



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

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**Committee against Torture**

**Communication No. 489/2012**

**Decision adopted by the Committee at its fifty-third session,  
3-28 November 2014**

<i>Submitted by:</i>	Asghar Tahmuresi, represented by counsel Mr. Urs Ebnöther
<i>On behalf of:</i>	Asghar Tahmuresi
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	20 January 2012 (initial submission)
<i>Date of present decision:</i>	26 November 2014
<i>Subject matter:</i>	Deportation to Iran
<i>Procedural issue:</i>	-
<i>Substantive issue:</i>	Risk of torture upon return to the country of origin
<i>Article of the Convention:</i>	article 3



## 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. 489/2012**

*Submitted by:* Asghar Tahmuresi, represented by counsel Mr. Urs Ebnöther

*On behalf of:* Asghar Tahmuresi

*State party:* Switzerland

*Date of complaint:* 20 January 2012 (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 26 November 2014,*

*Having concluded* its consideration of complaint No. 489/2012, submitted on behalf of Asghar Tahmuresi 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 and Other Cruel, Inhuman or Degrading Treatment or Punishment**

1.1 The complainant is Asghar Tahmuresi, a citizen of the Islamic Republic of Iran (hereinafter "Iran"), born on 1 March 1976. He claims that his deportation to Iran would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Urs Ebnöther.

1.2 On 26 January 2012, the Committee requested the State party, pursuant to rule 114, paragraph 1, of its rules of procedure, not to deport the complainant to Iran while the complaint is being considered.

#### **The facts as submitted by the complainant**

2.1 The complainant is an Iranian national from Karaj, Iran. He left his city after being caught having relations with a wife of a mullah. Fearing persecution due to the social standing of his lover's husband and after his parents' house was searched, he decided to illegally leave Iran on 3 April 2003 and enter Switzerland.

2.2 In Switzerland, the complainant became a member of the Democratic Association for Refugees – “Association Démocratique pour les Réfugiés” (the ADR), which is a political association with the aim of “combating the Islamic Republic and protecting human rights” in Iran. He joined the organization in August 2006 and has in the meantime become the leader of the cantonal branch for the political activity of ADR in the cantons of Lucerne and Schwyz. He has regularly taken part in the meetings of the association’s Executive Committee. He has participated in various demonstrations across Switzerland and distributed the monthly magazine “Kanoun”, critical of the Iranian regime, including to politicians in front of the parliament in Lucerne.

2.3 On 15 April 2003, the complainant applied for asylum in Switzerland. On 21 June 2004, the Swiss Federal Office for Refugees (now the Federal Office for Migration – the FOM) rejected his asylum request. On 21 June 2004, the complainant lodged an appeal against this decision with the Asylum Appeal Commission (now the Swiss Federal Administrative Tribunal – the FAT), which was rejected on 14 July 2006.

2.4 On 24 May 2007, the complainant submitted a second asylum request, emphasizing on his political activities in Switzerland. On 28 August 2007, the FOM rejected his second request for asylum. On 18 March 2010, the FAT once again rejected the appeal against the FOM’s decision.

2.5 On 3 August 2010, the complainant requested asylum for a third time. He argued that he has intensified his political activity in exile and therefore exposed himself much more than previously. He also claimed that since 1 January 2010, he has been the head of the ADR for the cantons of Lucerne and Schwyz. On 16 August 2010, the FOM rejected the asylum request once again, on the grounds that his increased political exposure and responsibilities did not change the legal situation for purposes of granting him asylum. On 24 August 2010, the complainant appealed against this decision, however, the FAT rejected it on 12 December 2011. The decision is final.

2.6 With a letter of 19 December 2011 by the FOM and the letter of 23 December 2011 from the Office for Migration and Asylum Lucerne, the complainant was ordered to leave the country by 3 January 2012.

### **The complaint**

3.1 The complainant claims that his forcible return to Iran would constitute a breach by Switzerland of article 3 of the Convention.

3.2 In substantiation, he claims that in Iran he would face a real risk of being subjected to treatment contrary to the Convention if he were deported, for the following reasons:

(a) The general human rights situation in Iran has become worse since the presidential election in June 2009 and the massive protests it provoked. The respect for basic human rights in Iran has continued to deteriorate and the government showed no tolerance for peaceful protests or gatherings, routinely detaining participants and subjecting them to torture.

(b) Referring to the European Court of Human Rights judgment in *R.C. v. Sweden*<sup>1</sup> the complainant submits that not only political leaders are facing persecution and the risk of arbitrary arrest, ill-treatment or torture, but also peaceful participants of demonstrations as well as anyone who opposes the current regime. The fact that Iran carries out the second largest number of death penalties annually, often after unfair or politically motivated proceedings, has also been underscored.

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<sup>1</sup> ECHR, Application No. 41827/07, *R.C. v. Sweden*, decision adopted on 9 March 2010.

(c) Due to the fact that the complainant left Iran illegally, there is an additional risk of his scrutiny upon return to Iran.

(d) The complainant has been an active member of the ADR for the cantons of Lucerne and Schwyz. By the time of the consideration of the third request for asylum by the FAT, he became the head of the ADR in the two cantons. However, the FAT held that the complainant still did not reach a level of exposure necessary to assume a risk of persecution in Iran. This was despite the fact that in previous decisions, it had ruled that the ADR members in high positions had a level of exposure sufficient to assume a risk of persecution in case of a forcible returning to Iran.

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

4.1 On 13 June 2012, the State party submitted its observations on the merits of the complaint. It considers that although the human rights situation in Iran is preoccupying in several respects, Iran is not affected by generalized violence, and the complainant has not demonstrated they he incurs a foreseeable, personal, and real risk to be subjected to torture thereon.

4.2 The State party observes that the complainant declared during his first asylum procedure that he had been hit by a police officer in Iran. He has not, however, invoked this incident in his complaint to the Committee, and therefore it could not be considered as an element of risk upon his return to Iran. The State party further observes that the complainant was never politically active in Iran. Furthermore, the State party's authorities, while examining his asylum request, did not find his claim that he would be persecuted due to his alleged sexual relation with a wife of Mullah credible.

4.3 With respect to the complainant's political activity in Switzerland, the State party considers that although the Iranian Secret Service could exercise surveillance of political activities against the Iranian regime conducted abroad, the Iranian authorities target high-profile individuals acting beyond a mass opposition and having positions or deploying activities that could represent a concrete threat to the regime. The State party asserts that the complainant does not represent such a profile; the activities he alleged to participate in are typical activities for many exiled Iranians; and would not identify the complainant as a potentially dangerous to the Iranian regime even if the Iranian authorities came to know of him.

4.4 The State party asserts that the Iranian authorities are likely to be aware that many Iranians living abroad attempt to portray themselves as dissidents in order to obtain asylum. The Iranian authorities are likely to distinguish between those genuinely politically active who are potential important political agitators and those active mainly for the purpose of obtaining a residence permit abroad. The complainant's activities, including his participation in demonstration, distribution of a magazine and his photos on internet would not, by themselves, draw the attention of the Iranian authorities, since these are similar to activities of many Iranians in Switzerland. The ADR is active mainly in Switzerland and its activities are not known abroad. The complainant's family was not aware about his political engagement and does not appear to have had any problems with the Iranian authorities due to his political activities.

4.5 The State party contests the complainant's statement that he has a particular profile due to his position within the ADR. The State party considers his position being of administrative nature. The complainant's position of a cantonal representative would not expose him more than any other member of the ADR. The State party submits that the ADR is known for systematic activities to provide personal grounds for asylum, by organizing weekly stands, publishing photos whereas participants are clearly identifiable on internet. Many of the ADR's members were not politically active in Iran and joined the association

only after being refused asylum. Ever since the Federal Administrative Tribunal confirmed its ruling that the simple membership in the ADR did not in itself constitute personal grounds for asylum, the association established variety of posts, such as logistics or security manager, so that almost every member has a “leadership position” in the association. Such proliferation of high positions reduces their importance.

4.6 The State party asserts that the complainant does not have a profile of a regime opponent who would be considered by the Iranian authorities as a dangerous person. He did not participate in political activities against Iran in Switzerland until the FAT denied his request for asylum, and his sudden and recent political engagement is superficial and does not appear to stem from profound conviction.

4.7 The State party submits that the entire complainant’s claim concerning a risk of his persecution in Iran, and particularly his activities in Switzerland, was examined by the competent Swiss authorities. The complaint submitted to the Committee does not contain any new element neither it claims any shortcomings on the State party’s asylum procedure. The State party refers to the Committee’s jurisprudence that “it is within the purview of the courts of the States parties to the Convention to assess the facts and evidence in a case”<sup>2</sup>. In particular, the Committee should examine facts and evidence if it can be established that “the evidence was assessed in a manifestly arbitrary manner or one that amounted to a miscarriage of justice”<sup>3</sup> In the case in question, the elements submitted by the complainant do not demonstrate any such irregularities.

4.8 The State party also observes that the complainant refers to the European Court on Human Rights’ decision in the case *R.C. v. Sweden*<sup>4</sup>, however, in the said case the applicant proved his ill-treatment due to his political engagement in Iran, and therefore the Court declared violation of the prohibition of torture in case of his forced return.

### **Complainant’s comments on the State party’s observations**

5.1 In his comments of 10 September 2012, the complainant contests the State party’s argumentation that he did not show that he will be at a foreseeable, real and personal risk of being subject to treatment contrary to the Convention, if he was returned to Iran. He reiterates that even ordinary and low-level, peaceful anti-regime demonstrators as well as rejected Iranian asylum seekers face a risk of treatment contrary to the Convention<sup>5</sup>. Given his high-level political activity within the ADR, he would face even higher risk of persecution.

5.2 He further submits that he mentioned the incident of beating only during the first asylum procedure, since the subsequent asylum procedures related to the new facts only.

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<sup>2</sup> The State party refers to communication No. 419/2010, *Ktiti v. Morocco*, decision adopted on 9 May 2008, paragraph 8.7)

<sup>3</sup> Ibid.

<sup>4</sup> Supra, see footnote 1.

<sup>5</sup> The complainant refers to the recent decision of the European Court on Human Rights in the case No. 52077/10, *S.F. and others v. Sweden*, adopted on 15 May 2012, where the Court referred to Iran as “a country where on all accounts the human rights situation gives rise to grave concern. It is noted that the country information has changed and that the situation appears to have deteriorated in Iran since the domestic authorities determined the case. It is evident from the current information available on Iran that the Iranian authorities frequently detain and ill-treat persons who peacefully participate in oppositional or human rights activities in the country. The Court notes that it is not only the leaders of the political organizations or other high-profile persons who are detained but that anyone who demonstrates or in any way opposes the current regime may be at risk of being detained or ill-treated or tortured.”

Despite the fact that he has not mentioned the beating in his complaint to the Committee, this incident has to be considered as one of the factors that contributed to the political sensitisation of the Iranian authorities towards the complainant. It was also one of the factors that formed the political opinion of the complainant.

5.3 The complainant maintains that he was not politically active in Iran due to the intense surveillance of political activity by the authorities and the immense repression resulting from it. The fact that he was not politically active in Iran therefore does not give any indications regarding the extent of his political opinions against the Iranian regime and his exile political activities. With respect to his ADR's engagement, he submits that governmental and other reports indicate that even low level political activity against the regime may lead to a real and personal risk of persecution. He also submits that given the ADR's heavy internet presence, it cannot be assumed that the organization is not known outside of Switzerland.

5.4 The complainant reiterates that he maintained extra-marital relations with the wife of a mullah in the past and this increases the risk of his persecution in Iran. The fact that the Swiss authorities did not consider it as credible does not diminish the current risk of persecution.

5.5 He also contests the State party argumentation that his tasks in the ADR are merely administrative. He maintains that he takes part in meetings of the Executive Committee, is responsible for the recruitment of the new members in his canton and he regularly visits asylum homes. He maintains that he joined the ADR shortly after its foundation and has been a very active member during the last six years. He further refutes the State party's observation that the ADR is a diffuse movement and that most of its members hold high positions. He maintains that besides the Executive Committee and the heads of the cantonal branches, there are only a few further important roles. Many of these positions were occupied for years by people who already have refugee status but nevertheless continue to campaign and demonstrate.

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

### *Consideration of admissibility*

6.1 Before considering any claim 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.

6.2 The Committee, finding no other reason to consider the communication inadmissible, thus proceeds to its consideration on the merits of the claims submitted by the complainant under article 3 of the Convention.

### *Consideration of the merits*

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

7.2 The issue before the Committee is whether the removal of the complainant to Iran would violate 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 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 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 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.<sup>6</sup>

7.4 The Committee recalls its general comment No. 1 (1997) 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". While the risk does not have to meet the test of being "highly probable", it must be personal and present. In this regard, the Committee has determined that the risk of torture must be foreseeable, real and personal.<sup>7</sup> The Committee recalls that 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 is entitled, under article 22, paragraph 4, of the Convention, freely to assess the facts of each case, taking into account the circumstances.<sup>8</sup>

7.5 Referring to its recent jurisprudence<sup>9</sup>, the Committee recalls that there are continuing reports regarding the use of psychological and physical torture to solicit confessions in Iran, which indicate the widespread and systematic use of such practices<sup>10</sup> and ongoing reports of incidents of detention and torture of political opponents<sup>11</sup>. The Committee considers that this is all the more alarming in the light of the fact that Iran frequently administers the death penalty and applies it without due process and in cases involving certain crimes not meeting

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<sup>6</sup> Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

<sup>7</sup> 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.

<sup>8</sup> General comment No. 1, para. 9; communication No. 375/2009, *T.D. v. Switzerland*, decision adopted on 26 May 2011, para. 7.7.

<sup>9</sup> See communication No. 481/2011, *K.N., F.W. and S.N. v. Switzerland*, decision adopted on 19 May 2014; communication No. 357/2008, *Jahani v. Switzerland*, decision adopted on 23 May 2011; communication No. 381/2009, *Faragollah et al. v. Switzerland*, decision adopted on 21 November 2011.

<sup>10</sup> See Situation of human rights in the Islamic Republic of Iran, Note by the Secretary-General, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, A/69/356, at para 16.

<sup>11</sup> See Human Rights Council, Report of the Special Rapporteur on the Situation of human rights in the Islamic Republic of Iran, A/HRC/25/61 (13 March 2014), paras. 23-29; Note by the Secretary-General on the Situation of human rights in the Islamic Republic of Iran, A/68/503 (4 October 2013), paras. 1,6,8,30.

international standards for the most serious offences<sup>12</sup>. The State party itself has recognized the existence of such situation in Iran.

7.6 The Committee notes that the complainant has been an active member of the ADR in Switzerland since 2006 and the leader of the cantonal branch for the political activity of ADR in the cantons of Lucerne and Schwyz and his name is listed as such in the monthly magazine “Kanoun” produced by the organisation; that he has attended the meetings of the executive committee, has been responsible for the recruitment of the new members in his canton and has regularly visited asylum homes. He has participated in stands, campaigns and demonstrations against the Iranian regime and his pictures have been exposed on internet. The State party has not contested this information. The Committee notes the State party’s observation that the Iranian authorities target high-profile individuals that could represent a concrete danger to the Iranian regime, and that the ADR is active mainly in Switzerland and its activities are not known abroad. However, the Committee observes that the complainant’s work in the ADR was not limited merely to participation in demonstrations or to administrative tasks, but placed him among the leadership of an organisation publicly opposing the regime in Iran. Moreover, the Committee observes that recent reports indicate that even low-level opposition is closely monitored in Iran<sup>13</sup> and that the Iranian authorities effectively monitor internet communications and regime critics both within and outside of Iran<sup>14</sup>.

7.7 In the light of all these circumstances, including the general human rights situation in Iran, the personal situation of complainant who continues its active engagement in political activities against the Iranian regime abroad, and bearing in mind its preceding jurisprudence<sup>15</sup>, the Committee is of the opinion that the complainant could well have attracted attention of the Iranian authorities. The Committee therefore considers that there are substantial grounds for believing that the complainant would risk being subjected to torture if returned to Iran. Moreover, the Committee notes that, since Iran is not a party to the Convention, and in the event of a violation of the complainant’s Convention rights in Iran, he would be deprived of the legal option of recourse to the Committee for protection of any kind.

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

9. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the decision expressed above.

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<sup>12</sup> See Human Rights Council, Report of the Special Rapporteur on the Situation of human rights in the Islamic Republic of Iran, see footnote 12, paras. 5, 84; See also communication No. 481/2011, *K.N., F.W. and S.N. v. Switzerland*, footnote 11, para 7.6.

<sup>13</sup> See Human Rights Council, Report of the Special Rapporteur on the Situation of human rights in the Islamic Republic of Iran, A/HRC/25/61 (13 March 2014), paras. 88-90; Note by the Secretary-General on the Situation of human rights in the Islamic Republic of Iran, A/68/503 (4 October 2013), paras. 6-15, 88-90.

<sup>14</sup> ECHR, Application No. 52077/10, *S.F. and others v. Sweden*, decision of 15 May 2012.

<sup>15</sup> See the Committee’s communications No. 339/2008, *Amini v. Denmark*, decision adopted on 15 November 2010, para 9.8, No. 357/2008 *Jahani v. Switzerland*, see footnote 11, para 9.4, No. 381/2009, *Faragollah et al. v. Switzerland*, see footnote 11, para 9.6.