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Committee against Torture

Communication No. 473/2011

Decision adopted by the Committee at its 53rd session (3 – 28 November 2014)

Submitted by:	Hussein Khademi et al. (represented by counsel, Mr Berhard Juesi)
Alleged victims:	The complainants
State party:	Switzerland
Date of the complaint:	3 August 2011 (initial submission)
Date of decision:	14 November 2014
Subject matter:	Expulsion of the complainants to the Islamic Republic of Iran
Procedural issue:	None
Substantive issue:	Risk of torture upon return to the country of origin
Article of the Convention:	3

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Annex

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

Concerning

Communication No. 473/2011

Submitted by:	Hussein Khademi et al. (represented by counsel, Mr Berhard Juesi)
Alleged victim:	The complainants
State party:	Switzerland
Date of complaint:	3 August 2011 (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 14 November 2014,

Having concluded its consideration of complaint No. 473/2011, submitted to the Committee against Torture on behalf of Hussein Khademi et al. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following:

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

1.1 The complainants are Mr Hussein Khademi, born on 23 September 1956, accompanied by his wife Shahin Qadery, born on 8 June 1969, and their children Ramyar, Zanyar, Mazyar and Kamyar, born in 1987, 1988, 1996 and 1997 respectively. All are nationals of the Islamic Republic of Iran. They claim that their expulsion to the Islamic Republic of Iran would constitute a violation, by Switzerland, of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They are represented by counsel, Bernhard Juesi.

1.2 On 5 August 2011, under rule 114, paragraph 1 (former rule 108, paragraph 1), of its rules of procedure (CAT/C/3/Rev.5), the Committee requested the State party to refrain from expelling the complainants to the Islamic Republic of Iran while their complaint was under consideration by the Committee. On 23 August 2011, the State party informed the Committee that the Federal Office for Migration had requested the competent authorities to stay the execution of the expulsion order in relation to the complainants until further notice.

The facts as presented by the complainant

2.1 The first-named complainant and his family are of Kurdish ethnicity. The first-named complainant was born in Divandareh and moved to Merivan in 1969, where he later

joined the "Peshmerga," an armed fighter group of the Democratic Party of Iranian Kurdistan (KDPI) at the age of 18 or 20. As an active Peshmerga for three years, he participated in both combat operations and attacks against military structures. He also assisted and accompanied his father, a KDPI group leader. After leaving the Peshmerga, he left Merivan and worked in Tehran and Bandar Abbas before returning to Merivan in 1986. In Merivan he married his wife, worked as a butcher and owned a small store.

2.2 In 1991, the first-named complainant was summoned by the ETALAAT, the State party's Secret Services police force. Upon his arrival at the ETELAAT station, he was blindfolded and left in a fenced courtyard for three days. On the fourth day he attempted to escape, but was caught and beaten by two prison guards. Bones in his right hand were broken. The ETALAAT accused the first complainant of spying for the KDPI in exile, for dissident activities and for threatening national security. He was kept in the ETALAAT prison in Merivan for eighteen months, eight of which were spent in solitary confinement. He was subjected to questioning and beatings on an almost daily basis, floggings and electric shocks. The first-named complainant's family only learnt of his whereabouts eight months into his detention.

2.3 In the summer of 1993, the first-named complainant was transferred to Sanandaj and formally prosecuted and sentenced to death. He successfully appealed the verdict, however, and as a result was instead sentenced to 15 years in exile in the city of Yazd. He was obliged to report to the ETALAAT on a daily basis during this time. The complainant's father was also arrested, held in prison for three years and subsequently sentenced to 15 years in exile in the city of Kashan.

2.4 In March 2001, the first-named complainant returned to Merivan while on leave to visit his mother and sisters on the occasion of Navroz.[1] In the city centre, opposition supporters were demonstrating against the regime. That same evening the first-named complainant received a phone call from his brother warning him that the ETALAAT had come to arrest him on the grounds that he had been filmed in the proximity of the demonstrators earlier that day. Members of the ETALAAT searched his house several times in Yazd for incriminating material and arrested his eldest son, who was detained at the police station in Yazd for two days before being released upon payment by the first complainant's friend, Ashkezari. The first-named complainant fled to Mehriz to a friend's house, where his family joined him a few days later and together they left to Saqiz. On 2 April 2001, the first-named complainant and his eldest son crossed illegally into Iraq, where the remaining family members joined them one month later. Together they fled to Erbil where they were recognised as refugees by UNHCR and issued a residency permit by the Kurdish Democratic Party (KDP). Fearing for his life after two assassination attempts in Erbil by Merivan's ETALAAT section, however, the first-named complainant and his family left Iraq for Greece through Turkey in 2003. After receiving an expulsion order four years later, the family left Greece and travelled to Switzerland, where they filed an asylum request on 27 August 2007 and 3 September 2007. The complainants initially did not reveal the fact that they had been in Greece for fear of being expelled there under the Dublin regulations. Furthermore, on 22 September 2008, Radio Kurdistan broadcasted an obituary for the complainant's deceased father, in which both the complainant and his father's activities for the Peshmerga are discussed.

2.5 While in Switzerland, the complainants have continued their political activities against the Islamic Republic of Iran's regime. They are active members of the Swiss section of KDPI and have organised several demonstrations. They also regularly participate in protests throughout Switzerland and in Europe.

[1] Also referred to as the "Persian new year."

2.6 On 17 November 2010, the Federal Office for Migration (BFM) rejected the asylum applications of the complainants and ordered their expulsion to the Islamic Republic of Iran. On 20 December 2010, they appealed the decision before the Federal Administrative Tribunal, which on 30 June 2011 upheld the BFM's decision. The Tribunal argued that it was implausible that the ETALAAT only arrested the first-named complainant five years after his return to Merivan, especially since the ETALAAT was allegedly aware of his activities with the KDPI. Furthermore, the Tribunal found it was not credible that the first-named complainant was identified within one day from footage taken of the demonstration which, according to him, was "huge." Conflicting statements regarding the manner in which he was identified also led to the Tribunal's conclusion that his claims were not credible. Regarding the statements made by the second-named complainant, the Tribunal found that it was implausible that she and her sons joined the first complainant in Mehriz a few days after he had fled as they would have put the latter's life at risk because their house in Yazd was being monitored by the ETALAAT and they would have been followed.

2.7 The Federal Administrative Tribunal further found that the documents submitted by the first-named complainant to support his claims could not be considered to be pertinent evidence. Firstly, the copies of the court files could have been falsified and the original copies of the verdict against him could have been procured. Second, a letter from KDPI and a tribal elder confirming the first complainant's political activities, a witness report and a letter from an Iranian lawyer, which explained that original case files could not be obtained, were written as a favour to the first complainant and were therefore unreliable. Third, the audio files of the interview on Kurdish radio could have been manipulated. Fourth, the medical certificate did not demonstrate an obvious link between the first-named complainant's PTSD, bodily scars and a bone fracture in his hand, and the ill-treatment he purportedly suffered in the Islamic Republic of Iran. In addition, the Tribunal drew on the fact that no reports concerning the death penalty conviction of the complainant were available, as is normally the case due to Kurdish organisations which publish such reports, to form its conclusion. It also reiterated that the allegations of the complainants concerning events in Iraq were false as the family was in Greece between 2002 and 2005 and that the third complainant had not mentioned having been detained for two days during his first asylum interview. Finally, the Tribunal ruled that the complainants' political activities in Switzerland could not have come to the attention of the Iranian authorities, which only identified activists in exile who had leading roles in dissident movements.

2.8 The complainants maintain that the Swiss authorities have mistakenly concluded that they will not run the risk of persecution should they be expelled to the Islamic Republic of Iran. The first-named complainant argues that the Federal Administrative Tribunal failed to invite the Swiss embassy in Tehran to investigate further the authenticity of the court documents submitted or the existence of an arrest warrant against him prior to its finding that these documents were not pertinent evidence of his claims. This omission, he observes, resulted in the Tribunal's other erroneous findings that letters from the KDPI, the tribal leader, a fellow inmate and the statement from an Iranian lawyer explaining their inability to obtain original court documents were not credible. Furthermore, the complainants contend that the Swiss authorities reversed the burden of proof against them. In particular, the medical certificate was not found to sufficiently demonstrate the link between the first-named complainant's injuries and the ill-treatment suffered without further investigation on the part of the Swiss authorities. The complainants also note that the Swiss authorities found that no record of the first-named complainant's death penalty conviction existed without considering that this conviction was passed twenty years ago when the use of internet was limited. Moreover, the complainants argue that the Swiss authorities did not address the matter of their illegal departure from the Islamic Republic of Iran, which would

result in scrutiny by Iranian authorities upon their arrival which may expose them to further harm, should they be returned. [2]The first-named complainant further submits that the Swiss authorities did not directly dispute his membership in KDPI as a Peshmerga which leaves him vulnerable to imprisonment and death upon return.[3] The first-named complainant adds that reports show that the Iranian authorities are actively trying to identify protestors abroad, even if they are low profile activists,[4] as well as arresting, torturing and carrying out hundreds of death sentences against human rights activists within the Islamic Republic of Iran.[5]

The complaint

3. The complainants submit that, altogether, the human rights situation in the Islamic Republic of Iran, the first-named complainant's political activities in the country, the family's political activities in Switzerland and the fact that the first complainant has been previously tortured, puts the complainants at real and personal risk of torture or other inhuman and degrading treatment should he be returned to the Islamic Republic of Iran. The complainants maintain that their forcible return to the Islamic Republic of Iran would constitute a breach by Switzerland of its obligations under article 3, paragraph 1, of the Convention.

State party's observations on the merits

4.1 On 3 February 2012, the State party submitted its observations on the merits. It recalls the facts of the case and notes the complainants' argument before the Committee that they would be at risk of being subjected to torture or inhuman treatment, if returned to their country of origin.

4.2 The State party notes that the third-named complainant had indicated in his first asylum interview on 10 September 2007 that he had left the Islamic Republic of Iran because of his father's political activities. In a second asylum interview and before the Committee, however, he claims to have been arrested, detained for two days and interrogated. The State party reiterates that, based on his initial claim, the Swiss asylum authorities found on 17 November 2010 that the third-named complainant had no credible reason to fear persecution upon return. Furthermore, the State party submits that the second-named complainant did not provide valid reason for an asylum claim. It also contends that the new evidence provided by the complainants, that is letters from KDPI dated 9 February 2010 and 1 May 2011; do not call into question the decisions of the asylum authorities of the State party.

4.3 The State party further clarifies the asylum proceedings pursued by the complainants. It notes, in particular, that on 17 November 2010, the Federal Office for Migration rejected the complainants' applications for asylum, which were submitted on 27 August 2007 and 3 September 2007, the latter on behalf of the third-named complainant,

[2] The complainants refer to R.C v Sweden, Application no. 41827/07, Council of Europe: European Court of Human Rights, 9 March 2010, para 53.

[3] The complainant refers to the United Kingdom's Home Office Report: Operational Guidance Note – Iran, 15 March 2011, v6, at para. 3.12.9f.

[4] The complainant refers to BA (Demonstrators in Britain – risk on return) Iran v Secretary of State for the Home Department, CG [2011] UKUT 36(IAC). United Kingdom: Upper Tribunal (Immigration and Asylum Chamber). 1 February 2011.

[5] The complainant refers to Human Rights Watch, World Report 2011 – Iran, 24 January 2011; and International Federation for Human Rights, Prosecutor says hundreds to be executed in Iranian capital Tehran, 8 June 2011.

because their allegations lacked credibility and that nothing in their case file led it to conclude that they would face torture upon return to the Islamic Republic of Iran. On 7 March 2011, the Federal Administrative Tribunal unified the separate asylum appeals from the complainants and noted that the complainants' request for free legal aid was incomplete. It also stated that it had received a report from the Swiss Embassy in Tehran indicating that it was possible to procure court files from revolutionary tribunals in the Islamic Republic of Iran. The complainants were given a timeframe in which to comment on these findings, but they failed to do so. On 30 June 2011, the Tribunal confirmed its decision to expel the complainants. The State party adds that all arguments presented by the complainants were considered in a complete manner and with strict adherence to the procedures of the Federal Office for Migration.

4.4 The State party recalls that, under article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there exists substantial grounds for believing that he or she would be subjected to torture. To determine the existence of 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 reference to the Committee's general comment No. 1, the State party adds that the author should establish the existence of a "personal, present and real" risk of being subjected to torture upon return to the country of origin. The existence of such a risk must be assessed on grounds that go beyond mere theory or suspicion. Additional grounds must exist for the risk of torture to qualify as "real" (paras. 6 and 7 of general comment No. 1). The following elements must be taken into account to assess the existence of such a risk: evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of origin; allegations of torture or ill-treatment sustained by the author in the recent past and independent evidence thereof; political activity of the author within or outside the country of origin; evidence as to the credibility of the author; and factual inconsistencies in the claim of the author (para. 8 of general comment No. 1).

4.5 With regard to the existence of gross, flagrant or mass violations of human rights, the State party submits that this is not in itself a sufficient basis for concluding that an individual might be subjected to torture upon his or her return to his or her country. The Committee should 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.[6] Additional grounds should be adduced for the risk of torture to qualify as "foreseeable, real and personal" under article 3, paragraph 1, of the Convention.[7] The risk of torture must be assessed on grounds that go beyond mere theory or suspicion.[8]

4.6 In light of the above, the State party submits that the human rights situation in the Islamic Republic of Iran is concerning in several regards. It recalls, however, the Federal Administrative Tribunal's finding that the country is not currently experiencing generalised violence. The State party further reiterates that the country situation is not in itself a sufficient ground to conclude that the complainants might be subjected to torture in the event of removal. It argues that the complainants failed to show that they would face a foreseeable, real and personal risk of being subjected to torture, if returned. Furthermore, the State party notes that the reports by the Committee itself, the International Federation for Human Rights, Amnesty International and Human Rights Watch on the human rights situation in the Islamic Republic of Iran, which were relied upon by the complainants to

[6] See communication No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, para. 10.2.

[7] Ibid., para. 10.5 and communication No. 100/1997, *J.U.A. v. Switzerland*, views adopted on 10 November 1998, paras. 6.3 and 6.5.

[8] Para. 6 of General Comment No. 1.

support their claims and which were reviewed by the Federal Administrative Tribunal, do not demonstrate that they would run a personal risk of being subjected to torture upon their return.

4.7 With regard to the allegations of torture or ill-treatment sustained in the recent past by the first-named complainant and the existence of independent evidence thereof, the State party underlines that State parties to the Convention have an obligation to take these into consideration in order to assess the risk of the complainant being subjected to torture, if returned to his country of origin (para. 8(b) of general comment 1). The State party recalls that the medical certificate presented by the first-named complainant to the Federal Administrative Tribunal was not found by the latter to demonstrate a causal link between the former's injuries and the allegations of ill-treatment he suffered in detention in 1991 – 1993 in Merivan. Furthermore, the Swiss authorities found that a letter, dated 24 May 2011, which was presented by the complainant as evidence and which was allegedly provided by a refugee in Sweden who was a fellow inmate of the first-named complainant, was not credible as the content of the letter appeared to have been influenced by the complainant himself. Events recounted in this letter, in particular a meeting between the first-named complainant and a judge, also did not correspond with his own recounts in the asylum interviews. Lastly, the State party points out that the complainant's argument that the Swiss authorities reversed the burden of proof against him is unfounded since the European Court of Human Rights' jurisprudence cited by the latter did not apply in this context and that the Swiss authorities had, as per their obligation, thoroughly examined the medical certificate, dated 4 September 2010. The Swiss authorities had consequently found that no causal link between the complainant's injuries and the alleged ill-treatment suffered in the Islamic Republic of Iran had been established. Hence, the State party argues that the treatment sustained by the complainants, as claimed before the domestic authorities and the Committee, would not amount to a violation of the Convention.

4.8 With regard to the political activities pursued by the first-named complainant, the State party notes that both before the domestic authorities and the Committee, he contended that he was an active member of the KDPI Peshmergas in the 1980s, that KDPI activists are brutally oppressed in the Islamic Republic of Iran, that he was arrested for his political activities and that he risked detention once more if returned to his country of origin. These allegations were duly examined by the Swiss asylum authorities, which established that they lacked credibility. Similarly, the first-named complainant's allegations relating to ETALAAT's search for him in Iran and Iraq were not found to be credible. Moreover, the State party notes that the first-named complainant did not demonstrate in a credible manner how his illegal departure from the Islamic Republic of Iran would expose him to danger in case of return. It was further noted that the first-named complainant has not been politically active in his country of origin since 1980 and did not submit credible evidence confirming his political activities or how the Iranian authorities would have known about them.

4.9 With regard to the political activities pursued by the complainants in Switzerland, the State party notes that, before the Committee, the first, second and third complainants have put forward that they are active members of the KDPI in Switzerland and participate regularly in protests, and that the Iranian authorities are actively identifying activists against the regime abroad, including "low profile" activists or those who participate in protests for opportunistic reasons. To support their latter claim, the complainants relied on a ruling in a British case. The State party underlines that the complainants only declared their political activities in Switzerland following the negative decision taken by the Swiss asylum authorities on 17 November 2010. Further, the State party notes that on 30 June 2011, the Federal Administrative Tribunal thoroughly examined, in light of its jurisprudence and the new information from the complainants, whether they could be returned to their country of origin. It found that since the revision of the Iranian Penal code in 1996, political activities conducted abroad by an organisation against the regime were punishable and that,

according to relevant reports, individuals had been arrested, accused and condemned for criticising the Islamic Republic of Iran on the internet. It was also determined that the Iranian authorities survey the political activities of dissidents abroad and systematically register their names. However, only dissidents of a particular profile were found to be targeted, that is to say those who occupy lead positions in exile, pose a serious and concrete threat to the government and who are in a position to place decisive pressure on the Swiss diaspora or the Iranian people, with the aim of toppling the Iranian regime. The State party argues that the complainants do not match this profile as their activities, including obtaining permits for a booth and manning it, participating in protests and writing articles online accompanied by pictures, can be compared to the political activities of many Iranian dissidents in exile and do not attract the attention of the Iranian authorities. Furthermore, the English ruling relied upon by the complainants, which finds that "low profile" dissidents abroad are targeted by the Iranian regime, cannot be interpreted as to mean that all "low profile" dissidents would face ill-treatment if returned to the Islamic Republic of Iran as this does not reflect the reality. In addition, the State party submits that, since the first-named complainant's allegations pertaining to his political activities in the Islamic Republic of Iran were not judged to be credible by the Swiss asylum authorities, the same credibility concerns arise vis-a-vis his allegation that he was identified as an activist in Iraq.

4.10 With regard to the credibility and the factual consistency of the complainants' claims, the State party recalls that the Swiss asylum authorities considered it implausible that the Iranian authorities would only arrest the first-named complainant for his involvement with the KDPI five years after he allegedly stopped these political activities. The domestic authorities also found that the first-named complainant's explanation regarding his identification by the ETALAAT during the first asylum proceedings was vague and illogical as he must have assumed it was safe to return to Merivan five years after he had left out of fear. In addition, following the negative asylum decision on 17 November 2010, the first-named complainant indicated in the second asylum proceedings that he was identified to the ETALAAT by a masked man who had been called up as a witness during the former's detention and who denounced him to the authorities. Considering the potential significance of such a revelation, the domestic authorities considered this additional information to have been invented by the complainant and concluded that there were no substantial grounds to believe that the complainants would be subjected to torture, if returned.

4.11 In respect of the first-named complainant's allegations that he returned to Merivan in 2001 to visit his family, by chance he found himself in the midst of a "huge" protest in the town centre, was identified through video footage within a day by the Iranian security forces and was sought after following their identification of him that same day, the State party notes that the domestic authorities found this recount to be implausible considering the short timeframe in which this supposedly occurred and the complainant's description of the protest as "huge." Furthermore, during the first asylum proceedings the first-named complainant made statements which led the domestic authorities to question the veracity of his allegations regarding these incidents. For instance, the first-named complainant pointed out that he visited his family in Merivan on the occasion of every Navroz, even during his detention as he was given seven days leave, and during his exile in Yazd. The Swiss asylum authorities, therefore, found it surprising that the ETALAAT would have suspected him on only this occasion of Navroz of coming to Merivan with the aim of participating in a protest. Furthermore, the first-named complainant provided conflicting statements in respect of his knowledge of ETALAAT's presence at the protest. In an initial interview, he claimed to have been unaware of ETALAAT agents taking photos, whereas in a later interview he claimed to have known that the authorities had installed secret cameras and were filming protestors and that he was identified through the footage.

4.12 The State party submits that, as established by the domestic authorities, the claims of the second-named complainant go against all logic. It is improbable that she both informed her husband that he was being sought in Yazd and explained to the Iranian authorities at their Yazd residence that he would not return while they were there, only for the authorities to leave without further question and for her and the children to leave for Mehran to join her husband without being followed. Moreover, the State party points out that the complainants omitted to declare that they had resided in Greece for four years prior to arriving in Switzerland. It was only through a criminal procedure against the fifth-named complainant that this fact was revealed. Thus, the claims made by the second-named complainant that the ETALAAT sought out her husband in Iraq just before the family departed are not true to reality.

4.13 The State party further submits that, as found by the domestic authorities, the documents provided by the complainants to support their claims are not credible. The domestic authorities noted that the pardon requests presented by the first-named complainant had no evidential value as they were written by him. The letter from the tribal elder in Merivan confirming the problems the first-named complainant allegedly faced and the letter confirming his activities in the KDPI could also not be counted as evidence as they were purposely drafted to support his claims. The copy of the complainant's request for 5 days holiday from detention in Merivan and a postal receipt could not be accepted as evidence either. Regarding the copies of legal documents from Yazd, which were lodged by the first-named complainant with the domestic authorities, it was considered that they could have been falsified and therefore could not be accepted as evidence. Moreover, when the domestic authorities requested the first-named complainant to submit original copies of the judicial process against him, he produced a letter from an Iranian lawyer confirming that access to these original documents was impossible. The domestic authorities considered that this letter could not be credible evidence as it was again drafted with the purpose of supporting the first-named complainant's claims. Furthermore, the domestic authorities determined that the lawyer who had drafted the letter had not been involved in the defence of the first-named complainant before the revolutionary tribunal. Furthermore, the domestic authorities established that, according to the Swiss embassy in Tehran, the general rule was that the condemned received a copy of the judgement or, at least, he or a mandated lawyer would be able to obtain copies at a later stage. The complainant was unable to convincingly argue against these findings and explain why he had not used a lawyer who had defended him before the revolutionary tribunal to obtain the required legal documents.

4.14 As regards the complainants other allegations, the State party first notes that the Swiss authorities could not find any evidence of the alleged death sentence against the first complainant, which was subsequently commuted to a less severe sentence. The Kurdish media is known to actively bring attention to death penalty cases against Kurdish individuals and thus the first-named complainant's case would have caught the interest of the population. Second, the Swiss authorities found that the first and second-named complainants would not have needed to make false allegations that the former was attacked at knife point in Iraq in 2005 and was being sought after by the ETALAAT a little before leaving Iraq. These claims do not conform to reality as the family was already in Greece at the time. Third, the Swiss authorities put forward that the audio files of the announcement of the death of the first complainant's father on Radio Voice of Kurdistan could have been manipulated. Fourth, the third-named complainant's accounts were conflicting as in his first interview there was no mention of having been detained for two days, an allegation which was made in a second interview. Fifth, the domestic authorities contended that the third-named complainant's allegation that he was interrupted during the first interview before he could go into any details is contrary to the reading of the interview, which indicates that he was permitted to speak freely.

4.15 In respect of the complaint itself, the State party submits that the complainants only partially present the arguments of the competent Swiss authorities and that those arguments which are disclosed are not sufficiently discussed or counter-argued. Rather, the complainants merely claim that the allegations which were not considered by the competent Swiss authorities to be credible are, in reality, true. In addition, the State party notes that the complainants did not adequately demonstrate in their complaint that the Swiss authorities' findings were ill-founded with regards to the lack of pertinence of the evidence submitted in proving the authenticity of their allegations. It further notes that the complainants did not explain in a plausible manner why they could not produce relevant evidence to support the allegation that the first-named complainant was sentenced to death by the Revolutionary Tribunal. The complainants' argument that the verdict cannot be found online because it occurred during the 1990s when there was little internet or modern forms of communication is also not plausible, nor is their claim that they were unable to obtain copies of the judgement. Moreover, the State party underlines that the Swiss authorities did not find the documents submitted by the complainants regarding the Facebook campaign or the letter from a Swedish witness relating to this campaign to be compelling evidence. Lastly, the Swiss authorities did not find it necessary to deliberate on the issue of the first-named complainant's alleged prosecution based on the alleged activities of his father as no pertinent documentary evidence was produced before them, nor was there an explanation as to why they did not provide such evidence.

4.16 The State party submits that, in light of the foregoing, there are no substantial grounds to fear that the complainants would be concretely and personally exposed to torture if returned to the Republic of Iran. Their allegations and evidence provided do not lead to the consideration that their return would expose them to a foreseeable, real and personal risk of torture. The State party, therefore, invites the Committee to find that the return of the complainants to the Republic of Iran would not constitute a violation of the international obligations of Switzerland under article 3 of the Convention.

Complainants' comments on the State party's observations

5.1 On 23 April 2012, the complainants commented on the State party's observations.. The complainants maintain that, as the State party itself submits, the human rights situation in Iran is worrying in several respects. The complainants argue that there clearly exists a real and imminent risk that they would be subjected to torture or other inhuman and degrading treatment if returned. They further argue that the State party's finding that there was no causal link between the ill-treatment of the first-named complainant during his detention and his post-traumatic stress disorder and several fractures, is unfounded, because, the health of the first-named complainant was not carefully examined by Swiss authorities.[9] If such an examination had taken place, it would have been concluded that it was highly probable that torture and ill-treatment were the cause of the first-named complainant's fractures and PTSD as there are no other reasonable causes for them.

5.2 The complainants challenge the State party's argument that the first-named complainant was not politically active in his country of origin. They reiterate that he joined the KDPI Peshmerga at the age of 18 or 20. As a former politically active Kurd, he was suspected of spying for the KDPI and was seen participating in a mass demonstration on the occasion of Navroz in March 2001. Regardless of how high profile his political activities were, the ETALAAT viewed him as a politically dangerous person who threatened national security and consequently imprisoned, tortured, prosecuted and punished him based on this

[9] The complainants refer to R.C v Sweden, Application no. 41827/07, Council of Europe: European Court of Human Rights, 9 March 2010, para 53.

belief. As regards the complainants' political activities in Switzerland, they dispute the State party's argument that they are "too low profiled" to attract the attention of the Iranian authorities. They submit that the first-named complainant was persecuted in the Islamic Republic of Iran for his political activities and was an active member, automatically making him a high profile figure in exile. The first, second and third-named complainants are also very active members of KDPI's Swiss section, with the latter's name appearing in many official documents and with all three's pictures on the internet. The complainants argue that, even if their political activities were considered to be low profile, they would still risk ill-treatment on return to the Islamic Republic of Iran.

5.3 With regard to the State party's argument concerning the lack of credibility of the complainants' accounts, the complainants submit that the State party came to this conclusion without finding any major contradictions in their stories and by generally denying all evidence provided to substantiate their claims. The complainants state that they are able to provide additional letters of testimony from other exiled persons who were found to be credible by official asylum bodies of other countries in Europe. These letters confirm that the first-named complainant was an active member of KDPI between 1979 and 1983 and that he was in prison between 1991 and 1993, and later exiled. The complainants state that they are unable to maintain contacts with anyone in the Islamic Republic of Iran to secure additional evidence of the first-named complainant's imprisonment. Furthermore, the complainants argue that the minor contradictions mentioned by the State party were already explained in detail during the national procedure and in the complaint itself.

5.4 The complainants put forward that, considering their past and current political activities, the first-named complainant's conviction in the Republic of Iran, their illegal departure from there and their request for asylum in Switzerland, there is a real and imminent risk that they would be subjected to torture or other inhuman and degrading treatment should they be returned to the Islamic Republic of Iran. In light of the ill-treatment already suffered by the first-named complainant and the credible reports about the frequent use of torture by Iranian security officials, the complainants fear that they would be apprehended and detained upon return, where they would suffer ill-treatment in prison.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party has recognized that the complainant has exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

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

7.2 The issue before the Committee is whether the removal of the complainants to the Republic of Iran would violate 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. 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 this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the 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 return.

7.3 The Committee recalls its general comment No. 1, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (para. 6), but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.[10] The Committee recalls that under the terms of its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.4 The Committee notes that the State party itself has recognized that the human rights situation in the Islamic Republic of Iran is concerning and that prominent political opponents of the regime are at risk of torture. The Committee further recalls its own findings regarding the extremely worrisome human rights situation in the Islamic Republic of Iran, particularly for individuals of Kurdish ethnicity since the elections held in the country in June 2009. [11]The Committee also notes that the State party is not disputing that the first-named complainant has been active in the KDPI Peshmergas, a Kurdish dissident movement in the late 1980s and that he had been imprisoned in 1991-1993. The Committee further notes that the State party does not dispute that the complainants were granted refugee status in Iraq by UNHCR based on these very claims.

7.5 The Committee takes note of the State party's submissions that the complainants' political activities in Switzerland were "too low profiled" to attract the attention of the Iranian authorities. The Committee, however, observes that the first-named complainant, having been previously imprisoned for his political activities, is likely to be on the watch list of the Iranian authorities for further activities abroad. The Committee also takes note of the State party's submission that they have examined the medical certificate, presented by the first-named complainant, and had found that no causal link between the complainant's injuries and the alleged ill-treatment suffered in the Islamic Republic of Iran had been established. The Committee, however, observes that the medical certificate states that the first-named complainant's medical condition "fits the description of the ill-treatment described."

7.6 Consequently, and in the light of the general human rights situation in the Islamic Republic of Iran that particularly affects members of the opposition, and in view of the

[10] See, inter alia, communications No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005, and No. 226/2003, *T.A. v. Sweden*, decision adopted on 6 May 2005.

[11] See Communication No. 357/2008, Jahani v. Switzerland, decision adopted on 23 May 2011, para. 9.4, and Communication No. No. 381/2009, Faragollah et al v Switzerland, decision adopted on 21 November 2011, para.9.4.

first-named complainant's political opposition activities in both the Islamic Republic of Iran and Switzerland, his previous imprisonment and history of torture, the Committee considers that there are substantial grounds for believing that the first–named complainant risks being subjected to torture if returned to the Islamic Republic of Iran.

7.7 As to the cases of the wife and the second, third and fourth child of the first-named complainant, which are dependent upon the cases of the latter, the Committee does not find it necessary to consider these cases separately. As regards the third-named complainant, who was not a minor at the time the family lodged their first asylum requests in Switzerland and whose case was initially assessed separately by the domestic authorities, the Committee notes that the Federal Administrative Tribunal merged his asylum request with that of his family upon appeal. The Committee, like the State party, thus jointly considered his case with that of the first-named complainant based on the facts presented by the latter.

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

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