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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. 673/2015**, ***

Communication submitted by:	D.R., represented by counsel
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	15 April 2015 (initial submission)
Date of present decision:	27 April 2018
Subject matter:	Expulsion to the Islamic Republic of Iran
Procedural issues:	-
Substantive issues:	Risk of torture upon return to country of origin
Article of the Convention:	3

* Reissued for technical reasons on 7 March 2023.

** Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

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

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Decision under article 22 (7) of the Convention against Torture

1.1 The complainant is D.R., an Iranian citizen, born on 29 August 1980. 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 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by Mr. Marcel Zirngast.

1.2 On 20 April 2015, the Committee against Torture, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from deporting the complainant to Iran while his complaint was being considered by the Committee.

The facts as submitted by the complainant

2.1 The complainant is an Iranian national of Kurdish ethnicity and a supporter of the Kurdistan Democratic Party (KDP). He claims that, on an unspecified date, he volunteered to take part in an operation to free 10 Kurdish students who had been imprisoned. The plan was uncovered by the authorities, however, and the complainant was arrested in December 2005, then imprisoned and tortured in various prisons by the Iranian security forces.[1] He was released upon receipt of a bail payment and statements of guarantee from his family in February/March 2006. In March 2006, he travelled from Iran to Turkey.

2.2 On 7 September 2008, the complainant entered Switzerland and filed an asylum application. On 22 March 2012, after he had attended two hearings in person,[2] the Federal Office for Migration (which is now called the State Secretariat for Migration) rejected his application for lack of credible grounds and ordered his expulsion from Switzerland. The Office drew attention to numerous contradictions in the complainant's story, which the complainant was unable to explain. On 19 April 2012, the complainant filed an appeal against this decision with the Federal Administrative Court.[3]

2.3 On 28 January 2014, the Federal Administrative Court dismissed the complainant's appeal on the grounds that he did not have the profile of an opponent of the regime who might be considered dangerous by the Iranian authorities.

2.4 On 15 April and 1 May 2014, the complainant filed two requests for reconsideration of his application with the Federal Office for Migration based on his mental state, on the grounds that he was suffering from post-traumatic stress as a result of his persecution in Iran. On 16 July 2014, the Federal Office dismissed his requests, arguing that his mental health problems had begun only after the Federal Administrative Court had handed down its ruling on 28 January 2014. This decision was upheld by the Federal Administrative Court on 3 September 2014.

2.5 On 29 December 2014, the complainant submitted another request for reconsideration of his application, on the grounds that an Iranian court had sentenced him in absentia to 4 years' imprisonment and that his name was on a blacklist that had allegedly been circulated to banks and airports in the country to ensure that he was arrested upon arrival in Iran.[4] On

[1] The complainant provides a letter from a lawyer, dated 17 March 2015, which states that several charges, including possession of weapons and ammunition, clashes with the police and defiance, had been brought against him. The letter states that the complainant was arrested and imprisoned on 24 January 2006.

[2] The complainant attended hearings on 13 October 2008 and 21 September 2009. On 27 August, 13 October and 16 November 2009, 19 July 2010 and 21 January and 28 September 2011, the complainant submitted additional evidence.

[3] On 7 June 2012, the Federal Office requested that the complainant's appeal be dismissed. On 27 November and 18 December 2012 and 3 December 2013, the complainant submitted additional evidence.

[4] The complainant provides an English translation of a notification from the Islamic Revolutionary Court of Tehran, dated 1 December 2007, informing him that his case would be heard on 6 January 2008 and that, if he did not attend the hearing, a judgment would be handed down in his absence. The notification stated that, in order to ensure his presence, the proceedings would be covered by a major

14 January 2015, the Federal Administrative Court dismissed the request on the grounds that, according to the case file, the offences for which the complainant claimed to have been sentenced were ordinary offences.

2.6 Following the Federal Administrative Court's decision of 28 January 2014, a deadline of 4 March 2014 was set for the complainant's departure. Enforcement of the expulsion order was suspended, however, due to the requests for reconsideration mentioned above. On 21 January 2015, the Department of Justice of the Canton of Lucerne fined the complainant 1,200 Swiss francs (SwF) for illegal residence in Switzerland. As he was unable to pay the fine, the complainant was sent to prison for 33 days.

2.7 The complainant states that, after fleeing from Iran, he continued his political activities. He has a blog in which he criticizes the Iranian Government. He has written numerous political articles — all highly critical of the Iranian regime — which have been shared widely online. He also presents and manages a radio programme called "Voice of the Resistance",[5] which is broadcast by the LoRa radio station in Zurich.

2.8 The complainant suffers from post-traumatic stress, which worsened significantly when his asylum application was rejected on 28 January 2014. As a result, he is no longer able to engage in political activism.[6] However, many articles that he has written, criticizing the Iranian Government, are still available and attract comments online,[7] as are many episodes of his radio programme "Voice of the Resistance".[8]

The complaint

3.1 The complainant maintains that he is a victim of a violation of article 3 of the Convention by the Swiss authorities, who have ordered his expulsion to a country where he will certainly be at risk of being subjected to torture and other cruel, inhuman or degrading treatment or punishment. He emphasizes that he is on a blacklist and will therefore be arrested upon entering Iranian territory. Given his political involvement and activities in Switzerland, his life and physical integrity are at considerable risk.

3.2 The complainant claims that the Swiss authorities, in particular the Federal Administrative Court, did not take into account all the evidence submitted during the asylum proceedings, which showed that his life and physical integrity would be threatened if he were to be returned to Iran. He states that he clearly demonstrated that he had been persecuted by the Iranian authorities on account of his activism since 2000 on behalf of KDP, which is banned in Iran.

3.3 The complainant considers that the Federal Administrative Court had ruled summarily that the many documents submitted did not demonstrate that he had the profile of a known political opponent who would be at risk of being suspected or persecuted by the Iranian

newspaper. The complainant also provides another notification from the same court, dated 24 April 2008, stating that he had been sentenced in absentia to 4 years' imprisonment for possession and illegal sale of military weapons and ammunition. He was also informed that, if he wished to appeal against the decision, he must do so within 10 days. In addition, the complainant provides a letter from a lawyer, dated 18 March 2015, which confirms that he was sentenced on 9 January 2008 and that the judgment was published in a newspaper as a means of informing the complainant that he must return and serve his prison sentence. The letter also states that, in view of the complainant's refusal to return, his name had been placed on a travel blacklist, so as to ensure that he would be arrested by police upon arrival in Iran, in accordance with his sentence for possession of weapons. However, the complainant maintains that he did not commit any offence involving a weapon and that, when he was arrested, he had had to sign a false confession in which he admitted to offences of that kind, otherwise he would not have been released. He claims that criminal proceedings had been brought against him because, as a Kurdish political activist, he had opposed the interests of the Iranian State.

[5] *Stimme des Widerstandes*.

[6] The complainant provides a medical assessment report, dated 14 March 2015, which confirms a diagnosis of post-traumatic stress disorder, caused partly by torture, and that he can no longer take political action because of his state of health.

[7] The complainant provides a list and copies of 10 articles, dated 17 March 2015.

[8] The complainant provides a list of 40 one-hour broadcasts, written and presented by him (from the website of radio LoRa, 17 March 2015).

authorities. He also claims that the Federal Administrative Court had merely stated in general terms that there was no risk of reprisals for his political activism against the Government of Iran.[9]

3.4 In the complainant's view it is clear that he has now attracted the attention of the Iranian authorities because of his political activities, even if that was not previously the case. In this regard, he mentions five cases in which the Committee found that the Swiss authorities would be violating article 3 of the Convention if they returned the complainants to Iran.[10] The complainant asserts that, in those five cases, the State party likewise challenged the credibility of the complainants' statements, drew attention to contradictions and inconsistencies and claimed that they would not face any threat if they were deported. He further asserts that, in those five cases, as in his case, the State party claimed that the complainants' political activity during their exile had been relatively low-profile and conducted only for the purpose of obtaining a residence permit. The complainant therefore believes that his personal risk of being subjected to torture on return to Iran should be regarded as real.

State party's observations on the merits

4.1 On 20 October 2015, the State party submitted its observations on the merits of the communication. It recalls the facts and the proceedings undertaken by the complainant in Switzerland with a view to obtaining asylum. It notes that the asylum authorities have duly considered the complainant's arguments. It states that the communication does not include any new information that would invalidate the asylum authorities' decisions.

4.2 The State party points out 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 shall take into account all relevant considerations, including, where applicable, the existence in the State party 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 of the Convention, the State party adds that the author 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 existence of such a risk 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).[11] 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 country of origin; any claims of torture or maltreatment in the recent past and independent evidence to support those claims; the political activity of the author within or outside the country of origin; any evidence as to the credibility of the author; and any factual inconsistencies in the author's claims.[12]

4.3 The State party points out that the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not, in itself, constitute sufficient grounds for determining that a particular person would be subjected to torture upon return to his or her country of origin. The Committee must establish whether the complainant is "personally" at risk of being subjected to torture in the country to which he or she would be returned.[13] Additional grounds must be adduced in order for the risk of torture to qualify as "foreseeable,

[9] The complainant refers, in particular, to the decision of 28 January 2014.

[10] *Azizi v. Switzerland* (CAT/C/53/D/492/2012), *Tahmuresi v. Switzerland* (CAT/C/53/D/489/2012), *X. v. Switzerland* (CAT/C/53/D/470/2011), *Khademi et al. v. Switzerland* (CAT/C/53/D/473/2011) and *K.N., F.W. and S.N. v. Switzerland* (CAT/C/52/D/481/2011).

[11] See general comment No. 1, paras. 6–7.

[12] See general comment No. 1, para. 8.

[13] See *K.N. v. Switzerland* (CAT/C/20/D/94/1997), para. 10.2.

real and personal" within the meaning of article 3 (1) of the Convention.[14] The risk of torture must be assessed on grounds that go beyond mere theory or suspicion.[15]

4.4 The State party considers that, although the human rights situation in the Islamic Republic of Iran is disturbing in a number of respects, the country is not experiencing widespread violence. It reiterates that the situation in the complainant's country of origin does not constitute, in itself, sufficient grounds for concluding that the complainant would be at risk of torture if he were to be returned there. The complainant refers to a very general type of risk for all persons abroad who have been politically active in opposing the current regime in the Islamic Republic of Iran, but he has been unable to demonstrate that he runs a foreseeable, real and personal risk of being subjected to torture.

4.5 With regard to claims of torture or maltreatment in the recent past and the existence of independent evidence to support those claims, the State party points out that States parties to the Convention have a duty to consider any such claims with a view to assessing the risk that the complainant concerned would be subjected to torture if he or she is sent back to his or her country of origin.[16] The State party points out that the complainant claims to have been subjected to torture in various prisons during his detention between 7 or 10 December 2005 and mid-February 2006 but that, notwithstanding the fact that the Federal Office for Migration and the Federal Administrative Court have described his claims of arrest and detention as implausible, he has not provided any evidence of the maltreatment he claims to have suffered. Furthermore, although the medical certificate dated 14 March 2015 indicates that the complainant suffers from post-traumatic stress disorder (PTSD), it does not indicate any specific cause. In its judgment of 3 September 2014, the Federal Administrative Court did not dispute the existence of PTSD but emphasized that its causes were not those claimed by the complainant. The Federal Administrative Court thus concurred with the findings of the Federal Office for Migration, according to which the complainant began to suffer from PTSD only after his asylum proceedings had come to an end.

4.6 With regard to the political activity of the complainant in his country of origin, the State party notes the complainant's claims that he had been politically active in Iran since 2000, that he was a supporter of the KDP and had volunteered to participate in freeing 10 Kurdish students, and that, because of his involvement in that effort, he was arrested, imprisoned and tortured in December 2005. These claims have been duly considered by the Swiss asylum authorities, which have found them to be implausible.

4.7 With regard to the political activity of the complainant in Switzerland, the State party submits that the cases that have come before the Federal Administrative Court indicate that the Iranian secret service may keep track of opposition political activities abroad, but that it focuses its attention primarily on persons having 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. The Federal Administrative Court is thus of the view that it is the position held in an opposition organization and the impact of activities that put a person at risk, not membership, or involvement in standard political activities, such as attending demonstrations, staffing a stand or distributing political material.[17] In the case at hand, in its judgment of 28 January 2014, the Federal Administrative Court also emphasized that the Iranian authorities were aware of the fact that many asylum seekers become involved in political activity in exile only once their application for asylum has been denied, which casts a great deal of doubt on the authenticity of their involvement. The authorities are quite capable of distinguishing political activities that reflect a serious personal conviction from activities that people engage in primarily for the purpose of obtaining a residence permit.

4.8 The State party further points out that, during his second hearing before the Federal Office for Migration, the complainant stated that he had become a supporter of the

[14] Ibid., para. 10.5, and *J.U.A. v. Switzerland* (CAT/C/21/D/100/1997), paras. 6.3 and 6.5.

[15] See general comment No. 1, para. 6.

[16] See general comment No. 1, para. 8 (b).

[17] See, for example, the judgments of the Federal Administrative Court of 21 January 2008 (D-4902/2007) and 9 July 2009 (D-3357/2006, para. 7.4.3), available at: https://www.bvger.ch/bvger/fr/home/jurisprudence/entscheiddatenbank-bvger.html.

Democratic Association for Refugees, that he had participated in a number of protests in Zurich and Bern between March and June 2009, that he had recited a poem during a radio broadcast, that he kept a blog and that he presented a broadcast on a local radio station. These activities were carefully reviewed by the Federal Administrative Court, which ruled that the tasks performed by the presenter of a radio broadcast were essentially limited to reading the news and commentary and were therefore not proof of any particular political profile held by the complainant. The Court held that the same applied to the position of head of production of the broadcast. Furthermore, the State party points out that the complainant did not clarify before the Federal Administrative Court or to the Committee how these activities had supposedly put him at political risk. With regard to the articles published in the complainant's name, the State party notes, like the Federal Administrative Court, that the articles were admittedly critical but were rather general in their wording. The complainant's participation in the activities of the Democratic Association of Refugees, such as protests, has equally done nothing to establish a political profile that could draw the attention of the Iranian authorities.

4.9 The State party is not convinced that the complainant's health condition is the result of the end of his political activity, since it is clear from the case file that the complainant has not been actively involved with the radio station since April 2012 and that his last article dates from 14 October 2013. Given that the complainant did not occupy an important position within a political organization opposed to the Iranian regime, the State party considers his situation to be distinct from the situations of other complainants whose cases have been brought before the Committee. In that connection, the State party points out that Mr. Azizi was an active member of the Swiss branch of the KDP of Iran and president of the regional executive committee for several cantons;[18] Mr. Tahmuresi had been an active member of the Democratic Association for Refugees in Switzerland since 2006, was one of the leaders of that organization, which openly opposes the Iranian regime, and was responsible for recruiting new members;[19] and the complainants X. and Z. were active members of the Komala party (Revolutionary Workers' Committee of Iranian Kurdistan), alongside various members of their family, and had previously been detained and tortured in Iran.[20] Moreover, the complainant has been unable to prove that members of his family residing in Iran have been harassed or threatened.

4.10 With regard to the complainant's credibility and the consistency of the information he has provided, the State party points out that the Swiss asylum authorities found the complainant's version of events to be implausible. The Federal Office for Migration and the Federal Administrative Court stated that the complainant had presented two diametrically opposed accounts of the events surrounding his arrest. According to his initial account, the complainant had travelled to Sardasht to pick up his colleague Mohammadi so that they might go together to the home of his contact, Barzagar, but Mohammadi had ultimately stayed in Sardasht. According to his second account of the events, the complainant had taken Mohammadi to his family home in Tehran. The complainant also presented two entirely different accounts of the events surrounding an alleged meeting in a garden in Ahmad Abad-e Mostowfi (Tehran). During his first hearing, the complainant stated that he had taken his contact, Barzagar, to the garden in question. Upon arrival, the complainant had given the statutes of the political parties concerned to Barzagar, who had thrown them to the ground when passing through the entrance to the garden. At his second hearing, the complainant stated that it was during a conversation at his workplace regarding their imminent meeting with Mohammadi that Barzagar had asked him whether he had brought the statutes. The complainant had told Barzagar that they were in the car. Upon their arrival at the garden, Barzagar had taken the statutes and had dropped a few pages, which he had then picked up before continuing towards the entrance to the garden and knocking on the door.

4.11 Furthermore, the State party points out that there are discrepancies in the complainant's account of his alleged arrest. According to his first version of events, the complainant had been arrested at his home and Barzagar had been arrested at the same time in front of the house by plainclothes police officers. During his second hearing, the

[18] See *Azizi v. Switzerland*, para. 8.6.

[19] See *Tahmuresi v. Switzerland*, para. 7.6.

[20] See *X. and Z. v. Finland* (CAT/C/52/D/483/2011-CAT/C/52/D/485/2011), paras. 7.6–7.7.

complainant stated that he had been able to escape by car from the garden in Ahmad Abad-e Mostowfi, thinking that Barzagar had been arrested. Lastly, the State party considers that the complainant's behaviour after the events at the garden in Ahmad Abad-e Mostowfi makes no sense. The complainant claims to have returned home after telephoning his wife, who had supposedly informed him that several persons had entered the family home. On this matter, the State party again concurs with its domestic authorities, which noted that the complainant had been unable to provide a plausible explanation as to why he had returned home without taking even the slightest precaution, even though he clearly risked arrest.

4.12 The State party doubts the authenticity of the judgment that the Revolutionary Court of Tehran allegedly passed against the complainant, as well as that of the court summons preceding it and the lawyer's letters dated 17 and 18 March 2015.[21] It says it is well known that such documents can be purchased with very little difficulty in Iran. Furthermore, it considers that the lawyer's letters are courtesy letters. This impression is borne out by the fact that the same lawyer had allegedly suggested to the complainant that he should contest that judgment through a defence strategy to which no further reference is made in his letters of 17 and 18 March 2015. Moreover, the judgment supposedly relates to ordinary offences (illegal possession and carriage of weapons and ammunition), as mentioned by the Federal Administrative Court in its judgment of 14 January 2015, and is therefore not sufficient grounds for concluding that the complainant runs the risk of persecution as the result of any political activity he might have undertaken. Any link between the judgment and the complainant's political activity is even less plausible in view of the fact that the first court summons addressed directly to the complainant was dated 12 October 2006, around 10 months after his supposed arrest, 8 months after his alleged release and/or 6 months after his having left the country. That the summons should arrive so late is all the more surprising in view of the claim that, in order to secure his own release, the complainant supposedly agreed to cooperate with the security authorities. If such were the case, failure to cooperate would have immediately drawn the attention of those authorities. In the light of the above, it is equally incomprehensible that the first court summons should schedule a hearing before the Revolutionary Court of Tehran three months after its issuance.

4.13 Lastly, the State party notes that the Federal Administrative Court also expressed doubts regarding the two court summonses addressed to the complainant's mother-in-law, threatening her with the confiscation of her assets if the complainant failed to appear before the Court, given the complainant's claim that he had been released upon providing financial guarantees from his mother, two of his sisters and his father-in-law.

4.14 In view of the above, the State party is of the view that the complainant's conduct while in Iran and Switzerland has not been such as to provide reason to believe that he stands a real, specific risk of being subjected to torture by the Iranian authorities. The complainant has not made plausible claims of persecution in Iran, and his profile as an opponent of the regime is not such as to prompt the Iranian authorities to consider him a danger by virtue of his activities in Switzerland. In sum, nothing in his case file indicates that the attention of the Iranian authorities has been drawn by his activities, that they are aware of his activities or that they have taken any action against him because of those activities. The State party concludes by stating that all of the complainant's arguments concerning a risk of persecution in the Islamic Republic of Iran, and in particular his activities in Switzerland, have been thoroughly examined by the Swiss authorities and that the complainant's communication does not contain any new information or evidence.

Complainant's comments on the State party's observations

5.1 The complainant submitted his comments on the State party's observations on 2 January 2016. He considers that the State party has simply repeated and summarized the arguments used by the Federal Office for Migration and the Federal Administrative Court to reject his application for asylum, without addressing the explanations he provided in his communication to the Committee. He submits that the State party has simply identified and highlighted supposed discrepancies in his detailed explanations, deliberately overlooking that it is precisely the degree of detail contained in those explanations that testifies to their

[21] See above, footnotes 1 and 4.

credibility. The real-life circumstances that led him to flee may not always appear logical or plausible, especially when considered from the standpoint of a safe country. A simple, logical and consistent story may, admittedly, be more comprehensible, but it is also more likely to have been invented than a detailed biography, not all of whose points are always immediately clear.

5.2 The complainant considers that he has proven and documented that the Revolutionary Court of Tehran did pass a judgment against him, that he had been publicly called upon to appear before the Court and that the judgment was subsequently published. The State party has not taken these documents into account, choosing simply to state dismissively that it is well known that such documents can easily be counterfeited in Iran. The complainant submits that if the documents were indeed false, he would undoubtedly have produced them much earlier in the course of proceedings, which he had been unable to do. It was only with the help of his Iranian partner residing in Switzerland and her relations residing in Iran that he had been able to obtain the documents.[22]

5.3 With regard to the State party's claim that the judgment of the Revolutionary Court of Tehran is not sufficient grounds for concluding that the complainant runs the risk of persecution as the result of any political activity he might have undertaken, it seems to the complainant that the State party is implying that sufficient grounds for such a conclusion would exist only if the judgment had clearly indicated that he had been convicted as a Kurdish political militant. The complainant considers this to be an entirely unrealistic viewpoint, since it is obvious that even Iran wishes to maintain, at least superficially, the appearance of a State governed by the rule of law. He points out that he had to confess to a firearm-related offence in order to secure his release from custody, a scenario that he considers to be entirely plausible.

5.4 With regard to his political activities in Switzerland, the complainant points out that the State party did not take into account the evidence provided, which clearly documents that he has been deeply and consistently engaged in political activity in Switzerland and that this activity alone brings with it a significant risk to his person in Iran. He considers the fact that he did not formally identify himself as a senior official of an opposition political party to be of no importance and that his documented engagement goes far beyond what could be claimed to be the conduct of "pseudo-activism" for the purpose of inventing a reason to flee. In that regard, he points out that, since 2009, using his real name, he has read several revolutionary poems and articles written by him during radio broadcasts, criticizing the crimes of the Iranian regime. He has also participated in protests, including two at the Iranian Embassy in Bern, where embassy staff took videos and photographs. Furthermore, he has participated in around 42 hours of weekly radio broadcasts on the human rights violations committed in Iran. The audio files of those broadcasts are still available on the website of the LoRa radio station. He further notes that he has held other positions, such as founding executive member of Radio Nedaye Moghavemat, member of the editorial board of the monthly magazine Kanoun, radio broadcast producer and anti-regime activist. He also keeps a blog on which he posts news and reports of human rights violations in Iran, as well as his essays, poems and photographs of various protests and gatherings held in Switzerland in opposition to the Iranian regime. He also claims that this blog has been blocked by the Iranian courts.

5.5 Lastly, the complainant makes reference to the physical and psychological torture that he suffered during his arrest and imprisonment, which were particularly severe as a result of his being both a Kurd and a Sunni. He also refers to his being diagnosed with post-traumatic stress disorder in 2014 as a result of that torture. He submits that if he were to be returned to Iran, he would be forced to confess to espionage and cooperation with Western intelligence agencies and would be subjected to further torture by the Iranian regime.

[22] The complainant states that one of his relatives held a senior position in the Revolutionary Court of Tehran.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (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. It notes that, in this case, the State party does not contest the exhaustion of all available domestic remedies by the complainant or the admissibility of the complaint.

6.3 The Committee considers that the complaint raises substantive issues under article 3 of the Convention and that those issues should be examined on the merits. The Committee sees no obstacle to the admissibility of the present communication and thus declares it admissible.

Consideration of the merits

7.1 The Committee has examined the complaint 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 With regard to the complainant's claim under article 3 of the Convention, the Committee must determine whether there are substantial grounds for believing that he would be personally in danger of being subjected to torture, should he be returned to the Islamic Republic of Iran. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee recalls, however, that the aim of such an analysis is to determine whether the complainant runs a personal, foreseeable and real risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds 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 person might not be subjected to torture in his or her specific circumstances. Moreover, the Committee notes that, since Iran is not a party to the Convention, in the event of a violation of the complainant's rights under the Convention in Iran, he would be deprived of the legal option of recourse to the Committee for protection of any kind.[23]

7.3 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to be shown to be "highly probable", the burden of proof generally falls on the complainant, who must present an arguable case establishing that he or she is at "personal, ... foreseeable and real" risk.[24] The Committee further recalls that, in accordance with its general comment No. 4, it gives considerable weight to findings of fact 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, under article 22 (4) of the Convention, to make a free assessment of the information available to it, taking into account all the circumstances relevant to each case.[25]

[23] See *Tahmuresi v. Switzerland*, para. 7.7.

[24] See, in particular, *A.R. v. Netherlands* (CAT/C/31/D/203/2002), para. 7.3, and *Dadar v. Canada* (CAT/C/35/D/258/2004), para. 8.4.

[25] See the Committee's general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, paras. 11, 39 and 50.

7.4 In the present case the Committee notes that the complainant maintains that he was imprisoned and tortured in Iran, then sentenced in absentia to 4 years' imprisonment and placed on a blacklist, which means that he risks being arrested upon arrival in Iran. It further notes that, according to the complainant, the State party's authorities failed to take this information into account. However, the Committee observes that in its judgment of 28 January 2014, the Federal Administrative Court analysed the judgment However, the Committee observes that in its judgment of 28 January 2914, the Federal Administrative Court analysed the judgment allegedly handed down by the Iranian courts and concluded that it was doubtful that any criminal proceedings had even been taken against the complainant because he had provided no documentation to that effect.[26] The Committee further notes that, as emphasized by the Federal Administrative Court in its judgment of 14 January 2015, the offences for which the complainant claimed to have been sentenced are offences under ordinary law.

7.5 The Committee also takes note of the inconsistencies and contradictions in the complainant's statements and submissions, to which the State party has drawn attention. In particular, the Committee notes that during the proceedings before the national authorities in Switzerland, the complainant submitted two diametrically opposed versions of the events surrounding his arrest and on the manner in which it was carried out, and that he has not provided any information to explain or refute these contradictions.

7.6 The Committee further 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 Iranian Government. The Committee takes note of the complainant's medical assessment report, which indicates that he is suffering from post-traumatic stress disorder, albeit without stating the cause, and the fact that the complainant could not remain politically active owing to his medical condition. In addition, the Committee observes that, in its judgment of 3 September 2014, the Federal Administrative Tribunal noted that the post-traumatic stress disorder had manifested only once the asylum procedure had ended, and that the applicant had family and medical facilities in Tehran that could provide him with the assistance he needed.[27]

7.7 In this context the Committee nevertheless notes that, even if it were to accept the claim that the complainant had been subjected to torture and ill-treatment in the past, the question is whether he remains, at present, at risk of torture in Iran in the event of his forcible return there. The Committee further recalls its jurisprudence to the effect that it is generally for the complainant to present an arguable case.[28]

7.8 The Committee is aware that numerous aspects of the human rights situation in the Islamic Republic of Iran remain problematic. 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. The Committee also notes that the complainant had ample opportunity to provide supporting evidence and more details about his claims to the Federal Office for Migration and the Federal Administrative Court. However, the evidence provided 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 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 concludes that the information

[26] See judgment E-2077/2012 of 28 January 2014, para. 6.3, p. 15, available at: www.bvger.ch/bvger/fr/home/jurisprudence/entscheiddatenbank-bvger.html.

[27] See judgment E-4534/2014 of 3 September 2014, para. 7.1, p. 7, available at: www.bvger.ch/bvger/fr/home/jurisprudence/entscheiddatenbank-bvger.html.

[28] See, for example, *C.A.R.M. et al. v. Canada* (CAT/C/38/D/298/2006), para. 8.10; *Zare v. Sweden* (CAT/C/36/D/256/2004), para. 9.5; *M.A.K. v. Germany* (CAT/C/32/D/214/2002), para. 13.5; *S.L. v. Sweden* (CAT/C/26/D/150/1999), para. 6.4; and *N.B-M. v. Switzerland* (CAT/C/47/D/347/2008), para. 9.9.

provided does not demonstrate that he would face a personal, foreseeable and real risk of torture if he were to be returned to Iran. [29]

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 Iran.

9. The Committee, acting under article 22 (7) of the Convention, finds 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.

[29] See, for example, *M.K. v. Switzerland*, (CAT/C/60/D/662/2015), paras. 7.8–7.9.