



# 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. 819/2017\*, \*\*

<i>Communication submitted by:</i>	J.D.
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	30 March 2017 (initial submission)
<i>Date of adoption of decision:</i>	30 December 2020
<i>Subject matter:</i>	Deportation to China
<i>Procedural issue:</i>	Examination by another procedure of international investigation or settlement
<i>Substantive issue:</i>	Risk of torture if deported to country of origin
<i>Article of the Convention:</i>	3

1.1 The complainant is J.D., a national of China, born in 1985. The complainant is not represented by counsel. She claims that her deportation to China would constitute a violation by Switzerland of article 3 of the Convention.

1.2 On 11 April 2017, the Committee, acting through its Rapporteur on new complaints and interim measures, denied the complainant's request for interim measures consisting in the suspension of her removal while the case was pending before the Committee.

#### Facts as submitted by the complainant

2.1 The complainant is from Zangjiakou in Hebei Province, China. She has been a member of the Quannengshen (the Church of Almighty God) religious community since 2012, when her aunt introduced her to the faith. The complainant indicates that, on 1 December 2012, some supporters of Quannengshen warned her aunt that the police knew about her faith and, on 10 December 2012, her aunt was fined. By 2013, the general situation had become more difficult for Quannengshen believers, the number of members had increased and they were being kept under government surveillance. The complainant claims that, around May 2014, the Government was spreading rumours about the Church. The complainant agreed with her aunt and uncle not to attend any more of its meetings. To avoid possible persecution, her aunt moved. On 8 October 2014, a neighbour whom her aunt had tried to convert denounced the complainant and her aunt. The police talked to the aunt's husband and inquired whether his wife and niece were believers. The uncle denied that the complainant was a

\* Adopted by the Committee intersessionally on 30 December 2020.

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Erdogan Iscan, Liu Huawen, Jens Modvig, Ilvija Puce, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



believer and promised he would see to it that his wife no longer talked about her former faith. The complainant's aunt and uncle convinced her to leave China as soon as possible.

2.2 The complainant remained in hiding for five months with a friend from her religious community, while another friend confirmed that her name was not on any police lists. On 25 October 2014, she received her passport from the provincial authority. On 31 October 2014, the police searched her father's apartment, without a warrant, but found nothing incriminating.

2.3 On 16 April 2015, the complainant arrived in Switzerland where, two months later, she applied for asylum. In July 2015, she settled in the canton of Aargau. In September 2015, she learned through a relative that the police had found out that she had fled to Switzerland and had searched her father's apartment once again, this time with a warrant, looking for evidence of her faith. They ordered her father to persuade her to come back, threatening that, if he knew her whereabouts and did not reveal them, he would be prosecuted for harbouring a criminal and his house would be confiscated. Her cousin warned her not to contact her parents directly for fear of getting them into more trouble.

2.4 On 21 November 2016, the State Secretariat for Migration of the State party concluded that the complainant did not qualify for refugee status and rejected her application, considering that the arguments were not sufficiently reasoned and that the description of the facts did not meet the substantiation requirements. On 19 December 2016, the complainant appealed to the Federal Administrative Court, arguing that the interpretation services she had been provided with during her interaction with SEM had been inadequate and that she had not received a translation of the appellant's written submissions. The complainant had made her observations in Chinese, but they had not been included in the record. She submits that the interpreter had said, "Fräulein, I am not a Christian, I cannot translate that". She therefore claims that her right to be heard was infringed. In her appeal, the complainant indicates that SEM questioned the fact that she was a genuine believer and asserts that the decision was arbitrary. The Federal Administrative Court dismissed her appeal on 24 January 2017 in a final decision.

2.5 On 10 October 2016, the complainant was elected as a deacon of Quannengshen in Switzerland.

2.6 The complainant believes that not only will she be prosecuted upon her return owing to her religious belief but, because she fled the country, her punishment will be even worse. She states that the Government of China has stigmatized the Church as an "evil cult".

2.7 On 6 February 2017, the complainant submitted an application and a request for interim measures to the European Court of Human Rights. On 13 February 2017, the complainant's request for interim measures was rejected. The Court, sitting in a single-judge formation, decided to declare it inadmissible on the grounds that the conditions of admissibility provided for in articles 34 and 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms were not fulfilled: in respect of articles 3 and 5 of the Convention, the complaints were manifestly ill-founded; and in respect of article 6, the complaint was inadmissible due to incompatibility *ratione materiae*.

### **Complaint**

3. The complainant submits that, by forcibly returning her to China, the State party would be breaching its obligations under article 3 of the Convention. She claims that the authorities did not take all relevant considerations into account. Additionally, because of her membership of Quannengshen, she would face a prison sentence of three to seven years upon return, exposing her to persecution by the local authorities. In this regard, the complainant points out that the Quannengshen Church is considered an evil cult and is therefore banned by the Chinese Communist Party.

### **State party's observations on admissibility**

4.1 On 1 June 2017, the State party objected to the admissibility of the complaint under article 22 (5) (a) of the Convention and maintained that the same matter had already been examined by the European Court of Human Rights. The State party points out that the complainant lodged an application before the Court arguing, *inter alia*, that her return to

China would expose her to the risk of being subjected to torture, thus constituting a violation of article 3 of the European Convention on Human Rights.<sup>1</sup> The State party recalls that, on 13 February 2017, the European Court of Human Rights sent the author a decision informing her of its rejection of her request for interim measures to suspend her removal, explicitly mentioning that the Court would therefore not intervene to prevent the execution of her removal. According to the second part of that decision, the Court, sitting in a single-judge formation, declared the author's complaints inadmissible since they did not meet the conditions of admissibility under articles 34 and 35 of the European Convention on Human Rights.

4.2 The State party notes that the decision of the European Court of Human Rights was not based solely on procedural questions, but also on substantive grounds, which indicates that sufficient consideration was given to the merits of the case. Accordingly, it must be considered that the Court has examined the complainant's application within the meaning of article 22 (5) (a) of the Convention against Torture.<sup>2</sup>

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

5.1 On 25 May 2018, the complainant reiterated the risk that she would face if she were to be returned to China. She added that a believer from the same Swiss Church that she belonged to, who had returned to China in January 2017, had been arrested on arrival and sentenced to three and a half years' imprisonment.

5.2 The complainant reiterates that she is a true believer and that the Swiss local authorities did not pay attention to the evidence submitted, instead using irrelevant cases to support the correctness of the decision of the State Secretariat for Migration.<sup>3</sup>

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

#### *Consideration of admissibility*

6.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention.

6.2 The Committee takes note of the State party's objection that the complaint should be declared inadmissible under article 22 (5) (a) of the Convention because the same matter has already been examined by the European Court of Human Rights.

6.3 The Committee recalls its consistent jurisprudence that it will not consider any complaint from an individual under article 22 (5) (a) of the Convention unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.<sup>4</sup> The Committee considers that a complaint has been, and is being, examined by another procedure of international investigation or settlement if the examination of a complaint by another procedure relates or is related to the "same matter" within the meaning of article 22 (5) (a), that is, the same parties, the same facts and the same substantive rights.<sup>5</sup>

6.4 The Committee observes that the complainant lodged an application concerning the same events with the European Court of Human Rights and that complaint included claims based on article 3 of the European Convention on Human Rights (prohibition of torture). It

<sup>1</sup> The State party refers to *M.T. v. Sweden* (CAT/C/55/D/642/2014), para. 8.5.

<sup>2</sup> The State party refers to *M.T. v. Sweden*, para. 8.5; see also *U. v. Sweden* (CAT/C/56/D/643/2014), para. 6.4; and *E.E. v. Russian Federation* (CAT/C/50/D/479/2011), para. 8.4.

<sup>3</sup> The complainant attaches information regarding a presentation by the Coordination des Associations et Particuliers pour la Liberté de Conscience, which, on 1 March 2018, organized an event on the denial of religious freedom in China, including persecution of members of Quannengshen. She also attaches documents describing three similar cases and declarations from non-governmental organizations urging the authorities of France, Germany, Greece, Italy, the Netherlands and Switzerland to grant political asylum to Chinese citizens who have been persecuted because of their religious beliefs in China.

<sup>4</sup> See, for example, *A.R.A. v. Sweden* (CAT/C/38/D/305/2006), para. 6.1; and *M.T. v. Sweden*, para. 8.3.

<sup>5</sup> See, for example, *A.A. v. Azerbaijan* (CAT/C/35/D/247/2004), para. 6.8; *E.E. v. Russian Federation*, para. 8.4; and *M.T. v. Sweden*, para. 8.3.

further notes that, by decision of 13 February 2017, the Court declared the application inadmissible, considering that the claims based on articles 3 and 5 of the Convention were manifestly ill-founded and that the claims based on article 6 were incompatible *ratione materiae*.

6.5 The Committee considers that, when the European Court bases a declaration of inadmissibility not solely on procedural grounds but also on reasons that include a certain consideration of the merits of a case, then the same matter should be deemed to have been examined within the meaning of article 22 (5) (a) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>6</sup> It is therefore for the Committee to determine whether, in the case in question, the European Court went beyond the examination of the purely formal criteria of admissibility when it declared the application inadmissible on the grounds that the conditions of admissibility laid down in articles 34 and 35 of the Convention had not been met.

6.6 The Committee gathers from the decision by the European Court of Human Rights that the author's claims based on article 3 and declared insufficiently substantiated did not appear to have been declared inadmissible on purely procedural grounds. The Committee notes that, to the contrary, the ground put forward by the Court inevitably implies a certain, albeit limited, consideration of the merits of the case.<sup>7</sup> The Committee therefore concludes that the same matter has already been examined by the Court.

7. In view of the above, the Committee considers that the requirement of article 22 (5) (a) of the Convention has not been met in the present case.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 (5) (a) of the Convention;

(b) That the present decision shall be communicated to the complainant and to the State party.

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<sup>6</sup> See, inter alia, *Mahabir v. Austria* (CCPR/C/82/D/944/2000), para. 8.3; *Linderholm v. Croatia* (CCPR/C/66/D/744/1997), para. 4.2; and *A.M. v. Denmark* (CCPR/C/16/D/121/1982), para. 6.

<sup>7</sup> See *Walmann et al v. Austria* (CCPR/C/80/D/1002/2001), para. 8.5.