/oeffentlichkeitsarbeit/publikationen/verfassungsschutzberichte)).

<sup>11</sup> Denmark, Danish Immigration Service, *Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.: Fact Finding Mission to the Islamic Republic of Iran 24th August–2nd September 2008* (Copenhagen, April 2009), p. 34; and Immigration and Refugee Board of Canada, “Iran: treatment of anti-Government activists by authorities, including those returning to Iran from abroad; overseas monitoring capabilities of the Government (2012–2013)”, 20 January 2014.

<sup>12</sup> Swiss Refugee Council, “Iran: dangers encourus par les activistes et membres des organisations politiques en exil de retour dans leur pays – moyens d’accès à l’information des autorités iraniennes”, 4 April 2006.

### State party's observations on the merits

4.1 On 25 October 2017, the State party submitted its observations on the merits of the communication. It recalls that under article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. For the purpose of determining whether there are such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. With regard to the Committee's general comment No. 1 (1997) on the implementation of article 3 in the context of article 22, the complainant must establish the existence of a personal, present and substantial risk of being subjected to torture upon return to his or her country of origin. The risk of torture must be assessed on grounds that go beyond mere theory or suspicion. There must be grounds for describing the risk of torture as substantial (paras. 6 and 7). The following elements must be taken into account to ascertain the existence of such a risk: any evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the State concerned; any claims of torture or maltreatment in the recent past and independent evidence to support those claims; the political activity of the complainant within or outside the State concerned; any evidence as to the credibility of the complainant; and any factual inconsistencies in the complainant's claims (para. 8).

4.2 The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not, of itself, constitute sufficient grounds for determining that a particular person would be subjected to torture upon return to that country. The Committee must establish whether the individual concerned is personally at risk of being subjected to torture in the country to which he or she would return.<sup>13</sup> Additional grounds must be adduced to show, for the purposes of article 3 (1) of the Convention, that the risk of torture is foreseeable, real and personal.<sup>14</sup>

4.3 Although the human rights situation in the Islamic Republic of Iran is disturbing in a number of respects, such as the massive and systematic use of psychological and physical torture to extract confessions, the situation in the complainant's country of origin does not, of itself, constitute sufficient grounds for concluding that he would be at risk of torture if he were to be returned there. The complainant has been unable to demonstrate that there is a foreseeable, real and personal risk of him being subjected to torture. He also does not claim to have been subjected to torture by the Iranian authorities.

4.4 With regard to the political activity of the complainant in his country of origin, the complainant claims that he has been a supporter of the Green Movement since the 2009 elections, in which capacity he put up posters in villages and distributed green strips. He also participated in two demonstrations. These claims have been duly considered by the Swiss asylum authorities, which have found them to be implausible. The complainant has not demonstrated genuine political involvement that would have exposed him. Consequently, it is unlikely that the Iranian authorities tried to find him based on his allegedly lost identity card, which in fact could also have been found by another person or stolen.

4.5 With regard to the political activity of the complainant in Switzerland, the State party acknowledges that the Iranian authorities monitor the political activities of their citizens abroad. However, each particular case should be assessed to ascertain whether, in case of return, there is a high probability that political activities in exile may lead to serious adverse effects. The Iranian secret services focus their attention mainly on persons with a particular profile, whose actions fall outside the scope of collective protest and who occupy positions or carry out activities that represent a serious and real threat to the Iranian regime. They are quite capable of distinguishing political activities that reflect a serious personal conviction from activities undertaken primarily for the purpose of obtaining a residence permit. In its decision of 23 February 2017, the Federal Administrative Court was of the

<sup>13</sup> *K.N. v. Switzerland* (CAT/C/20/D/94/1997), para. 10.2.

<sup>14</sup> *Ibid.*, para. 10.5; and *J.U.A. v. Switzerland* (CAT/C/21/D/100/1997), para. 6.5.

view that, in the assessment of whether a person was at risk, what was important were concrete efforts towards a targeted and effective change of political conditions in the country rather than the name of the position occupied or the number of activities.

4.6 Given that the complainant has failed to prove his alleged political activities in the Islamic Republic of Iran and the subsequent prosecution, there is no ground for believing that he was perceived as a political opponent by the Iranian authorities before leaving the country. His activities do not go beyond the threshold of generally known political protests in exile. The fact that he is responsible for the website of the Democratic Association for Refugees does not imply an effective or important decision-making role within the organization. Neither does reading the news on the radio indicate an exposed political engagement. The same holds true for the complainant's Facebook posts, which present information linked to events or criticism of the situation in the Islamic Republic of Iran: these posts do not confer on him the profile of an exposed opponent who may be perceived as dangerous by the Iranian regime. The photographs showing the complainant as a participant in different demonstrations do not entail a high risk of torture in case of return to the Islamic Republic of Iran either, because they do not reveal that he occupied a particular function in this context. The letters delivered by the Democratic Association for Refugees in support of him do not change this assessment because they are probably documents of convenience.

4.7 During the hearing on 5 February 2014 regarding his second asylum request, the complainant declared that he had joined the Democratic Association for Refugees at the beginning of October 2011. It was only afterwards that he claimed that he had joined the organization in September 2011. Given that his first asylum request was dismissed on 23 September 2011, it is evident that – contrary to his allegations – his political engagement in exile started after the rejection of his asylum request. The Iranian authorities are able to make a distinction between such activities aimed at visibility and a genuine engagement emerging from an inner conviction.

4.8 The huge amount of information available on the Internet makes it barely likely that the Iranian authorities would keep it all under surveillance. They would rather focus on those opponents who represented a potential danger to the regime. This hypothesis is confirmed by the large amount of activities throughout the whole of Western Europe, which are critical to the Iranian regime. In the case in hand, there are no specific signs that the Iranian authorities are aware of or interested in the complainant's activities.

4.9 Referring to the practice of the Swiss authorities, the State party mentions that the Federal Administrative Court dismissed the request of a person with a profile that was similar to that of the complainant.<sup>15</sup> Referring to the Committee's practice, the State party points out that, unlike the complainant in *Tahmuresi v. Switzerland*, the complainant does not occupy the position of being in charge of the association in one of the Swiss cantons.

4.10 With regard to the complainant's credibility and the coherence of the information that he has provided, the Swiss asylum authorities found the complainant's allegations to be implausible. In particular, he provided vague and partially contradictory information as to the crimes of which he was accused in the Islamic Republic of Iran. He did not explain why he was released on bail when his lawyer allegedly predicted the maximum sentence for his crimes. His allegations as to his journey to Switzerland were also not plausible, given that he claimed that he had travelled hidden in a lorry and he had been able to get out only once, while in Turkey.

4.11 In view of the above, the State party is of the belief that the complainant has not demonstrated that there are serious reasons to believe that he stands a specific and personal risk of being subjected to torture by the Iranian authorities.

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<sup>15</sup> Federal Administrative Court, *A. v. Federal Migration Office*, Decision No. E-2077/2012, 28 January 2014. The case of that person was then referred to the Committee, which found that there would be no violation in case of deportation to the Islamic Republic of Iran. See *Ravanbakhsh Rasooli v. Switzerland* (CAT/C/63/D/673/2015).

### Complainant's comments on the State party's observations

5.1 The complainant submitted his comments on the State party's observations on 30 January 2018. The State party does not dispute that he was politically active in the Islamic Republic of Iran, but merely submits that his activities did not reach an extent that would trigger the interest of the Iranian authorities for his political views. His political involvement in the Islamic Republic of Iran is therefore not disputed. As to the alleged vagueness and contradictions in his testimony as to the crimes of which he was accused in the Islamic Republic of Iran, the complainant explains that the Iranian authorities themselves were very vague with respect to those crimes. It is more than normal for the Government to accuse citizens of false crimes, purposefully keeping the allegations as vague as possible.

5.2 In analysing his activities, the State party considered each activity individually, thus failing to make an overall assessment of all of his political activities. However, as a whole, his numerous actions do prove that he is politically very active, and thus exposed. His activities and responsibilities within the Democratic Association for Refugees show that he has become an important and decisive member of the organization. He is in charge of the association's website and writes numerous articles for its *Kanoun* newspaper, which are very critical of the Government of the Islamic Republic of Iran.

5.3 Contrary to the State party's allegations, the complainant does, in fact, assume a leading role during demonstrations and events organized by the Democratic Association for Refugees and an alliance of democratic Iranian forces.<sup>16</sup> As a whole, the numerous tasks that he has assumed within the Democratic Association for Refugees – writing articles, administering the website and leading protests – demonstrate that he plays an important role within the association, and that he is a key figure and a very active member of the opposition. The fact that he is a member of the association because of his personal conviction cannot be disputed merely on the basis of the month in which he joined, especially since the process of joining an organization may take several months.

5.4 The complainant states that he hosts the opposition radio programme "Voice of the Resistance" and that his articles written for *Kanoun* have been broadcast on the programme. He is one of the most frequent hosts of the radio programme.<sup>17</sup> He provides a letter dated 24 March 2015 from the Swiss branch of the Democratic Party of Iranian Kurdistan and another dated 10 March 2015 from the Abroad Committee of the Komala Party of Iranian Kurdistan, which confirm that the complainant is a known civil rights activist. Both letters hold that, due to his political activities, he would face persecution in case of return to the Islamic Republic of Iran.

5.5 The complainant further refers to his public profile on Facebook and his daily posts on the gross human right violations committed by the Iranian regime. Reports indicate that the Government conducts widespread secret observation of individuals perceived as critics of the regime. The Committee itself has acknowledged that Iranian authorities effectively monitor Internet communications and regime critics both within and outside the Islamic Republic of Iran.<sup>18</sup> The complainant reiterates that the European Court of Human Rights found in *R.C. v. Sweden* that it was not only political leaders who faced persecution and arbitrary arrest, but also peaceful participants in demonstrations.<sup>19</sup> He further claims that in 2010, the Government set up a cyberpolice unit to scour the web in search of people "spreading lies" and "insults" against the system.<sup>20</sup>

<sup>16</sup> He submits videos from a demonstration in Zurich, Switzerland, on 1 May 2017, which shows him as the leader of the protest march, chanting slogans such as "Down with the Iranian Islamic Republic", which others repeat; from a protest in Geneva on 9 June 2017, where he is the leading figure, as the first speaker and then introducing the other speakers and handing them the microphone; and from a protest in Chur, Switzerland, on 9 December 2017, where he gives a speech in German and in Farsi, at the end of which he calls for the dissolution of the Iranian State. He participated in further protests, on 19 May 2017, 16 September 2017 and 19 November 2017.

<sup>17</sup> He encloses a schedule of the radio programme.

<sup>18</sup> *Tahmuresi v. Switzerland*, para. 7.6.

<sup>19</sup> European Court of Human Rights, *R.C. v. Sweden*, para. 54.

<sup>20</sup> Amnesty International, "Iranian 'web crime' unit designed to silence dissent", 16 November 2009.

5.6 With tensions rising in 2017 and now culminating in the mass protests in the Islamic Republic of Iran, the crackdown by the Government on any form of dissent has intensified. It comes as no surprise that in 2017, the Government introduced new laws to criminalize any form of expression deemed to be “against the management of the country and its political institutions”.<sup>21</sup> The Secretary-General also expressed concern about continued restrictions on public freedoms and the related persecution of civil society actors (A/HRC/34/40).

5.7 In conclusion, because of his many activities in Switzerland, the chance of the Government of the Islamic Republic of Iran being aware of his oppositional engagement and views is very high. The State party did not assess all of his activities and thus failed to see that, overall, the complainant is very active and holds a decisive role in the opposition to the Iranian regime in Switzerland, and is therefore very exposed and at risk of being persecuted by the Iranian authorities upon return.

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

#### *Consideration of admissibility*

6.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (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 individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies.

6.3 As the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

#### *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, in accordance with article 22 (4) of the Convention.

7.2 In the present case, 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 of the Convention not to expel or to return (“refouler”) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

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 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. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a

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<sup>21</sup> Amnesty International, *Amnesty International Report 2016/17: The State of the World’s Human Rights* (London, 2017), p. 192.



person might not be subjected to torture in his or her specific circumstances. Moreover, the Committee notes that since the Islamic Republic of Iran is not party to the Convention, in the event of a violation of the complainant's rights under the Convention in that country, he would be deprived of the legal option of recourse to the Committee for protection of any kind.<sup>22</sup>

7.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, according to which the non-refoulement obligation in article 3 of the Convention exists whenever there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture in a State to which the person is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination. The Committee's practice has been to determine that substantial grounds exist whenever the risk of torture is foreseeable, personal, present and real (para. 11). Indications of personal risk may include, but are not limited to, the political affiliation or political activities of the complainant, previous torture, incommunicado detention or other forms of arbitrary and illegal detention in the country of origin, and clandestine escape from the country of origin following threats of torture (para. 45). The Committee gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (para. 50).

7.5 In the present case, the Committee notes that the complainant maintains that he was imprisoned in the Islamic Republic of Iran for having participated in a demonstration. It further notes that, according to the complainant, the State party does not dispute that he was politically active in the Islamic Republic of Iran, but contests the level of his political involvement. The Committee also notes that the State party points to inconsistencies and contradictions in the complainant's statements and submissions.

7.6 The Committee notes that, according to the State party, the complainant's political activities in Switzerland do not constitute lasting and intensive activity that could be considered a real and serious threat to the Government of the Islamic Republic of Iran. The Committee notes that the complainant has not clearly demonstrated that he began his political activities in Switzerland before his first asylum application had been rejected. According to the State party, the complainant's political activities in Switzerland 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 individuals with a particular profile who occupy positions or carry out activities that represent a serious and real threat to the current regime. In that respect, the Committee takes note of the complainant's evidence of his involvement in such activities.

7.7 The Committee notes that the State party recognizes that legitimate concern can be expressed regarding the human rights situation in the Islamic Republic of Iran. In that connection, the Committee recalls that it is noted in the most recent report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran that the country's legislation continues to authorize the use of punishments such as flogging and amputation for individuals convicted of certain offences (A/HRC/37/68, para. 29). According to that report, the Government of the Islamic Republic of Iran rejects the notion that amputations and floggings amount to torture and maintains that they are effective deterrents to criminal activity. The Secretary-General also expressed concern about continued restrictions on public freedoms and the related persecution of civil society actors (see para. 5.6 above). The Committee also notes that the State party itself acknowledges that the Iranian authorities monitor the political activities of their citizens abroad, although it maintains that the secret services focus their attention mainly on persons with a particular profile, who occupy positions or carry out activities that represent a serious and real threat to the Iranian regime (see para. 4.5 above).

<sup>22</sup> *Tahmuresi v. Switzerland* (CAT/C/53/D/489/2012), para. 7.7; and *Ravanbakhsh Rasooli v. Switzerland*, para. 7.2.

7.8 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.<sup>23</sup> The Committee also notes that the complainant had ample opportunity to provide supporting evidence and more details about his claims to the Swiss authorities, in the course of three sets of asylum proceedings. However, the evidence provided by the complainant fails to sufficiently substantiate his claim and does not make it possible to conclude that his involvement in political activities in the Islamic Republic of Iran and Switzerland could put him at risk of being subjected to torture or inhuman or degrading treatment upon his return to the Islamic Republic of Iran.

7.9 On the basis of the information before it, the Committee concludes that the complainant has not proved that his political activities are important enough to attract the attention of the authorities of his country of origin, and finds that the information provided does not demonstrate that he would face a personal, foreseeable and real risk of torture if he were to be returned to the Islamic Republic of Iran.<sup>24</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 personal, foreseeable and real risk of torture if he were to be returned to the Islamic Republic of Iran.

9. The Committee, acting under article 22 (7) of the Convention, decides that the return of the complainant to the Islamic Republic of Iran would not constitute a violation of article 3 of the Convention by the State party.

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<sup>23</sup> See, for example, *H.R.E.S. v. Switzerland* (CAT/C/64/D/783/2016), para. 8.14.

<sup>24</sup> See, for example, *M.K. v. Switzerland* (CAT/C/60/D/662/2015), paras. 7.8–7.9, and *Ravanbakhsh Rasooli v. Switzerland*, paras. 7.8–7.9.