



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. 812/2017*, **

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| <i>Communication submitted by:</i> | Namigh Hosseiny, Fariba Masroory and Avin Hosseiny (represented by counsel, Urs Ebnöther) |
| <i>Alleged victims:</i> | The complainants |
| <i>State party:</i> | Switzerland |
| <i>Date of communication:</i> | 17 February 2017 (initial submission) |
| <i>Document references:</i> | Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 14 March 2017 (not issued in document form) |
| <i>Date of decision:</i> | 21 July 2021 |
| <i>Subject matter:</i> | Expulsion to the Islamic Republic of Iran |
| <i>Procedural issues:</i> | None |
| <i>Substantive issues:</i> | Risk of torture or cruel, inhuman or degrading treatment or punishment in the event of expulsion (non-refoulement) |
| <i>Article of the Convention:</i> | 3 |

1.1 The complainants are Namigh Hosseiny, Fariba Masroory and Avin Hosseiny, Iranian nationals born in 1970, 1972 and 1996, respectively. Their asylum application has been rejected and they face deportation to the Islamic Republic of Iran. They claim that their return would constitute a violation by the State party of article 3 of the Convention. The State party made the declaration under article 22 (1) of the Convention on 2 December 1986. The complainants are represented by counsel.

1.2 On 14 March 2017, pursuant to rule 114 (1) of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from deporting the complainants while their complaint was under consideration. On 16 March 2017, the State party informed the Committee that no steps would be taken to deport the complainants while the Committee was considering the communication.

* Adopted by the Committee at its seventy-first session (12–30 July 2021).

** The following members of the Committee participated in the consideration of the communication: Essadia Belmir, Claude Heller, Erdoğan İşcan, Liu Huawen, Ilvija Pūce, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.



Facts as submitted by the complainants

2.1 The complainants are of Kurdish origin. In 1995, while holding a senior position at Bank Melli in Baneh, in the Islamic Republic of Iran Mr. Hosseiny observed transactions between the morality police and members of a terrorist organization, linked to an order to kill members of the Iranian opposition living in Iraq. The terrorist group in question was subsequently disbanded by Kurdish forces in Iraq. Approximately two months later, the Iranian authorities summoned Mr. Hosseiny and interrogated, detained and tortured him. He was detained for 85 months, 6 of which he spent in total darkness in solitary confinement. His fourth and fifth ribs were broken, and he suffered from back pain. He was regularly beaten and burned with cigarettes, suffered from malnutrition and witnessed other prisoners being mistreated, which left him traumatized. His mental health continues to suffer as a result, and he is receiving medical treatment for post-traumatic stress disorder.

2.2 After his release in 2003, Mr. Hosseiny was harassed by the security services and, as a result, was unable to find employment. In September 2010, he left the Islamic Republic of Iran for Sweden, where he applied for asylum. At the time, he was already suffering from stomach cancer. His health had deteriorated considerably when an Iranian friend, A.M., a Christian convert, gave him a Bible, which he began to read despite being a Muslim. The Bible left a strong impression on him. He turned to God and prayed for healing, and is convinced that this led to his recovery. Galvanized by his recovery, he was baptized with the help of his Iranian friend and members of a church in Sundsvall, Sweden.

2.3 While his asylum claim was being processed, Mr. Hosseiny received a call informing him that some members of his family had been detained in order to force him to return to the Islamic Republic of Iran. He withdrew his asylum application. Upon his arrival in Tehran, Iranian secret service agents arrested him and detained him for 23 days, during which he was beaten and tortured. He was eventually released on bail. A few days later, he began to undertake Christian missionary work, distributing tracts and Bibles to friends and later to acquaintances. His son helped him distribute the religious material. After several days of doubts and discussions, Ms. Masroory and Ms. Hosseiny accepted his conversion.

2.4 One evening, while the complainants were at the home of a friend, K.H., in Baneh, Ms. Masroory's brother informed them by telephone that the authorities had searched their house in Saqqez and found religious material and Bibles. This report was confirmed by a neighbour. That same night, they went to another friend's house and, on 10 July 2011, they fled from there to Sulaymaniyah in Iraq, where representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) registered them as asylum seekers. The file submitted to UNHCR contains a judicial summons dated 5 June 2011, received by Ms. Masroory's mother, which cites Mr. Hosseiny's apostasy and missionary activities as grounds.

2.5 In Sulaymaniyah, Ms. Masroory, Ms. Hosseiny and Mr. Hosseiny's son converted to Christianity and were baptized. Their baptism was documented by means of certificates and a video of the ceremony. The son was subsequently granted asylum in the Netherlands. Before leaving for Europe, Ms. Masroory and Ms. Hosseiny had to return to Tehran for a month so that their smuggler could obtain visas for them. They left the Islamic Republic of Iran on 3 July 2014.

2.6 The complainants continued to practise their Christian faith in Switzerland. They enclose various letters testifying to Mr. Hosseiny's commitment to Christianity, including his participation in church services, his attendance at Bible courses and his commitment to teaching the Bible and converting Muslims to Christianity. Mr. Hosseiny has also been politically active and participated in demonstrations against the Iranian Government and in a conference at the Office of the United Nations High Commissioner for Human Rights in Geneva.

2.7 On 28 April 2016, the State Secretariat for Migration rejected the complainants' asylum application. The Federal Administrative Court upheld that decision on 3 August 2016.

Complaint

3.1 The complainants argue that, with regard to the situation of converts to Christianity in the Islamic Republic of Iran, the Danish Immigration Service has reported that the Iranian regime regarded evangelical movements as opponents.¹ Individuals who have converted abroad and who wish to practise their faith upon their return to the country face serious risks. Even individuals who do not promote Christianity are considered a threat because they have renounced Islam. There is a risk of interrogation and repercussions when the authorities become aware that an individual has been baptized abroad. The authorities find out about baptisms with the help of informants and through telephone tapping and Internet monitoring. The Iranian regime arrests persons who engage in evangelism. Individuals who return to the Islamic Republic of Iran from Europe after their baptism must exercise extreme caution in conducting their evangelical activities. Converts must keep a low profile and not speak publicly about their conversion. Individuals who spend an extended period of time abroad may come under suspicion of spying, which only increases the danger facing the person concerned. Lastly, the report by the Danish Immigration Service states that, in the Islamic Republic of Iran, converts are arrested, tortured and even executed. Even if they are not known to the authorities, converts are sometimes shunned and targeted in honour killings.

3.2 The complainants refer to reports indicating that converts to Christianity are at risk of rights violations by the Iranian authorities, who consider them to be apostates, which is a criminal offence. Sharia does not allow Muslims to convert, and converts, especially evangelists, are at risk of physical attacks, harassment, surveillance, arbitrary arrest and detention, as well as torture and ill-treatment.²

3.3 The complainants argue that, as a result of their conversion, they run a real risk of being subjected to treatment contrary to article 3 of the Convention. They presented a detailed, coherent and credible account of their conversion, Mr. Hosseiny's missionary work and their persecution by the Iranian authorities. The Federal Administrative Court simply made reference to the decision of the State Secretariat for Migration and refused to accept that the certificates and photographs of their respective baptisms held any probative value. The Swiss authorities did not take into account other information from governmental or non-governmental agencies and therefore violated article 3 of the Convention by failing to consider all the relevant facts. Similarly, the State Secretariat for Migration and the Federal Administrative Court did not ask for details of Mr. Hosseiny's conversion and did not take into account his statements regarding his motivation or his quotations from the Bible. Mr. Hosseiny provided a realistic account of his health problems and the pain he suffers, as well as of his inner struggle around renouncing Islam. The Court did not take his baptism certificate into consideration.

3.4 The complainants express doubts as to the conclusions reached by the State party's authorities about Mr. Hosseiny's statements regarding his involvement in the planning of his baptism and the reasons why the baptism was filmed. The fact that one of his friends asked the church staff to set the date does not seem difficult to understand. Similarly, the fact that visitors to the church who attended the baptism decided to film it does not seem unusual. Furthermore, contrary to the assessment of the State Secretariat for Migration, Mr. Hosseiny described his baptism in detail, indicating that he had been baptized by an assistant pastor who had provided him with white clothes and asked him whether he wanted to fully convert, that the same pastor had then led him to a baptismal tank filled with pleasantly warm water, and that two assistants had put him in the water and spoken the name of Jesus Christ. At this

¹ Danish Immigration Service, *Update on the Situation for Christian Converts in Iran*, June 2014.

² United Kingdom of Great Britain and Northern Ireland, Home Office, *Iran: country of origin information (COI) report*, 26 September 2013; United Kingdom, Home Office, *Country information and guidance. Iran: Christians and Christian Converts*, December 2015; Commission on International Religious Freedom, *2016 Annual Report*, April 2016; United States of America, Department of State, *2015 Report on International Religious Freedom – Iran*, 10 August 2016; A/HRC/31/69; Human Rights Watch, *World Report 2017*, 2017; Iran Human Rights Documentation Center, *Apostasy in the Islamic Republic of Iran*, 25 September 2014; and Ireland, Refugee Documentation Centre, *Iran – researched and compiled by the Refugee Documentation Centre of Ireland on 17 October 2014*.

point in the hearing, the investigator interrupted the questioning and therefore did not examine Mr. Hosseiny's claims in depth.

3.5 In addition, Mr. Hosseiny submitted a credible account of his distribution of Bibles and Christian tracts. The argument that the State Secretariat for Migration and the Federal Administrative Court identified discrepancies in his claims regarding when he informed his family must be set aside. In keeping with the accounts of the other complainants, Mr. Hosseiny explained that he had first told his son, who is better educated, about his conversion and that, about five days after Mr. Hosseiny's release from detention, they had begun to undertake missionary activities together, and that, about 20 days after his release, he had told Ms. Masroory and Ms. Hosseiny, who at first struggled with the news but were later understanding. The same applies to the argument, put forward by the State Secretariat for Migration, that Mr. Hosseiny's claims of persecution by the Iranian authorities because he had performed missionary work were unfounded. Mr. Hosseiny and Ms. Masroory explained that they were visiting a friend named K.H. in Baneh when they received a call from Ms. Masroory's brother informing them of the discovery of the compromising material and Bibles, which was confirmed by a neighbour. In this regard, the complainants consider that the decision of the State Secretariat for Migration does not accurately reflect their claims.

3.6 The complainants reject the conclusion reached by the State party's authorities that Mr. Hosseiny's and Ms. Masroory's respective accounts regarding Mr. Hosseiny's position at Bank Mellî are contradictory. Mr. Hosseiny provided a detailed, coherent and credible account of his imprisonment and the ill-treatment that he suffered. Furthermore, these arguments are not directly relevant to their fear of being persecuted in the Islamic Republic of Iran because of their conversion to Christianity. Although Mr. Hosseiny never held a senior position in the opposition, his handling of confidential information nevertheless put him at significant risk. The fact that he was imprisoned for seven years suggests that the Iranian authorities did not view his disloyalty as a minor offence. It must therefore be assumed that Mr. Hosseiny is known to the Iranian authorities, which would increase the risk of his conversion being discovered, even if he no longer undertakes missionary work.

3.7 The complainants further argue that the European Court of Human Rights has repeatedly emphasized that, although it is for asylum seekers to adduce evidence to substantiate their claims, owing to the special situation in which they often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their claims and the documents submitted in support thereof.³ Therefore, it must be concluded that the complainants' claims should be considered credible despite certain inconsistencies.

State party's observations on the merits

4.1 On 14 September 2017, the State party submitted its observations on the merits of the communication. The State party is aware that the human rights situation in the Islamic Republic of Iran remains a matter of concern in many respects.⁴ Nevertheless, the general situation in the country does not, in itself, constitute sufficient grounds for concluding that the complainants would be at risk of torture if returned there.⁵

4.2 The State party maintains that the complainants did not adduce sufficient evidence for it to conclude that they would face a foreseeable, real and personal risk of being subjected to torture if returned. It notes that there is no link between Mr. Hosseiny's alleged periods of detention and his conversion to Christianity, on which the complaint is based, and that his detention is therefore not directly relevant to the present proceedings.

4.3 With regard to the detention of Ms. Masroory and Ms. Hosseiny, the State party notes that Mr. Hosseiny initially told the Swiss authorities that his wife and two children had been detained. At the second hearing, however, he claimed that only his children had been taken hostage. Ms. Masroory stated that her husband had returned from Sweden because Iranian

³ European Court of Human Rights, *F.G. v. Sweden*, application No. 43611/11, Judgment, 23 March 2016, para. 113.

⁴ *Azizi v. Switzerland* (CAT/C/53/D/492/2012), paras. 8.5 and 8.7.

⁵ *Ibid.*, para. 8.3.

secret service agents had detained her and her two children. She claimed that she had been brought a telephone and forced to ask her husband to return. When confronted with this contradiction, Mr. Hosseiny replied: “When I speak of children, ‘*batscheha*’, I mean my whole family. That is how it works in Persian; by ‘children’ we mean the whole family.” This explanation lacks substance and the complainants’ claims are therefore not plausible.

4.4 With regard to Mr. Hosseiny’s political activities in the Islamic Republic of Iran, the State party notes his statement to the effect that he had access to information on transactions in his capacity as the manager of a bank branch, while Ms. Masroory claimed that he had turned down this position. When confronted with this contradiction, Mr. Hosseiny explained that, in the Islamic Republic of Iran, he had indeed been employed as a bank manager. The State party notes, as did its authorities, that these clarifications are not sufficient to explain the contradiction and that, consequently, the complainants’ statements are not credible.

4.5 With regard to Mr. Hosseiny’s political activities in Switzerland, the State party notes that this evidence was not raised during the domestic proceedings and that the complainants have therefore not exhausted domestic remedies. The complainants do not argue that, as a result of these activities, they would risk prosecution if they were returned. Moreover, although the Iranian authorities monitor the political activities of Iranians in exile, the secret services focus on identifying individuals who hold positions or engage in activities that go beyond generic political protests and that distinguish them from the large numbers of people who disagree with the regime, making them potentially dangerous opponents.⁶ In the State party’s view, the complainants’ claims do not show that Mr. Hosseiny has put himself at risk in this way. There is therefore no reason to believe that the complainants would be at risk of treatment contrary to the Convention if they were returned.

4.6 With regard to Mr. Hosseiny’s conversion, the State party notes that his statements regarding his baptism were short and superficial. In particular, he failed to provide substantial and detailed answers to questions about how the baptism was organized and conducted. The State party argues that it is strange that Mr. Hosseiny had not wished to be involved in the organization of the baptism, especially as it was a very personal decision. The same is true of Mr. Hosseiny’s assertions regarding the presence of Iranians who filmed him, as his statements on the matter have remained vague. The State party finds it implausible that he could not explain why these people wanted to film the occasion, especially since he would have been aware of the risks. Lastly, Mr. Hosseiny failed to provide a convincing explanation for the contradictions in his accounts of when he informed his family of his conversion. The State party concludes that Mr. Hosseiny’s statements regarding his conversion are not plausible. The State party adds that the baptism certificate on file does not change this assessment, since there are serious doubts as to its authenticity.

4.7 With regard to the conversion of Ms. Masroory and Ms. Hosseiny, their claims in that respect are weak, unsubstantiated and extremely difficult to believe. Their baptism certificates have no evidentiary value. The photographs and video footage lead to the same assessment, since their claims are not plausible. In addition, they stated that they had not experienced any problems with the Iranian authorities as a result of their conversion because the authorities were not aware of it. Moreover, as Ms. Hosseiny was still very young when she left Iran, there is no reason to believe that she would encounter problems if she returned.

4.8 The State party also considers the claims concerning Mr. Hosseiny’s missionary activities in the Islamic Republic of Iran to be implausible, particularly since persons who return from abroad and are released from detention do not generally go on to undertake missionary activities. The State party notes that Mr. Hosseiny presented three different accounts of how the complainants escaped. In view of these contradictions and the unsubstantiated nature of the claims, the State party considers them to lack credibility.

4.9 With regard to the complainants’ missionary activities in Switzerland, the State party notes that they have submitted several supporting documents, including letters from Pastors D.T. and C.M., dated 16 May 2012 and 5 September 2016, respectively, corroborating Mr. Hosseiny’s attendance at church services and his missionary activities. The documents also include confirmation that he is listed in the baptismal register as a witness to a baptism on 17

⁶ Federal Administrative Court, ATAF 2009/28, 9 July 2009, considerations 7.4.3.

October 2016 and five attestations of his missionary activities. The State party notes that, since these documents are dated after the Federal Administrative Court decision of 3 August 2016, the complainants have not exhausted domestic remedies. Moreover, the circumstances of Mr. Hosseiny's conversion as described by C.M. are inconsistent with Mr. Hosseiny's statements to the Swiss authorities and the Committee. In any case, his commitment to Christianity is limited mainly to particular Christian communities and interactions with individuals. The evidence does not show that Mr. Hosseiny's activities were such that they could have attracted the interest of the Iranian authorities.

4.10 Moreover, the Iranian authorities are aware that many Iranian asylum seekers attempt to obtain permission to remain in Europe by becoming Christians. These considerations also apply to Ms. Masroory and Ms. Hosseiny, who do not claim to be committed to Christianity. Therefore, in the State party's view, the complainants have failed to demonstrate that, as a result of their alleged conversion or their religious activities in Switzerland, they would risk treatment contrary to the Convention if returned to the Islamic Republic of Iran.

4.11 The State party also notes that the complainants claim that the family's son was recognized as a refugee in the Netherlands and that they refer to the decision of the State Secretariat for Migration in this regard, even though the decision in question makes no mention of this evidence and his refugee card is not included in the annexes.

Complainants' comments on the State party's observations

5.1 On 19 March 2018 and 20 August 2020, the complainants submitted their comments. They argue, on the one hand, that the State party's observations mention aspects of the case that bear little relevance to the rejection of their asylum applications and can be refuted, and, on the other hand, that the State party questions the authenticity of the documents submitted without a convincing reason. The complainants have proved the authenticity of these documents to the best of their knowledge and belief. By arguing repeatedly that their claims are not sufficiently substantiated, the State party, like the State Secretariat for Migration and the Federal Administrative Court, is interpreting the rule of evidence in asylum procedures too strictly. It is frequently necessary to give asylum seekers the benefit of the doubt when it comes to assessing the credibility of their claims and the documents submitted in that connection. The complainants reiterate that their account of their personal history and the reasons why they fear persecution are consistent and plausible.

5.2 The complainants stress, and the State party has acknowledged, including by reference to the case *Azizi v. Switzerland*, that the current situation in the Islamic Republic of Iran poses a danger to Muslims who have converted to Christianity and persons accused of apostasy, who risk serious persecution, detention and torture.⁷ All the elements cited in *Azizi v. Switzerland* as giving rise to a high risk of human rights violations are applicable to the complainants: they are of Kurdish origin and are converts, and Mr. Hosseiny has already been targeted by the Iranian authorities because of his opposition to government activities. The complainants conclude that they will suffer severe consequences if they are returned.

5.3 The complainants reject the State party's observation that Mr. Hosseiny's detention in the Islamic Republic of Iran is irrelevant. As in *Azizi v. Switzerland*, the fact that Mr. Hosseiny has already been exposed as a political enemy and has been detained and tortured for that reason might well attract the attention of the Iranian authorities if he is returned. This, combined with his conversion, would increase the risks he would face if returned to the Islamic Republic of Iran.

5.4 As for the apparent contradiction in their statements regarding whether Ms. Masroory was detained, the complainants enclose a letter dated 2 January 2018 from a certified interpreter, confirming that, in Kurdish, the head of the family uses the term "children" to refer to the whole family, including his wife. During her hearing, Ms. Masroory identified a

⁷ Human Rights Watch, *World Report 2018*, 2017, pp. 277–283; Amnesty International, *Report 2017/18 – The State of the World's Human Rights – Iran*, 2018, pp. 244–250; United Kingdom, Home Office, *Country policy and information note – Iran: Christians and Christian converts*, February 2017; and Center for Human Rights in Iran, *11 Christian Converts Issued Long Prison Sentences in Iran in Less Than Two Months in Sham Trials*, 20 July 2017.

problem of interpretation in this context. She recalls having spoken with the interpreter, who confirmed that the term “children” included the wife when used by the head of the family.

5.5 With regard to the State party’s doubts as to Mr. Hosseiny’s post at the bank, the complainants maintain that their statements do not contradict each other. Ms. Masroory did not know the details of her husband’s job and they did not discuss his work. Furthermore, she clearly stated that he worked at the bank but that she knew nothing of his hierarchical position. However, Mr. Hosseiny’s and Ms. Masroory’s respective statements coincide in that Mr. Hosseiny received an offer from the bank to work as a branch manager in a border region considered unsafe. Moreover, the question of whether Mr. Hosseiny was a branch manager is not essential; after having held a senior position for five years, he would have had access to confidential information.

5.6 The State party’s observation that Mr. Hosseiny’s political activities in Switzerland have not been examined in the context of domestic proceedings in no way diminishes their value. The new documents submitted simply provide further proof of his opposition views, which had already been proved by his handling of confidential information in the context of his work at the bank. It is clear that, in addition to his conversion, Mr. Hosseiny’s involvement in opposition activities against the Iranian regime increases the risk of persecution that he would face. Given that he was wanted by the Islamic Revolutionary Guard Corps and the Iranian intelligence services, the State party’s assertion that his activities were unlikely to attract the attention of the Iranian authorities does not hold.

5.7 With regard to Mr. Hosseiny’s conversion, the State party simply repeats the opinion of the State Secretariat for Migration and the Federal Administrative Court, which the complainants refute. They reiterate that Mr. Hosseiny described his baptism in detail, produced a certificate signed by the church pastor and explained why he had not organized the baptism himself and why some visitors wanted to film it. The complainants enclose a document dated 8 March 2018 confirming that his baptism is recorded in the register of the church in Sundsvall. They reiterate that Mr. Hosseiny consistently explained that he revealed his conversion first to his son and then to Ms. Masroory and Ms. Hosseiny about 20 days after his release.

5.8 With regard to the conversion of Ms. Masroory and Ms. Hosseiny, the State party does not provide concrete reasons to justify its doubts as to the authenticity of their certificates and the photographs of their respective baptisms. They provided a coherent account of their respective baptisms, including the name of the priest. The fact that they did not experience difficulties after their return to the Islamic Republic of Iran does not in any way guarantee that they will not face repercussions, especially if the Iranian authorities have become aware of their conversion in the meantime. Given the danger that they would face, it is unwise to assume that Ms. Hosseiny would not be persecuted on account of her young age if she were returned to the country.

5.9 The complainants have also given a consistent account of the religious activities of Mr. Hosseiny and his son in the Islamic Republic of Iran. They reject the State party’s argument that it is hardly plausible that someone who returned to the Islamic Republic of Iran and who had been detained in the past would go on to undertake religious missionary work. Mr. Hosseiny and his son carried out their activities in a limited manner and only with trusted individuals. They reiterate that their account of the search of their house was consistent and credible.

5.10 As for their religious activities in Switzerland, the complainants point out that the State party does not question the content of the documents submitted in this regard, which demonstrate their religious affiliation and the fact that, shortly after his arrival in Switzerland, Mr. Hosseiny already demonstrated a thorough knowledge of Christianity. The State party alludes to inconsistencies between Mr. Hosseiny’s statements during the hearings and the letter from C.M. However, the letter does not mention that he converted because of the teachings of a woman named N., who taught him about the Christian faith in Sulaymaniyah after his flight from the Islamic Republic of Iran. At the time, Mr. Hosseiny had already converted and been baptized in Sweden. N. is the wife of the priest who baptized Ms. Masroory and Ms. Hosseiny. Furthermore, the fact that certain documents were issued after the decision of the Federal Administrative Court should not result in their being discounted,

since they were submitted as proof of the religious activities undertaken by Mr. Hosseiny both before and during the domestic proceedings.

5.11 The complainants reiterate that the Iranian authorities have discovered their religious and missionary activities in the Islamic Republic of Iran, as confirmed by the summons of 5 June 2011. At no point has the State party taken this document into consideration.

5.12 Christianity is an important part of the complainants' lives: they attend church regularly, take Bible courses and frequently share their experience of conversion with others. It can be assumed that their religious activities have attracted the attention of the Iranian authorities. Moreover, in *Azizi v. Switzerland*, where the complainant was no more intensely involved in such activities than the complainants in the present case, the Committee considered conversion to be one of the reasons why it was likely that the complainant would face persecution if returned. Moreover, a confrontation between the complainants and an Iranian embassy employee after their asylum applications were rejected demonstrates that the Iranian authorities are aware of those applications. Combined with Mr. Hosseiny's previous detention and torture, and the summons issued on 5 June 2011, it is clear that the Iranian authorities have sufficient information upon which to act if the complainants are returned. The authorities have undoubtedly also been informed of Mr. Hosseiny's participation in events in Switzerland and of his missionary activities.

5.13 The complainants enclose a copy of the Dutch residence permit belonging to the son of Mr. Hosseiny and Ms. Masroory, which was granted to him on the basis of the same facts. They also enclose a medical certificate issued by their doctor and dated 25 July 2020, which states that Mr. Hosseiny suffers from post-traumatic stress as a result of the torture he experienced in a number of prisons in the Islamic Republic of Iran and that his disturbing recollections of being tortured have been compounded by his precarious residency status in Switzerland.

State party's additional observations

6. On 27 April 2021, the State party informed the Committee that the medical certificate dated 25 July 2020 did not contain any new information, and referred to its observations of 14 September 2017.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 In accordance with article 22 (5) (b) of the Convention, the Committee must ascertain that the complainants have exhausted all available domestic remedies. The Committee observes that the State party contests the admissibility of the evidence relating to Mr. Hosseiny's political and missionary activities in Switzerland, insofar as the documents submitted in support of his claims are dated after the Federal Administrative Court decision of 3 August 2016. It notes that the complainants maintain that this evidence is simply intended to substantiate Mr. Hosseiny's opposition views and his religious activities, which he had already raised during the domestic proceedings.

7.3 The Committee recalls its jurisprudence according to which the State party must be given an opportunity to assess new evidence falling within the scope of article 3 of the Convention before the Committee considers the communication under article 22 thereof.⁸ However, the complainants do not provide any valid argument to justify why this evidence was not raised during the domestic proceedings or, insofar as the documents are dated after the decision of the Federal Administrative Court, in a second asylum procedure. In the light

⁸ *F.M.-M. v. Switzerland* (CAT/C/46/D/399/2009), para. 6.5.

of the foregoing, the Committee considers this part of the communication to be inadmissible under article 22 (5) (b) of the Convention.

7.4 With regard to the remaining claims under article 3 of the Convention, the Committee declares them admissible and thus proceeds to consider the communication on the merits.

Consideration of the merits

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

8.2 The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally in danger of being subjected to torture if 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 possible existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim is to establish whether the complainants would be personally at a foreseeable and real risk of being subjected to torture in the country to which they 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 the complainants would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that they 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 the Islamic Republic of Iran is not a party to the Convention, in the event of a violation of the complainants' rights under the Convention in the Islamic Republic of Iran, they would be deprived of the legal option of recourse to the Committee for protection of any kind.

8.3 The Committee notes that the complainants argue that they run a real risk of being subjected to treatment contrary to article 3 of the Convention if returned to the Islamic Republic of Iran because the Iranian authorities know of their conversion to Christianity and of Mr. Hosseiny's political and missionary activities in the Islamic Republic of Iran and in Switzerland. The Committee also notes the complainants' claim that the Iranian authorities imprisoned them, searched their house, tortured Mr. Hosseiny during his detention and later summoned him to appear before a judicial body on those grounds.

8.4 The Committee notes that the State party maintains that the complainants did not adduce sufficient evidence for it to conclude that they would face a foreseeable, real and personal risk of being subjected to torture if returned. The Committee also notes the State party's observation that the complainants' claims concerning events in the Islamic Republic of Iran lack credibility. It further notes that the State party maintains that, with regard to their political and religious activities in Switzerland, the evidence submitted does not demonstrate that Mr. Hosseiny's involvement was such that it might have aroused the interest of the Iranian authorities, and that the latter are aware that many asylum seekers attempt to obtain permission to remain in Europe by becoming Christians.

8.5 The Committee considers that, when an asylum seeker submits that he or she has converted to another religion, the test for the Committee remains whether there are substantial grounds for believing that the individual's behaviour and activities in connection with his or her stated religion, such as attending a place of worship or engaging in proselytizing activities, could have serious adverse consequences in the country of origin so as to put him or her at risk of irreparable harm.

8.6 In this regard, the Committee notes that the complainants have submitted a document confirming that Mr. Hosseiny's baptism is recorded in the register of the church in Sundsvall. It also notes that, in his statement of 16 May 2015, Pastor D.T. affirms that Mr. Hosseiny is an active Christian, that the family's lifestyle demonstrates that they live a Christian life and have distanced themselves from all Muslim traditions, that Mr. Hosseiny actively participates in all Persian-language church services with his family, as well as in a weekly course that will enable him to teach the Bible, that he is an active missionary, that he regularly invites Iranians and Kurds to his home to teach them the Bible and that he also talks about his faith

on the Internet and by telephone. The Committee also notes that the complainants argue that the State Secretariat for Migration and the Federal Administrative Court did not take into consideration or verify the truthfulness of Mr. Hosseiny's statements regarding his reasons for converting or his knowledge of Christianity. As for the claims that Mr. Hosseiny was persecuted in the Islamic Republic of Iran, the Committee further notes that his medical certificate, dated 27 January 2017, confirms that one of his scars is attributable to the torture that he allegedly suffered.

8.7 The Committee notes that the State party does not contest the fact that, in the Islamic Republic of Iran, there is widespread and systematic recourse to psychological and physical torture to extract confessions, that Christians, including Protestants and Muslim converts, are persecuted in the Islamic Republic of Iran, that Christians are reportedly arrested and subjected to torture or cruel, inhuman or degrading treatment and placed in solitary confinement for long periods to coerce them into confessing, often without the assistance of a lawyer, and that, in most cases, Christians are reportedly tried for offences against national security and some are prosecuted in criminal courts for expressing their religious beliefs.

8.8 In the light of the situation of Christian converts in the Islamic Republic of Iran, the Committee notes that the complainants argue that the State party failed to take into consideration the summons of 5 June 2011 allegedly issued by the Iranian authorities in respect of Mr. Hosseiny. The Committee further notes that the State party has not contested the complainants' statement that the summons in question cites Mr. Hosseiny's apostasy and missionary activities as grounds. In the absence of any specific response from the State party contradicting these statements, the Committee is of the view that due weight should be given to the summons. In the light of the foregoing, the Committee considers that the complainants' conduct is likely to have attracted the attention of the Iranian authorities.

9. The Committee, acting under article 22 (7) of the Convention, and taking into account the risks faced by Christian converts in the Islamic Republic of Iran, as well as the persecution and torture suffered by Mr. Hosseiny in the past, concludes, on the basis of the facts presented, that the return of the complainants to the Islamic Republic of Iran would constitute a violation by the State party of article 3 of the Convention.

10. The Committee is of the view that the State party is required by article 3 of the Convention to reconsider the complainants' asylum application in the light of its obligations under the Convention and the present findings. The State party is also requested to refrain from expelling the complainants while their asylum application is being reconsidered.

11. Pursuant to rule 118 (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 the present decision, of the steps that it has taken to respond to the above observations.
