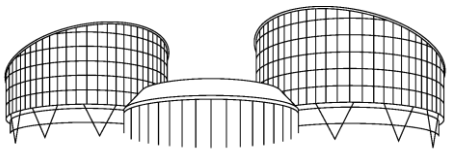

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF F.G. v. SWEDEN

(Application no. 43611/11)

JUDGMENT

STRASBOURG

16 January 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of F.G. v. Sweden,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mark Villiger, *President*,
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
André Potocki,
Paul Lemmens,
Helena Jäderblom, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 10 December 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 43611/11) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Iranian national, Mr F.G. ("the applicant"), on 12 July 2011. The President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr G. Donner, a lawyer practising in Stockholm. The Swedish Government ("the Government") were represented by their Agent, Ms H. Lindquist, of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that his expulsion to Iran would involve a violation of Articles 2 and 3 of the Convention.

4. On 25 October 2011 the President of the Section to which the case had been allocated decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be expelled to Iran for the duration of the proceedings before the Court.

5. On the same day, 25 October 2011, the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is an Iranian national who was born in 1962 and is currently in Sweden.

A. Background and proceedings before the Swedish authorities

7. The applicant applied for asylum and a residence permit in Sweden on 16 November 2009. Before the Migration Board (*Migrationsverket*) he stated the following. In Iran, he had worked with persons, connected to different universities, who were known to oppose the regime. He had mainly worked on creating and publishing web pages. He and one of the other persons had been arrested in April 2007. He had been released after 24 hours and then hospitalised for ten days due to high blood pressure. Before the elections on 12 June 2009, the applicant had worked with the Green Movement, who had supported Mousavi for the presidential position, by spreading their message via the Internet. The day before the elections, he and his friends had been arrested, questioned and detained in the polling station overnight. After the elections, the applicant had participated in demonstrations and other activities. He had been arrested once again in September 2009 and imprisoned for twenty days. In October 2009 he had been taken before the Revolutionary Court, which had released him after a day on condition that he cooperate with the authorities and spy on his friends. He had agreed to the demands and given his business premises as a guarantee. He had also assured them that he would not participate in any demonstrations and that he would respond to their summons. Following his release in a park, he had found that his business premises had been searched. He had kept politically sensitive material there, which the authorities must have noticed, and his passport and other documents were gone. On 2 November 2009 the applicant had been summoned to appear before the Revolutionary Court. He had contacted a friend who, in turn, had obtained the help of a smuggler to enable him to leave the country. He had converted to Christianity after coming to Sweden. The applicant submitted, *inter alia*, a summons from the Revolutionary Court which stated that he should present himself at Evin prison in Teheran on 2 November 2009.

8. On 29 April 2010 the Migration Board rejected the request. It first stated that the applicant had not proven his identity but that he had made it and his citizenship probable. Turning to the applicant's asylum story, the Board held that participation in demonstrations or affiliation with the Green Movement could not, of itself, give rise to a risk of persecution, ill-treatment or punishment on return to Iran. The Board noted that the applicant had changed his story in some parts during the proceedings; in

particular, he had changed his statements concerning how many times he had been arrested. Furthermore, he had not been able to name the park where he had been released. Thus, the Board found reason to question whether he had been arrested at all. The Board further considered that the applicant's political activities had been limited. After the questioning in 2007 and until the elections in 2009, he had been able to continue working with the web pages that contained the critical material, even though the authorities at this time were allegedly aware of his activities. For these reasons, the Board found that the applicant could not have been of interest to the authorities on account of his activities and the material he had in his possession. As to the applicant's conversion to Christianity, the Board noted that he had not submitted a baptism certificate and that he had initially been unwilling to refer to his religious affiliation as grounds for asylum since this, he claimed, was a private matter. In these circumstances, it was not plausible that the applicant would risk persecution in Iran due to his religious affiliation. In conclusion, the Board found that the applicant had not shown that he was in need of protection in Sweden.

9. The applicant appealed to the Migration Court (*Migrationsdomstolen*), maintaining his claims and adding the following. The reason why, at first, he had not wanted to refer to his religious affiliation was that he had not wanted to trivialise the seriousness of his belief. He submitted a baptism certificate to the court. During the oral hearing, the applicant added that his computer had been taken from his business premises while he was in prison. Material that was critical of the regime was stored on his computer, since he had visited some web pages and had received caricature drawings via e-mail. Therefore, there was enough evidence to prove that he was an opponent of the system. The summons to appear before the Revolutionary Court was submitted to the Migration Court. The applicant had not been summoned again and his family had not been targeted, or at least they had had no problems with which they wanted to burden him. He did not claim that his conversion constituted grounds for asylum but contended that it would clearly create problems for him if he had to return to Iran.

10. On 9 March 2011 the Migration Court rejected the appeal. It did not question the applicant's story or that the uncertainties that had been pointed out by the Migration Board had been satisfactorily explained. However, as regards the summons to the Revolutionary Court which had been submitted to the Migration Board, the court found that, regardless of the authenticity of the document, it could not of itself substantiate a need for protection for the applicant. This was because the document was merely a summons and because no reason was given as to why the applicant should present himself at Evin prison. Turning to the applicant's asylum story, the court considered that the information concerning his political activities had been vague and lacked details. The applicant had only stated that he had participated in the

campaign for the opposition before the elections in 2009 by joining demonstrations and having contact with students and the student movement in order to help them with their web pages. Moreover, the applicant had stated that the material he had had in his possession when he was questioned in 2007 had not differed from the material he had in 2009. These circumstances, together with the fact that he had not been summoned again to appear before the Revolutionary Court after November 2009 and that his family had not been targeted, made the court doubt that his political activities had been of such a nature and extent to have resulted in the consequences he had alleged. The court found that the applicant had exaggerated the importance of his political activities and their consequences and therefore also the authorities' interest in him. For these reasons, the court considered that the applicant had not made out that the Iranian authorities had a special interest in him and, thus, he was not in need of protection.

11. The applicant appealed to the Migration Court of Appeal (*Migrationsöverdomstolen*) which, on 8 June 2011, refused leave to appeal.

12. In September 2011 the applicant requested the Migration Board to stay the enforcement of his expulsion and to reconsider its previous decision due to new circumstances. He stated, *inter alia*, that the act of converting from Islam to another religion was punishable by death in Iran.

13. On 13 September 2011 the Migration Board found that no new circumstances had been presented which could justify staying the enforcement of the applicant's expulsion order or granting him a residence permit. The Board noted that the applicant had, in the previous proceedings, stated that he had been baptised by a Christian church and that he had converted to Christianity. The Board also noted that the applicant had stated that his conversion was a personal matter which he did not wish to invoke as a ground for asylum. In the Board's view, it was remarkable that the applicant now raised the question of conversion when he had been given the chance to elaborate on it during the oral hearing before the Migration Court but had declined to do so.

14. The applicant appealed to the Migration Court, maintaining his claims.

15. On 6 October 2011 the Migration Court rejected the appeal. It observed that the authorities had already been aware of the applicant's conversion in the previous proceedings. Therefore, the conversion could not be considered as a "new circumstance". The fact that the applicant had previously chosen not to invoke the conversion as a ground for asylum did not change the court's assessment in this regard.

16. The applicant appealed to the Migration Court of Appeal which, on 22 November 2011, refused leave to appeal.

B. Application of Rule 39 of the Rules of Court and further developments in the case

17. On 12 July 2011 the applicant lodged his application with the Court and requested it to apply Rule 39 of the Rules of Court in order to stay the enforcement of his expulsion. He stated that he had been active against the regime in Iran prior to, and during, the presidential elections in 2009. More importantly, he had converted to Christianity a couple of years earlier. The conversion had taken place prior to any decisions in his asylum proceedings. Conversion from Islam to another religion or faith was harshly punished by the Iranian system and society.

18. In support of his claims the applicant submitted, *inter alia*, a copy of a certificate, dated 13 April 2011, in which a pastor and a congregation member stated that they had first met the applicant in the summer of 2010, that he had converted from Islam to Christianity and that he had been a member of their congregation since February 2011. They also stated that their church services were broadcast on the Internet, meaning that anyone could have access to the transmissions.

II. RELEVANT DOMESTIC LAW

19. The basic provisions mainly applicable in the present case, concerning the right of aliens to enter and to remain in Sweden, are laid down in the Aliens Act, as amended on 1 January 2010.

20. Chapter 5, section 1, of the Aliens Act stipulates than an alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden. According to Chapter 4, section 1, of the Aliens Act, the term "refugee" refers to an alien who is outside the country of his or her nationality owing to a well-founded fear of being persecuted on grounds of race, nationality, religious or political beliefs, or on grounds of gender, sexual orientation or other membership of a particular social group and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country. This applies irrespective of whether the persecution is at the hands of the authorities of the country or if those authorities cannot be expected to offer protection against persecution by private individuals. By "an alien otherwise in need of protection" is meant, *inter alia*, a person who has left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 4, section 2, of the Aliens Act).

21. Moreover, if a residence permit cannot be granted on the above grounds, such a permit may be issued to an alien if, after an overall assessment of his or her situation, there are such particularly distressing

circumstances (*synnerligen ömmande omständigheter*) to allow him or her to remain in Sweden (Chapter 5, section 6, of the Aliens Act).

22. As regards the enforcement of a deportation or expulsion order, account has to be taken of the risk of capital punishment or torture and other inhuman or degrading treatment or punishment. According to a special provision on impediments to enforcement, an alien must not be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 12, section 1, of the Aliens Act). In addition, an alien must not, in principle, be sent to a country where he or she risks persecution (Chapter 12, section 2, of the Aliens Act).

23. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has gained legal force. This applies, under Chapter 12, section 18, of the Aliens Act, where new circumstances have emerged that mean there are reasonable grounds for believing, *inter alia*, that enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment or there are medical or other special reasons why the order should not be enforced.

24. If a residence permit cannot be granted under Chapter 12, section 18, of the Aliens Act, the Migration Board may instead decide to re-examine the matter. Such a re-examination shall be carried out where it may be assumed, on the basis of new circumstances invoked by the alien, that there are lasting impediments to enforcement of the nature referred to in Chapter 12, sections 1 and 2, of the Aliens Act, and these circumstances could not have been invoked previously or the alien shows that he or she has a valid excuse for not doing so. Should the applicable conditions not have been met, the Migration Board shall decide not to grant a re-examination (Chapter 12, section 19, of the Aliens Act).

25. Under the Aliens Act, matters concerning the right of aliens to enter and remain in Sweden are dealt with by three instances: the Migration Board, the Migration Court and the Migration Court of Appeal. However, no appeal lies against a decision by the Migration Board not to grant a residence permit under Chapter 12, section 18, of the Aliens Act (Chapter 14 of the Aliens Act, *a contrario*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

26. The applicant complained that his return to Iran would involve a violation of Articles 2 and 3 of the Convention. These provisions read, in relevant parts, as follows:

Article 2

"1. Everyone's right to life shall be protected by law. ..."

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

27. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The submissions of the parties

28. The applicant claimed that, if expelled to Iran, he risked to be punished or sentenced to death because he had been politically active against the Iranian regime and because he had converted to Christianity. He further asserted that he had been baptised on 31 January 2010. According to him, the Iranian authorities were aware of this since the opposition and converts in Sweden were under surveillance. His Christian faith had matured in Sweden, where he was able to practice it openly. Although he firmly believed that religion was a private matter, he did not hide his faith. Therefore, his conversion was now known to a wide circle of persons. Consequently, he was convinced that he would be at risk of persecution and ill-treatment if returned to Iran.

29. The Government stated that they did not wish to underestimate the concerns which could legitimately be expressed with respect to the current human rights situation in Iran for political opponents and Christians. However, they considered that these could not, in themselves, suffice to establish that the forced removal of the applicant to his home country would breach Article 2 or 3 of the Convention.

30. Turning to the question of whether the applicant, if returned, would personally face a real risk of being subjected to treatment in violation of Article 2 or 3 of the Convention, the Government first stated that there was no reason to conclude that the Swedish authorities' decisions and judgments were inadequate or that the outcome of the domestic proceedings was arbitrary. As regards the applicant's political activities, the Government noted that he had not submitted any documentation to support the claim that the content of his web pages had contained critical material opposing the Iranian regime or any evidence to prove that the web pages had even existed. Furthermore, the Government contended that the political activities in which the applicant had been engaged in Iran must be considered to have taken place at a low level. Moreover, the Government stated that the fact that the applicant had not received any new summons from the Revolutionary Court since 2009 and that none of the applicant's remaining family members in Iran, according to his own information, had been subjected to reprisals also suggested that he was not of interest to the Iranian authorities. Against this background, in the Government's view there was reason to question the applicant's claim that he had been imprisoned.

31. As regards the claim that the applicant risked being killed by the Iranian authorities due to his conversion from Islam to Christianity, the Government first pointed out that the applicant had stated, during the initial interview before the Migration Board, that he was a follower of Islam. They further observed that, later, he had stated that he did not wish to invoke his religious affiliation as grounds for asylum and had claimed that it was a private matter. Moreover, the Government noted that, in his appeal to the Migration Court on 7 July 2010, the applicant had stated that he had been forced to flee from Iran because of his political commitment against the Iranian regime and not because of his religious affiliation. Moreover, the Government observed that the applicant's conversion had taken place in Sweden and that he had never made his religious beliefs public in Iran. Even though the Government did not dispute the fact that the applicant had converted in Sweden, they maintained that he had not substantiated that this was known to the Iranian authorities. Nor had he demonstrated that he would face a particular risk upon return for any other reason.

2. The Court's assessment

32. The Court reiterates that the Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens. However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if expelled, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an

obligation not to expel the person in question to that country (*Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008).

33. The assessment of whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires the Court to assess the conditions in the receiving country against the standards of Article 3 of the Convention (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). These standards imply that the ill-treatment the applicant alleges he or she will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case (*Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II).

34. Moreover, the Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see, *inter alia*, *Collins and Akaziebie v. Sweden* (dec.), no. 23944/05, 8 March 2007, and *N. v. Sweden*, no. 23505/09, § 53, 20 July 2010). In principle, the applicant has to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention. Where such evidence is adduced, it is for the Government to dispel any doubts about it (see *NA. v. the United Kingdom*, no. 25904/07, § 111, 17 July 2008).

35. Thus, in order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to Iran, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 108 Series A no. 215).

36. The above principles apply also in respect to Article 2 of the Convention (see, for example, *Kaboulov v. Ukraine*, no. 41015/04, § 99, 19 November 2009). The Court therefore finds that the applicant's complaints under Articles 2 and 3 of the Convention are indissociable and it will therefore examine them together.

37. The Court notes that the applicant's request for asylum was carefully examined by the domestic authorities. There are no indications that these proceedings lacked effective guarantees to protect the applicant against arbitrary *refoulement* or were otherwise flawed. The Court will therefore continue by examining whether the information presented before it could lead it to depart from the domestic authorities' conclusions.

38. As regards the applicant's political activities in Iran, the Court observes that he has claimed, *inter alia*, that he participated in the campaign for the opposition before and during the elections in 2009, that he worked with persons who were known to be opposed to the regime and that his work mainly entailed creating and publishing web pages. The Court finds that no information has emerged to indicate that the applicant's political activities and engagement were anything more than peripheral. Furthermore, the Court notes that the domestic authorities considered that the applicant's statements concerning his political activities were vague and lacking in details. The Court can see no reason to deviate from this assessment. Even at this late juncture, the applicant has failed to submit any detailed description of the webpages in question and their alleged critical content. Furthermore, and as the Government have underlined, the applicant has not submitted anything, apart from his own statements, to substantiate the existence of these web pages.

39. The Court also notes that the applicant has claimed that he was able to work with the web pages that contained the critical material until the elections in 2009. In other words, he was able to continue to publish material which was critical of the regime until the elections in 2009, even though he had been questioned in 2007 and despite the Iranian authorities being aware of his activities. The Court finds this remarkable, especially given that the applicant has stated that the material he had in his possession in 2007 did not differ from the material he had in his possession in 2009.

40. Furthermore, the Court observes that the applicant has not been summoned to appear before the Revolutionary Court since November 2009. It is also noted that the applicant has stated that his family in Iran has not been targeted because of his political activities. Lastly, it is observed that the applicant has not claimed to have continued his political activities following his arrival in Sweden.

41. As regards the applicant's conversion, the Court observes that the applicant expressly stated, before the domestic authorities, that he did not wish to invoke his religious affiliation as a ground for asylum, since he felt that this was a private matter. The Court notes that the applicant had the opportunity to raise the question of his conversion during the oral hearing before the Migration Court but chose not to. This stance ultimately changed when the expulsion order against him became enforceable. Moreover, the applicant has claimed that he converted to Christianity only after arrival in Sweden and he has kept his faith a private matter. Against this background, and apart from the possible publication of the applicant's image in connection with broadcasted church services, the transmission of which to the Iranian authorities is merely speculative, the Court finds that there is nothing to indicate that the Iranian authorities are aware of his conversion. Consequently, the Court considers that the applicant would not face a risk of ill-treatment by the Iranian authorities on this ground.

42. In conclusion, the Court considers that the applicant has failed to substantiate that, if returned to Iran, he would face a real and concrete risk of being subjected to treatment contrary to Article 2 or 3 of the Convention. Consequently, his expulsion to Iran would not involve a violation of Article 2 or 3.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. The applicant also complained under Article 6 of the Convention that his right to fair proceedings had been violated. The Court notes that this provision does not apply to asylum proceedings as they do not concern the determination of either civil rights and obligations or of any criminal charge (*Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

44. The applicant further complained under Article 14 of the Convention that the Swedish courts discriminated against foreign nationals.

45. The Court notes that the applicant has neither explicitly nor implicitly invoked any other Article of the Convention in conjunction with his submissions in this regard. Since Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols, it has no independent existence but has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. In any event, the Court sees no reason to find that the applicant has been discriminated against on the basis of his nationality. It follows that this part of the application is also manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. RULE 39 OF THE RULES OF COURT

46. The Court recalls that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

47. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 4 above) must continue in force until the present judgment becomes final or until the Court takes a further decision in this connection (see operative part).

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint concerning Articles 2 and 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* by four votes to three that the implementation of the expulsion order against the applicant would not give rise to a violation of Article 2 or 3 of the Convention;

3. *Decides* unanimously, to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to expel the applicant until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 16 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges B.M. Zupančič, A. Power-Forde and P. Lemmens is annexed to this judgment.

M.V.
C.W.

JOINT DISSENTING OPINION OF JUDGES ZUPANČIČ, POWER-FORDE AND LEMMENS

We do not share the majority's view that the proposed deportation of the applicant to Iran, if executed, would not engage the Respondent State's obligations under Articles 2 and 3 of the Convention.

Whilst we have certain reservations about the consequences, for the applicant, of his prior political activities should he be returned to Iran, – noting, in particular, his claims of having been tortured there in 2007 – our main difficulty with the approach adopted by the majority is two-fold. Firstly, there is, in our opinion, an unacceptable failure to assess, thoroughly, the risk which the applicant faces arising from his conversion to Christianity. Secondly, insofar as the majority implies that any such risk, if it exists, could be avoided by the applicant's concealment of his religious conversion, we consider that such a requirement is wholly unreasonable and no authority for such a proposition can be found in the case law of this Court.

There can be no real doubt that conversion to Christianity constitutes a serious human rights issue for any Iranian living in Iran.[1] The Government accepts that conversion from Islam to Christianity is considered illegal under Islamic law and that it is punishable by death. It notes that those who have so converted suffer intense pressure and are subjected to serious human rights abuses on a regular basis. It recognizes that extra-judicial killings and attacks by official Islamic militias or radical groups are a serious cause for concern and it cites a number of cases in which Christian pastors have been imprisoned because of their beliefs. It concedes that converts who suffer persecution are unable to seek protection and redress from the authorities, acknowledging that on 22 September, 2010, the 11th Circuit Criminal Court of Appeals for the Gilan Province upheld the death sentence and conviction of Youcef Nadarkhani for apostasy.[2] However, the Government also submits that as long as a person keeps his or her religious belief as a private matter, he or she does not generally run any risk.[3]

Numerous reports of independent human rights bodies serve to corroborate what the Government has already accepted concerning Christian converts in Iran. To cite but one example, on 27 August 2013 the International Campaign for Human Rights in Iran reported that the eight-year prison sentence imposed on Christian convert Saeed Abedini had been upheld. In July 2011 while conducting a routine visit to a non-profit orphanage which his family helped to establish, the Iranian security forces

[1] International Campaign for Human Rights in Iran, *The Cost of Faith: Persecution of Christian Protestants and Converts in Iran* (16 January 2013), www.iranhumanrights.org.
[2] Government Observations, 1 June 2012, paragraph 26.
[3] Government Observations, 1 June 2012, paragraph 23.

arrested him and seized his passport. The Iranian courts convicted him of 'undermining national security' accusing him and other Christian converts of waging a 'soft war' against the Iranian government through their practice of Christianity in informal house churches.[1]

Regrettably, reports of this nature are not isolated. Yet, despite the established and acknowledged risks facing Christian converts in Iran there is no proper assessment made either by the domestic authorities or by this Court of the risk which this applicant may face on account of his conversion to Christianity in the event that he were to be deported to Iran.

Firstly, at national level, the authorities have never, in fact, conducted any assessment whatsoever of this particular risk. In April 2010, the Migration Board noted that, *initially*, the applicant had been unwilling to refer to his religious affiliation as a ground for asylum. By use of the word 'initially', it is clear that at some point after the lodgment of his application the applicant had, indeed, put the fact of his conversion to Christianity in issue in his asylum proceedings. The Board, however, simply noted that he had not submitted a baptismal certificate and concluded, without any further assessment, that it was not plausible that the applicant would risk persecution in Iran due to his religious affiliation.

By the time the matter came before the Migration Court it was clear that the applicant was, indeed, raising his religious conversion as a risk factor that required to be assessed. He explained to the Migration Court why, at first, he had not wanted to refer to his religious affiliation citing his desire not to trivialize the seriousness of his belief. In view of the reference, at first instance, to the omission of any baptismal certificate, the applicant produced, promptly, to the Migration Court authentic evidence of his baptism. The certificate was dated 31 January 2010, indicating clearly, that his conversion to Christianity and his baptism had occurred prior to the first hearing of his application before the Migration Board. By offering a reasonable explanation for his initial reluctance to raise the issue of his conversion and by producing, promptly, a baptismal certificate when its absence was put in issue, it is clear that the applicant was raising before the Migration Court the matter of his conversion as a factor to which regard should be had in any assessment of his asylum claim.

Nevertheless, the majority's judgment (§ 10) makes it clear that the Migration Court failed entirely to consider this factor or to ascribe any weight whatsoever thereto as a potential risk facing the applicant in assessing his claims under Article 3. In its judgment of 9 March 2011 the Migration Court is wholly silent on the applicant's conversion to Christianity, focusing, exclusively, upon his political activities prior to his fleeing Iran. The failure of that court to consider in any way the applicant's

[1] www. iranhumanrights.org/press releases/page 2.

conversion to Christianity is a serious lacuna in its assessment of the applicant's claim under Article 3.

When, subsequently, the applicant sought, specifically, to focus the authorities' attention upon the risk arising from his conversion to Islam, the Migration Board rejected his request outright noting simply that his baptism and conversion had already been raised in the previous proceedings at domestic level. It was thus not considered to be a 'new circumstance'.

The domestic authorities cannot have it both ways. Either they ought to have assessed the risk in the first round of proceedings once aware of the fact of the applicant's conversion or such a risk required to be assessed as a 'new circumstance' when raised in the second asylum application. This want of a rigorous assessment of a serious and, potentially, life-threatening risk is inconsistent with what this Court has previously confirmed is required of domestic authorities when dealing with claims made under Articles 2 or 3 of the Convention.[1] It was, indeed, such a lack of rigor that led the Court in the case of *Z.N.S. v Turkey* to find that the applicant's deportation to Iran (which, in that case, also involved a conversion to Christianity) would be in violation of Article 3 of the Convention.[2] The Court stated that it 'was not persuaded that the national authorities conducted any meaningful assessment of the applicant's claim'. We find likewise in the circumstances of this case.

There is another aspect of the majority's reasoning that lies uneasily with respect for fundamental human rights. In § 41 of the judgment, the Court notes that the applicant had 'kept his faith a private matter'. Against this background it concludes that there is nothing to indicate that the Iranian authorities are aware of his conversion and thus no risk for the applicant under Article 3 on this ground.

The majority appears to endorse, implicitly, the Government's submission that for as long as the applicant does not bring his religious affiliation to the attention of the Iranian authorities by publicly practising his faith then, in all probability, no real risk should arise in the event of his deportation. This is a dangerous line of reasoning. Such an argument was rejected, unequivocally, by the Court of Justice of the European Union in its recent judgment in *Bundesrepublik Deutschland v Y and Z*.[3] In that case, the Court addressed the question as to whether Article 2 (c) of Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that an applicant's fear of being persecuted is well-founded where such a person can avoid exposure to

[1] *Chahal v. the United Kingdom*, 15 November 1996, § 96, *Reports of Judgments and Decisions* 1996-V.

[2] *Z.N.S. v. Turkey*, no. 21896/08, 19 January 2010.

[3] *Bundesrepublik Deutschland v. Y* (C-71/11) *and Z* (C-99/11), 5 September 2012.

persecution in his country of origin by abstaining from certain religious practices. The Court noted that none of the rules laid down in the Directive stated that when assessing the extent of the risk of actual acts of persecution, it is necessary to take account of the possibility open to an applicant of avoiding the risk by abstaining from his or her religious practice in question and, consequently, renouncing the protection which the Directive is intended to afford to an applicant by conferring refugee status. The Court concluded:

> It follows that, where it is established that, upon return to his country of origin, the person concerned will follow a religious practice which will expose him to a real risk of persecution, he should be granted refugee status, in accordance with Article 13 of the Directive. The fact that he could avoid that risk by abstaining from certain religious practices, is, in principle, irrelevant.[1]

The same line of reasoning ought to apply when assessing a risk of persecution under Article 3. National authorities cannot reasonably expect from an applicant that he or she abstain from the exercise of the fundamental right to religious freedom and conscience in order to avoid treatment prohibited under Article 3.

For an asylum seeker to have to conceal his religious convictions if returned to his country of origin or to exercise reserve in the expression of his convictions was found by the Court of Justice to be ‘an unreasonable expectation’ and one that was not consistent with the law of the European Union. We consider that there is nothing under the case law of this Court which holds otherwise when it comes to the European Convention on Human Rights.

[1] *Ibid.*, paragraph 79.