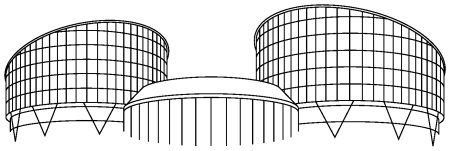

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF F.G. v. SWEDEN

(Application no. 43611/11)

JUDGMENT

STRASBOURG

23 March 2016

This judgment is final but it may be subject to editorial revision.

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

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Guido Raimondi, *President,*
Dean Spielmann,
András Sajó,
Josep Casadevall,
Ineta Ziemele,
Elisabeth Steiner,
George Nicolaou,
Ledi Bianku,
Vincent A. De Gaetano,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Helena Jäderblom,
Aleš Pejchal,
Krzysztof Wojtyczek,
Dmitry Dedov,
Robert Spano, *judges*

and Johan Callewaert, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 3 December 2014 and on 7 January 2016,

Delivers the following judgment, which was adopted on the last-mentioned 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 Grand Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant, who had been granted legal aid, was represented by Mr D. Loveday, member of the Bar of England and Wales, practising in Sweden. The Swedish Government ("the Government") were represented by their Agent, Mr A. Rönquist, Ambassador and Director General for Legal Affairs, Ministry of Foreign Affairs.

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

4. The application was allocated to the Fifth Section of the Court (Rule 52 § 1). On 25 October 2011 the President of the Section to which the case had been allocated decided to apply Rule 39, indicating to the Government that the applicant should not be expelled to Iran for the duration of the proceedings before the Court. On 16 January 2014 a Chamber composed of Mark Villiger, President, Angelika Nußberger, Boštjan M. Zupančič, Ann Power-Forde, André Potocki, Paul Lemmens, Helena Jäderblom, judges, and also of Claudia Westerdiek, Section Registrar, delivered its judgment. It held that the implementation of the expulsion order against the applicant would not give rise to a violation of Articles 2 or 3 of the Convention. The joint dissenting opinion of judges Zupančič, Power-Forde and Lemmens was annexed to the judgment.

5. On 16 April 2014 the applicant requested that the case be referred to the Grand Chamber in accordance with Article 43 of the Convention, and the panel of the Grand Chamber accepted the request on 2 June 2014.

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

7. The applicant and the Government each filed further written observations (Rule 59 § 1) on the merits.

8. In addition, third-party comments were received from the European Centre for Law and Justice, the Alliance Defending Freedom assisted by Jubilee Campaign, the Advice on Individual Rights in Europe ("the AIRE Centre"), the European Council on Refugees and Exiles ("ECRE"), the International Commission of Jurists, and the Office of the United Nations High Commissioner for Refugees ("UNHCR"), which had been granted leave by the President of the Grand Chamber to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 3 December 2014 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr Anders RÖNQUIST, Ambassador and Director General for Legal Affairs, Ministry of Foreign Affairs, *Agent;*
Ms Helen LINDQUIST,
Ms Maria WESTMAN-CLÉMENT,
Ms Linda ÖMAN BRISTOW, *Advisers*;

(b) *for the applicant*
Mr David LOVEDAY, member of the Bar of England and Wales, practising in Sweden, *Counsel,*
Ms Hanna PETTERSSON,
Ms Angela EVANS, *Advisers*.

The Court heard addresses by Mr Rönquist and Mr Loveday as well as their replies to questions from Judges Spano, Jäderblom, Bianku, Pinto de Albuquerque and De Gaetano.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1962 and lives in Sweden.

11. He entered Sweden on 16 November 2009 and applied for political asylum.

12. On 19 February 2010, counsel appointed the applicant made written submissions to the Migration Board (*Migrationsverket*) in which he developed the grounds for the applicant's request for political asylum.

13. On 24 March 2010 the Migration Board held an oral interview with the applicant in the presence of his counsel and an interpreter. The applicant handed over a declaration of 15 March 2010 from a pastor in Sweden certifying that the applicant had been a member of his congregation since December 2009 and had been baptised. The Migration Board official therefore started the interview by asking about that matter. The applicant replied that it was a private matter "in [his] heart", adding: "It has nothing to do with this but if you want to ask questions you may. All problems in my home country are caused by Islam entering Iran ...". The Migration Board official explained that the reason why he was asking questions about it was that he had interpreted the certificate as though the applicant had relied on his conversion as a ground for asylum. The applicant stated: "no, it is not something I want to rely on. It is something private". The Migration Board official then suggested a break in the interview in order for the applicant and his counsel to confer. After a ten-minute break, counsel stated: "the applicant wants to underline that he has not changed religion in order to enhance his chances of getting a residence permit but out of personal conviction". When asked when he had converted, the applicant replied that this had happened after he had arrived in the Swedish town of X, where there were not many Iranians. He had got to know a person who went to church four times a week. This person knew that the applicant hated Islam. The applicant continued: "I do not regard Christianity as a religion". When asked why that was so, the applicant replied: "if regarded as a religion it would be like Islam, but Christianity is about a kind of love you have for God". He explained that he had been going to the congregation's gatherings two to four times per week and that he read the Bible. The applicant gave examples of miracles and prophecies from the Bible which had attracted him to Christianity. The Migration Board official asked why, if the

applicant did not wish to rely on his conversion as a ground for asylum, he had nevertheless handed in the certificate from the pastor, to which the applicant replied: "I don't know. I never asked for it and I had not even considered handing it in, but you wanted it. They gave all converts a certificate like that".

14. The rest of the interview dealt with the applicant's political past. The applicant explained that 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.

15. 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.

16. 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. He had been ill-treated in prison. 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 missing.

17. Subsequently, the applicant was summoned to appear on 2 November 2009 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. The applicant submitted a summons from the Revolutionary Court dated 21 October 2009 stating that he should present himself at Evin prison in Teheran on 2 November 2009.

18. The interview before the Migration Board lasted approximately two hours and the record was subsequently sent to the applicant and his counsel for comment. Counsel commented that the applicant had not read the certificate from the congregation's pastor before the interview as it had not been translated and that the applicant intended to submit the formal baptism certificate.

19. On 29 April 2010 the Migration Board rejected the applicant's request for asylum. By way of introduction, it stated that while the applicant had not proven his identity or citizenship he had established the probability thereof.

20. As regards the request for political asylum, the Migration 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 his return to Iran. The Migration Board noted that the applicant had changed his story in some parts during the proceedings, and in particular, he had changed his statements concerning the number of times he had been arrested. Furthermore, he had not been able to name the park where he had been released in October 2009. Thus, the Migration Board found reason to question whether he had been arrested at all. The Migration 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, according to the applicant, already at that time the authorities had been aware of his activities. For these reasons, the Migration Board found that the applicant could not have been of interest to the authorities on account of his activities or the material he had in his possession.

21. As to the applicant's conversion to Christianity, the Migration Board noted that the conversion and baptism had not taken place in the Church of Sweden and that the applicant had not handed in any proof of his baptism. The certificate from the congregation's pastor could be regarded only as a plea to the Migration Board that the applicant should be granted asylum. The applicant had not initially wished to invoke his conversion as a ground for asylum and had stated that his new faith was a private matter. To pursue his faith in private was not found to be a plausible reason for believing that he would risk persecution upon return. In conclusion, the Migration Board found that the applicant had not shown that he was in need of protection in Sweden.

22. The applicant appealed to the Migration Court (*Migrationsdomstolen*), maintaining his claims and relying on both political and religious grounds for asylum. As regards the latter he handed in a baptism certificate of 31 January 2010. He reacted against the decision by the Migration Board, which in his view implied that a conversion within a "free church" was of less relevance than if it had been within the Church of Sweden. He explained that the reason why he had not initially wished to rely on his conversion was that he did not want to trivialise the seriousness of his beliefs.

23. On 16 February 2011 the Migration Court held an oral hearing in the presence of the applicant, his counsel, an interpreter and a representative of the Migration Board.

24. The Migration Board did not question the fact that the applicant, at the time, professed the Christian faith, but found that this, by itself, was not enough to consider him in need of protection. It referred to the British Home Office's operational guidance note of January 2009.

25. The applicant stated that he did not wish to rely on his conversion as a reason for asylum but considered it something personal. He added that "it would, however, obviously cause [him] problems upon return".

26. In respect of his political past he explained, *inter alia*, that he had had contact with the student movement and quite a lot of students and had helped them with their home pages. 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. While he had not personally criticised the regime, or President Ahmadinejad, or the highest leaders, the applicant had visited some websites and had received cartoons via e-mail. Therefore, in his view, there was enough evidence to prove that he was an opponent of the system. It was much the same as the material he had had on his computer in 2007.

27. The summons to appear before the Revolutionary Court on 2 November 2009 was also submitted to the Migration Court. The applicant explained that the summons had been served at his home and that his sister had brought it to him. He had left the summons with a friend when he left Iran. Subsequently, the said friend had sent it to another friend, who was going to Ukraine, and who had made sure that the summons was sent to the applicant in Sweden. He had not been summoned again and his family had not been targeted. Something might have happened, though, that his family did not wish to burden him with.

28. On 9 March 2011 the Migration Court rejected the appeal. It observed that the applicant was no longer relying on his religious views as a ground for persecution and it did not refer further to this issue in its conclusions.

29. The Migration Court found that the applicant's story in support of his request for political asylum had been coherent and trustworthy on the most essential points. It found that the uncertainties that had been pointed out by the Migration Board had been satisfactorily explained. However, as regards the summons to appear before the Revolutionary Court, the Migration Court found, regardless of the authenticity of the document, that it could not by itself substantiate a need for protection. The Migration Court pointed out in this respect that the document was merely a summons and that no reason had been given as to why the applicant should present himself at Evin prison. Moreover, the information concerning the applicant's political activities had generally been vague and lacking in detail. 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 the student movement and students in order to help them with their web pages. Furthermore, 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 Migration Court doubt that his political activities had been of such a nature and extent as to have resulted in the consequences alleged. The Migration 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, it considered that the applicant had not made out that the Iranian authorities had a special interest in him and that therefore he was in need of protection.

30. On 30 March and 19 April 2011 the applicant requested leave to appeal to the Migration Court of Appeal (*Migrationsöverdomstolen*). He maintained his need for political asylum. He also alleged that before the Migration Court he had relied on his conversion. He submitted that the latter issue had been sensitive for him, that he had considered it a private matter and that had not wanted to tarnish the seriousness of his belief. This was the reason why he, in response to a direct question by the Migration Court, had stated that he was no longer relying on his conversion as a ground for asylum. After the oral hearing before the Migration Court he had become a member of another Christian congregation and had taken part in an initiation ceremony broadcast on the Internet. His fear that his conversion had become known to the Iranian authorities had therefore increased. He enclosed a letter of 13 April 2011 from his new congregation which supported his explanation. In particular, it stated that the applicant had converted shortly after his arrival in Sweden, that he had shown with honest intent and interest that he was willing to learn more about Christianity, and that he took part in church services, prayer meetings and social activities. It also stated that he became a member of the congregation in February 2011 and that his Christian beliefs were no longer private as the services he attended were broadcast on the Internet.

31. On 8 June 2011 the Migration Court of Appeal refused the applicant's request for leave to appeal. The removal order thus became enforceable.

32. On 6 July 2011 the applicant requested the Migration Board to stay the enforcement of his expulsion and to reconsider its previous decision in the light of new circumstances. He stated, *inter alia*, that the act of conversion from Islam to another religion was a taboo and punishable by death in Iran. The applicant submitted the above-mentioned letter of 13 April 2011 from his new congregation.

33. On 13 September 2011 the Migration Board refused to re-examine the applicant's request for asylum based on his conversion. The Migration Board noted that in the original asylum proceedings the applicant had stated that he had been baptised and had converted to Christianity. He had also stated that his conversion was a personal matter which he did not wish to rely on as a ground for asylum. The Migration Board found it noteworthy 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. It thus concluded that the applicant's conversion could not be regarded as a new circumstance, which was a precondition for the Migration Board to re-examine the request.

34. The applicant appealed against the decision to the Migration Court, maintaining his claims. He submitted that since he had not previously relied on his conversion, it should be regarded as a new circumstance.

35. 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 original proceeding leading to the decision to expel him. Therefore, the conversion could not be considered as a "new circumstance". The fact that the applicant had previously chosen not to rely on his conversion as a ground for asylum did not change the court's assessment in this regard.

36. The applicant's request for leave to appeal was refused by the Migration Court of Appeal on 22 November 2011.

37. Since under Chapter 12, section 22 of the Aliens Act, the validity of a deportation order expires four years after the date on which it acquired legal force, in the present case the deportation at issue expired on 8 June 2015.

II. RELEVANT DOMESTIC LAW AND PRACTICE

38. The relevant provisions concerning the right of aliens to enter and to remain in Sweden are laid down in the Aliens Act (*Utlänningslagen*, 2005:716), as amended on 1 January 2010.

39. 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 (see Chapter 4, section 2, of the Aliens Act).

40. 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*) as to allow him or her to remain in Sweden (see Chapter 5, section 6, of the Aliens Act).

41. As regards the enforcement of a deportation or removal 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 (see 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 (see Chapter 12, section 2, of the Aliens Act).

42. Under certain conditions, an alien may be granted a residence permit even if a deportation or removal 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.

43. 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 re-examination is to 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 that 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 be met, the Migration Board will decide not to grant re-examination (see Chapter 12, section 19, of the Aliens Act).

44. Under the Aliens Act, matters concerning the right of aliens to enter and remain in Sweden are dealt with by three bodies: 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 (see, *a contrario*, Chapter 14 of the Aliens Act). According to Chapter 16, section 11 of the Aliens Act leave to appeal is a condition for a case to be tried on the merits by the Migration Court of Appeal. Leave to appeal is granted if it is of importance for the guidance of the application of law that the Migrations Court of Appeal considers the appeal or there are extraordinary reasons for such a consideration.

Pursuant to Chapter 12, section 22, of the Aliens Act, the validity of a deportation order, which has not been issued by a general court (i.e. not as a consequence of a criminal conviction), expires four years after the date on which it acquired legal force. When a deportation order thus becomes statute-barred, the alien may apply anew for asylum and a residence permit. A new application entails a full examination by the Migration Board of the reasons put forward by the alien and the Board's decision may, if negative, be appealed against to the Migration Court and the Migration Court of Appeal in accordance with the rules pertaining to the ordinary proceedings concerning asylum and residence permits. An appeal against a negative decision by the Board has suspensive effect and the alien may accordingly not be expelled while the proceedings are pending.

45. On 30 November 2011 the Swedish Migration Court of Appeal delivered a judgment (MIG 5 (25), 2011:29) ruling on the assessment of the risk of persecution in cases of *sur place* conversion. It held that when assessing whether an alien had plausibly demonstrated that his or her conversion from one religion to another was genuine in the sense that it was based on a genuine personal religious conviction, an individual assessment should be made in accordance with the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention, on the 1967 Protocol relating to the Status of Refugees (hereinafter "the UNHCR handbook") and the UNHCR Guidelines on International Protection regarding Religion-Based Refugee Claims (hereinafter "the UNHCR Guidelines"). An overall assessment should be made based on the circumstances in which the conversion took place and whether the claimant could be expected to live as a convert upon returning to his or her home country. Furthermore, in the case of individuals who had converted after having left their country of origin (conversion *sur place*), the credibility issue required particular attention. In a case where conversion was invoked shortly after the decision to expel the claimant became final and non-appealable, particular attention should be paid to the credibility of the statements made concerning the conversion. A complainant whose conversion was not deemed to have been based on genuine conviction had not plausibly demonstrated that, upon returning to his or her country of origin, he or she had the intention of living there as a convert and consequently attracting the interest of the authorities or individuals.

46. On 12 November 2012 the Director General for Legal Affairs at the Swedish Migration Board issued a "general legal position" concerning religion as grounds for asylum, including conversion (*Rättsligt ställningstagande angående religion som asylskäl inklusive konvertering*, RCI 26/2012). It was based on the above-mentioned judgment by the Migration Court of Appeal (MIG 5 (25) 2011:29), the UNHCR Guidelines and the judgment of 5 September 2012 of the Court of Justice of the European Union in the case of *Bundesrepublik Deutschland v. Y* (C-71/11)

and Z (C-99/11) (see § 50 below). According to the legal position, the credibility of a conversion must be carefully assessed in order to determine whether a genuine conversion has taken place; a person whose conversion is not based on genuine conviction will most likely not practise his or her new religion upon returning to his or her country of origin. Furthermore, if the complainant is not credible, an assessment must be made of whether adherence to the new religion is attributed to the individual upon return to his or her country of origin. In this assessment it is relevant to consider whether the conversion may have or will come to the attention of the authorities or any other actor which could constitute a threat. Finally, a person who has undergone a genuine change in his or her faith or who risks being attributed a new religious belief and who therefore risks persecution should not be compelled to hide his or her faith solely in order to avoid persecution.

47. On 10 June 2013 the Director General for Legal Affairs at the Swedish Migration Board issued a "general legal position" concerning the methodology for assessing the reliability and credibility of applications for international protection (*Rättsligt ställningstagande angående metod för prövningen av tillförlitlighet och trovärdighet*, RCI 09/2013), which was based on, *inter alia*, the assessment by the UNHCR in its report "Beyond Proof; Credibility Assessment in EU Asylum Systems", of May 2013. It sets out that it is the duty of the applicant to submit all relevant elements needed to substantiate his or her application for international protection, and that the initial burden of proof rests on the applicant. However, responsibility for the assessment of an application for international protection lies jointly with the applicant and the examining authority. Furthermore, it also follows from the legal position that the evidence in an asylum case consists not only of the applicant's statements but also of supporting evidence, such as documents, testimony and country information.

III. RELEVANT EUROPEAN UNION LAW AND CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

48. Council Directive 2004/83/EC of 29 April 2004 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 (the Qualification Directive), replaced by Council Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection

granted, which applies from 9 January 2012, provided, in so far as relevant, as follows:

Article 4: Assessment of facts and circumstances

"1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.

2. The elements referred to in of paragraph 1 consist of the applicant's statements and all documentation at the applicants disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection.

3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

(d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country;

(e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

4. The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation, when the following conditions are met:

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and

(e) the general credibility of the applicant has been established."

Article 5: International protection needs arising *sur place*

"1. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.

2. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which have been engaged in by the applicant since he left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.

3. Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall normally not be granted refugee status, if the risk of persecution is based on circumstances which the applicant has created by his own decision since leaving the country of origin."

Article 9: Acts of persecution

"1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:

(a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).

2. Acts of persecution as qualified in paragraph 1, can, *inter alia*, take the form of:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment, which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);

(f) acts of a gender-specific or child-specific nature.

3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1."

Article 10: Reasons for persecution

"1. Member States shall take the following elements into account when assessing the reasons for persecution:

(a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;

(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

..."

49. Council Directive 2005/85/EC of 1 December 2005 (the Asylum Procedures Directive) on minimum standards on procedures in Member States for granting and withdrawing refugee status, was replaced by Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, which applies from 19 July 2013. The former, stipulated, *inter alia*, as follows:

CHAPTER III: PROCEDURES AT FIRST INSTANCE

SECTION II

Article 25: Inadmissible applications

"1. In addition to cases in which an application is not examined in accordance with Regulation (EC) No 343/2003, Member States are not required to examine whether the applicant qualifies as a refugee in accordance with Directive 2004/83/EC where an application is considered inadmissible pursuant to this Article.

2. Member States may consider an application for asylum as inadmissible pursuant to this Article if:

(...)

(f) the applicant has lodged an identical application after a final decision;

(...)"

SECTION IV

Article 32: Subsequent application

"1. Where a person who has applied for asylum in a Member State makes further representations or a subsequent application in the same Member State, that Member State may examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

2. Moreover, Member States may apply a specific procedure as referred to in paragraph 3, where a person makes a subsequent application for asylum:

(a) after his/her previous application has been withdrawn or abandoned by virtue of Articles 19 or 20;

(b) after a decision has been taken on the previous application. Member States may also decide to apply this procedure only after a final decision has been taken.

3. A subsequent application for asylum shall be subject first to a preliminary examination as to whether, after the withdrawal of the previous application or after the decision referred to in paragraph 2(b) of this Article on this application has been reached, new elements or findings relating to the examination of whether he/she qualifies as a refugee by virtue of Directive 2004/83/EC have arisen or have been presented by the applicant.

(...)"

CHAPTER V: APPEALS PROCEDURES

Article 39: The right to an effective remedy

"1. Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for asylum, including a decision:

(i) to consider an application inadmissible pursuant to Article 25(2),

..."

50. On 5 September 2012 the Grand Chamber of the Court of Justice of the European Union ("the CJEU") delivered its judgment in the case of *Bundesrepublik Deutschland v. Y* (C-71/11) *and Z* (C-99/11). It concerned two asylum-seekers from Pakistan, who claimed that they had been ill-treated because of their membership of the Muslim Ahmadiyya community, an Islamic reformist movement, and for that reason had been forced to leave their country of origin. The German authorities had found that Y and Z were deeply committed to their faith and that their life had been actively shaped by it in Pakistan. They continued to practise their religion in Germany and considered that the public practise of their faith was essential in order for them to preserve their religious identity. The references for a preliminary ruling concerned the interpretation of Articles 2(c) and 9(1)(a) of Council Directive 2004/83/EC of 29 April 2004 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. The German Federal Administrative Court (*Bundesverwaltungsgericht)* had asked the CJEU three questions. First, it was asking to what extent an infringement of freedom of religion, and in particular the right of the individual to live his faith openly and fully, was likely to be an "act of persecution" within the meaning of Article 9(1)(a) of Directive 2004/83/EC. Next, the national court was asking the CJEU whether the concept of an act

of persecution was to be restricted to infringements affecting only what was referred to as a "core area" of freedom of religion. Finally, it was asking the CJEU whether a refugee's fear of persecution was well-founded within the meaning of Article 2(c) of Directive 2004/83/EC where the refugee intended, on his return to his country of origin, to perform religious acts which would expose him to danger to his life, his freedom or his integrity or whether it was, on the contrary, reasonable to expect that person to give up the practice of such acts. In its conclusion CJEU held as follows:

> "1. Articles 9(1)(a) of Council Directive 2004/83/EC of 29 April 2004 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:
>
> – not all interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union is capable of constituting an 'act of persecution' within the meaning of that provision of the Directive;
>
> – there may be an act of persecution as a result of interference with the external manifestation of that freedom, and
>
> – for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union may constitute an 'act of persecution', the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of Directive 2004/83.
>
> 2. Article 2(c) of Directive 2004/83 must be interpreted as meaning that the applicant's fear of being persecuted is well founded if, in the light of the applicant's personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices."

51. On 2 December 2014 the Grand Chamber of the CJEU delivered its judgment in the case of *A* (C-148/13), *B* (C-149/13), *C* (C-150/13) *v. Staatssecretaris van Veiligheid en Justitie.* It concerned third country nationals who had lodged an application for asylum in the Netherlands because they feared persecution in their respective countries of origin on account, in particular, of their homosexuality. The Dutch Council of State (*Raad van State*) requested a preliminary ruling concerning the interpretation of Article 4 of Council Directive 2004/83/EC of 29 April 2004 as to whether EU law limited the actions of Member States when assessing requests for asylum made by an applicant who feared persecution in his country of origin on grounds of sexual orientation. In its conclusion, the CJEU held as follows:

"Article 4(3)(c) of Directive 2004/83/EC of 29 April 2004 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 and Article 13(3)(a) of Directive 2005/85/EC of 1 December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status, must be interpreted as precluding, in the context of the assessment by the competent national authorities, acting under the supervision of the courts, of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum, whose application is based on a fear of persecution on grounds of that sexual orientation, the statements of that applicant and the documentary and other evidence submitted in support of his application being subject to an assessment by those authorities, founded on questions based only on stereotyped notions concerning homosexuals.

Article 4 of Directive 2004/83, read in the light of Article 7 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of that assessment, the competent national authorities from carrying out detailed questioning as to the sexual practices of an applicant for asylum.

Article 4 of Directive 2004/83, read in the light of Article 1 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of that assessment, the acceptance by those authorities of evidence such as the performance by the applicant for asylum concerned of homosexual acts, his submission to 'tests' with a view to establishing his homosexuality or, yet, the production by him of films of such acts.

Article 4(3) of Directive 2004/83 and Article 13(3)(a) of Directive 2005/85 must be interpreted as precluding, in the context of that assessment, the competent national authorities from finding that the statements of the applicant for asylum lack credibility merely because the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the ground for persecution."

IV. RELEVANT GUIDELINES AND OTHER MATERIAL FROM THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)

52. On 28 April 2004 the UNCHR issued Guidelines on International Protection regarding Religion-Based Refugee Claims, which under the heading, "Substantive Analysis, A. defining "religion" stated, *inter alia*:

"...9. Establishing sincerity of belief, identity and/or a certain way of life may not necessarily be relevant in every case. It may not be necessary, for instance, for an individual (or a group) to declare that he or she belongs to a religion, is of a particular religious faith, or adheres to religious practices, where the persecutor imputes or attributes this religion, faith or practice to the individual or group. As is discussed further below in paragraph 31, it may also not be necessary for the claimant to know or understand anything about the religion, if he or she has been identified by others as belonging to that group and fears persecution as a result. An individual (or group) may be persecuted on the basis of religion, even if the individual or other members of the group adamantly deny that their belief, identity and/or way of life constitute a "religion"."

According to the guidelines, religious belief, identity or way of life is considered as so fundamental to human identity that one should not be compelled to hide, change or renounce it in order to avoid persecution. Restrictions on the freedom to manifest one's religion or belief are permitted if these limits are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Even though discrimination for reasons of religion is prohibited under international human rights law, all discrimination does not necessarily rise to the level required for recognition of refugee status. Furthermore, where individuals convert after their departure from the country of origin, this may have the effect of creating a *sur place* claim. In such situations, particular credibility concerns tend to arise and a rigorous and in-depth examination of the circumstances and genuineness of the conversion will be necessary. Issues which need to be assessed include the nature of and connection between any religious convictions held in the country of origin and those now held, any disaffection with the religion held in the country of origin, for instance, because of its position on gender issues or sexual orientation, how the claimant came to know about the new religion in the country of asylum, his or her experience of this religion, his or her mental state and the existence of corroborating evidence regarding involvement in and membership of the new religion. So-called "self-serving" activities do not create a well-founded fear of persecution on a Convention ground in the claimant's country of origin, if the opportunistic nature of such activities will be apparent to all, including the authorities there, and serious adverse consequences would not result if the person were returned.

53. The UNCHR has also published a handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention on the 1967 Protocol relating to the Status of Refugees (the UNHCR handbook). Paragraph 67 of the handbook states as follows:

> "It is for the examiner, when investigating the facts of the case, to ascertain the reason or reasons for the persecution feared and to decide whether the definition in the 1951 Convention is met with in this respect. It is evident that the reasons for persecution under these various headings will frequently overlap. Usually there will be more than one element combined in one person, e.g. a political opponent who belongs to a religious or national group, or both, and the combination of such reasons in his person may be relevant in evaluating his well-founded fear."

Of relevance also is the UNHCR report "Beyond Proof: Credibility Assessment in EU Asylum Systems" of May 2013.

V. RELEVANT US SUPREME COURT JUDGMENTS

54. The US Supreme Court judgments, *United States v. Steeger*, 380 U.S. 163 (1965) and *Welsh v. United States* 15 June 1970, concerned

conscientious objectors and the "test of religious belief" provided by the US Supreme Court under § 6(j) of the Universal Military training and Service Act. In the former judgment the Supreme Court ruled that the test of religious belief under § 6(j) is whether it is a sincere and meaningful belief occupying in the life of its possessor a place parallel to that filled by the God of those admittedly qualified for the exemption. Thus conscientious objector status was not reserved to individuals of a traditional religious background. In the latter judgment, the Supreme Court found that although Welsh denied any religious foundation for his beliefs, whereas Seeger had characterized his pacifist beliefs as "religious," Welsh's conviction was nevertheless valid. More specifically it stated, among other things:

> The Court made it clear [in Steeger] that these sincere and meaningful beliefs that prompt the registrant's objection to all wars need not be confined in either source or content to traditional or parochial concepts of religion. It held that § 6(j) "does not distinguish between externally and internally derived beliefs," *id.* at 186, and also held that "intensely personal" convictions which some might find "incomprehensible" or "incorrect" come within the meaning of "religious belief" in the Act. *Id.* at 184-185. What is necessary under *Seeger* for a registrant's conscientious objection to all war to be "religious" within the meaning of § 6(j) is that this opposition to war stem from the registrant's moral, ethical, or religious beliefs about what is right and wrong and that these beliefs be held with the strength of traditional religious convictions. Most of the great religions of today and of the past have embodied the idea of a Supreme Being or a Supreme Reality - a God - who communicates to man in some way a consciousness of what is right and should be done, of what is wrong and therefore should be shunned. If an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content, but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual "a place parallel to that filled by ... God" in traditionally religious persons. Because his beliefs function as a religion in his life, such an individual is as much entitled to a "religious" conscientious objector exemption under § 6(j) as is someone who derives his conscientious opposition to war from traditional religious convictions.

VI. BACKGROUND MATERIAL RELEVANT TO THE APPLICANT'S ASYLUM CLAIM ON POLITICAL GROUNDS

55. The relevant background material includes the United Kingdom Home Office's "Iran, Country of Origin Information (COI) Report" of 26 September 2013 describing, among other things, the "History and Recent Developments" (chapters 3 and 4), "Summonses" (chapter 11.53) and the "Green Movement" (chapter 15.49). Of interest also is the UN Special Rapporteur's report on the situation of human rights in the Islamic Republic of Iran of 13 March 2014, and the UK Foreign and Commonwealth Office's report, "Iran, Country of Concern" of 10 April 2014.

56. Just after the elections in Iran on 12 June 2009, the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe (PACE) on 1 October 2009 adopted a declaration in which it considered the

violent reactions of the Iranian authorities to peaceful protests to be a serious breach of Iranian citizens' human rights. It also called upon governments of other countries not to expel Iranian citizens to Iran. Furthermore, the United States Department of State's 2010 Human Rights Report on Iran, in Section 2 "Freedom of Speech and Press/Internet Freedom" (8 April 2011) noted:

> "The government monitored Internet communications, especially via social networking websites such as Facebook, Twitter and YouTube, and collected individuals' personally identifiable information in connection with peaceful expression of views. The government threatened, harassed and arrested individuals who posted comments critical of the government on the internet ..."

The UK Home Office's Operational Guidance Note on Iran, dated November 2011, stated the following: "3.7.11 ... There is a real risk that high profile activists and political opponents who have come to the attention of the authorities would on return to Iran face a real risk of persecution and should be granted asylum for reason of his or her political opinion".

VII. BACKGROUND MATERIAL RELEVANT TO THE APPLICANT'S ASYLUM CLAIM BASED ON HIS CONVERSION

57. The Danish Immigration Service's "Update on the Situation for Christian Converts in Iran", June 2014, stated, *inter alia*, as follows:

> "1.2.1 Charges used against Christian converts over time
>
> According to an international organization in Turkey, although apostasy does not figure in the Iranian criminal code, there have in the past been cases where judges have made apostasy rulings basing these decisions on the knowledge of the judge and incorporating Islamic law. Reference was made to the case of Pastor Soodmand who, in 1990, was executed upon being charged with apostasy. It was added that in 1994 another pastor, Pastor Mehdi Dibaj, was charged with apostasy, released and found killed in a forest. Since 1990, there have been no reports of converts from Islam to Christianity having been sentenced to the death penalty for apostasy in Iran. The latest case where a convert has been charged with apostasy is that of Yousef Naderkhani, a Church of Iran pastor, which was covered widely in international media. He was sentenced to three years' imprisonment.
>
> In 2009-2010, when Naderkhani's case came up, courts were being pressured by the regime to make use of apostasy charges in cases regarding converts. However, the courts were reluctant as apostasy cases were reserved to special religious courts for clergy. Religious courts were legally the only courts that could try apostasy charges and therefore only in the instance where a religious cleric had converted, would such a charge be applicable. Instead, in courts outside of the religious courts, the cases involving converts would then rather be on charges of disturbing the public order than apostasy.
>
> Since 2011, the only significant change in the way the authorities are treating converts to Christianity is the crystallization that apostasy is not applicable to converts to Christianity. The Iranian authorities stated in 2009 to 2011 that house churches were linked to outside movements, for example Zionist movements, and organizations

abroad, for example in the US. The regime sees the efforts of evangelical movements as a drive against the Iranian regime. As a result, evangelical churches and house churches are viewed in a national security frame. This view of the regime explains why some cases involving converts, specifically leaders of house churches, also involved charges of a more political nature.

Concerning the case of Yousef Nadarkhani, Christian Solidarity Worldwide (CSW) said that according to the knowledge of the organisation, Nadarkhani is still living in Rasht and is carrying on with his business as a pastor. There has been no use of apostasy on Christians in Iran after the case of Naderkhani in which his charges were overturned. Today, all charges against converts and pastors/house church leaders are of a political nature, linking to allegations of threats to national security or espionage, including links to foreign bodies and enemies of Islam, including Zionists.

...

1.6 Situation of converts who return to Iran after having converted abroad, i.e. in Europe/Western countries

Mansour Borji explained that 20 years ago, it was possible for a Christian convert to be baptized in a church in Iran. Over time, the churches that did baptize paid the price and due to gradual pressure, this possibility has now been eliminated. Since 2006-2007, converts are no longer baptized in Iranian churches as no one was willing to run the risk of performing a baptism. Christian converts consequently started travelling to Turkey and other neighbouring countries to get baptized. Asked if house churches perform baptism, the source said that some churches might. With regard to the situation of converts who return to Iran after being baptized abroad, be it in Turkey, Armenia, UAE or another country, the source found that they may return to Iran quietly and not encounter any problems. If the person is already monitored by the authorities, he or she could risk consequences upon return to Iran. According to AIIS it is difficult to obtain information on potential risks an individual may face upon returning to Iran after conversion abroad. If Iranian informants have gathered information regarding an individual who has returned to Iran, the authorities may arrest them for questioning. It is possible that charging and conviction will follow the arrest and questioning. A wide group of people could be in that position: students, political activists, family members of political persons might even be questioned as well as Christian converts. Regarding whether baptism abroad would put a person at risk from the authorities in Iran, AIIS considered that the importance of baptism should be balanced against how the Iranian authorities perceive a convert. A person who has attended training and sessions abroad may be considered a convert, although he or she may not have officially been baptized. Asked about the situation for a convert who returns to Iran after having converted abroad, i.e. in Europe or a Western country, Mansour Borji found that there would be no difference in the way the Iranian authorities would deal with the case. If the person is known to the authorities and they have shown an interest in him or her before he or she left the country, there could be a risk to him or her upon returning. If the person is unknown to the authorities, the source did not consider that there would be a huge threat towards him or her. The source referred to a case of a family who went back to Iran and upon return, they were threatened and followed around/harassed. It was considered that perhaps relatives or others had reported them to the authorities causing the harassment. Ultimately, the family left Iran again. They had secretly begun to attend a house church. Concerning the consequences for an individual upon return to Iran after having converted abroad, CSW said that any convert who wishes to practice his or her faith upon return, would face serious risk. Whether an individual has been baptized in a nearby country or in Europe or the US, would not make any difference. If an individual returns to Iran and

is not actually promoting Christianity, the fact still remains that such an individual has left the 'faith' (Shia Islam) and thus threatens the order of the regime. When asked about the consequences of returning to Iran after having been baptized abroad, Elam Ministries said that many Iranians do go abroad and return to Iran after a while. If the authorities in Iran become aware of the fact that a person has been baptized abroad such an individual may risk interrogation and repercussions. The source considered that the authorities may find out that an individual has been baptized through informers and telephone/internet tapping. When asked about how persons who have been baptized abroad carry on with a Christian life upon return to Iran, it was considered that Iranian converts need baptism because of their Islamic background. It is easier mentally to live as a Christian after baptism has taken place. After baptism an individual will often display a greater change in behaviour that will be obvious to others. Talking from experience, an Iranian network leader said that after he had turned Christian, he no longer used profanity or was angry as he used to be and that this change in behaviour was of course noticed by his family members and the people around him. Also, after having become a Christian one is given the command to share one's faith with others. Part of the teachings of the Bible is evangelism and the gospel of Matthew is that one should go and tell people about Jesus. Converts wish to obey this and it is those who evangelize that the authorities want to stop. It was considered that persons who return from Western countries after converting would have to be very careful about doing any evangelizing. When considering the situation of an individual who has converted in Europe who then returns to Iran, their situation would be much the same as that of Iranians who convert in Iran. Such individuals would have to lay low and not speak openly about their conversion. If their conversion is uncovered and the authorities are notified, there is a risk that such an individual will be suspected of links with foreign organizations much the same as a convert who has been living in Iran. The source added that those who are outside of Iran for extended periods of time may be more at risk in that the authorities may suspect them of spying. It was further added that this counts not only for Christian converts but also for other Iranians. Asked about the situation of Christian converts who return to Iran after coming to Turkey or another country, and meeting with other believers, the representatives of the Union Church informed the delegation that if the converts stay 'quiet'; i.e., they do not associate with other believers, they may not be discovered and the visits to a foreign country will then not make a lot of a difference for them. The source did not consider that there would be less risk to an individual who returns to Iran after being baptized in a Western country, if the individual renounces the baptism and explains it to be part of a strategy for coming to the West. This would work for their families, but maybe not for the government authorities. Converts in Iran are subject to arrest, torture and execution; they would normally not be declaring their religion on job or school applications. According to the representatives of the Union Church, even if not known to authorities, converts can face shunning and even 'honour killing' by their families. Ethnic Christian minorities (Armenians, Assyrians) are allowed to meet and worship in strictly regulated conditions. The source said that we hear that they also have difficulties, some of which are reported in the media."

58. The United Kingdom Home Office's, "Iran, Country of Origin Information (COI) Report" of 26 September 2013, stated, *inter alia*:

"19.01 The Christians in Parliament All Party Parliamentary Group (APPG) 'Report on the Persecution of Christians in Iran' published in October 2012, stated: Pre-revolution, Iran was seen as sympathetic towards religious minorities, and the Iranian constitution contains guarantees of fundamental human rights, including freedom of opinion, and protection from torture and arbitrary arrest. Article 23 of the Iranian

constitution states that: 'The investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief. However, these rights are subject to a more general principle that Sharia law takes precedence in any conflict of law, and so these constitutional provisions have not stopped widespread interrogation and punishment of Iranians purely on the grounds of their religious beliefs.'

19.02 The same APPG report further noted that, the Iranian constitution enshrines protection of freedom of religion for Christians, Jews and Zoroastrians, and there is a system of registration for non-Muslim places of worship. In reality, however, even the officially recognised churches face severe limitations on their freedom to worship.

..."

Religious demography

"19.09 The Criminal Intelligence Agency (CIA) World Fact book, updated 22 August 2013, accessed 11 September 2013, provided the following breakdown of religious groups in Iran: Muslim (official) 98% (Shia 89%, Sunni 9%), other (includes Zoroastrian, Jewish, Christian, and Baha'i) 2%."

...

Proposed law on apostasy

"19.21 The 2013 ICHRI report, 'The Cost of Faith', noted that, 'Under the pending new Iranian penal code awaiting final approval, apostasy remains uncodified. However, the code includes a provision referring to Article 167 of the Iranian constitution that explicitly instructs judges to utilize Islamic legal sources where crimes or punishments are not covered by the code. This leaves the door open for the continued practice of relying on jurisprudence that holds apostasy to be a capital crime.'"

...

Prosecution of apostates

"19.23 On the prosecution of apostates the Landinfo Report 2011 noted 'In practice, people are convicted of apostasy only very rarely'. The same source continued, however: 'Charging converts of apostasy appears to have become more common ... Formal charges of apostasy against converts have occurred relatively seldom in Iran, but threats of such charges have been brought up during the trial as a means of pressuring converts to declare that they repent and wish to return to Islam. In many cases the court has decided to release the convert without any charges, or brought other charges, such as participation in illegal house churches or for having had contact with foreign media.'

19.24 The 2013 ICHRI report, The Cost of Faith, reported that: 'The Campaign has been able to document three cases of Christians charged with apostasy: those of Mehdi Dibaj, Youcef Nadarkhani, and Hossein Soodmand, and one case, that of Hossein Soodmand, in which a Christian was executed by the state for apostasy. Soodmand, a convert and pastor, was arrested in 1990. After two months in prison, during which time he reportedly refused to renounce his faith, Soodmand was executed by hanging. It is not known whether he had a trial. Nadarkhani, also a convert and pastor, was arrested in 2009 and subsequently sentenced to death. His retrial, granted upon appeal, garnered international attention; after pressure from the UN, the European Union, international human rights organizations, and the Vatican, he was acquitted on apostasy charges and sentenced instead to three years

imprisonment for charges linked to evangelism. He was released in 2012 on time served.'"

...

Christians

"This section should be read in conjunction with the sections on Apostasy, Prosecution of apostates and Muslim Converts to Christianity.

19.31 The International Campaign for Human Rights in Iran (ICHRI) 2013 report, The Cost of Faith, stated: 'There are no definitive statistics on the number of Christians, and Christian converts in particular, in Iran due to the lack of reliable polling. In 2010, the research group World Christian Database (WCD) recorded 270,057 Christians in Iran, or about 0.36 percent of the entire Iranian population of 74.7 million. In Iran, there are two main categories of Christians: ethnic and non-ethnic. The majority are ethnic Christians, which refers to Armenians and the Assyrians (or Chaldeans) who possess their own linguistic and cultural traditions. Most ethnic Christians are members of their community's Orthodox church. Non-ethnic Christians are for the most part members of Protestant churches and most, though not all, are converts who came from Muslim backgrounds. The WCD in 2010 reported approximately 66,700 Protestant Christians in Iran, which represents about 25 percent of the Iranian Christian community. The Iranian government does not recognize converts as Christians and many converts do not report their faith publicly due to fear of prosecution. Thus the number of converts in Iran is likely undercounted. Several Iranian Christian organizations indicated to the Campaign that the number of Christian converts could be as high as 500,000, but such estimates could not be independently confirmed.'"

Muslim converts to Christianity

...

"19.53 The CSW (the Christian Solidarity Worldwide) report of June 2012 stated:

'There has been a noticeable increase in the harassment, arrests, trials and imprisonments of converts to Christianity since the beginning of 2012 in various cities across Iran, with a particular crackdown on individuals and groups in Tehran, Kermanshah, Esfahan and Shiraz. Although some of these detainees have been released after being asked to sign documents preventing them from attending Christian meetings, many others remain detained, including women and the elderly. There was a particular upsurge of arrests during February 2012, which continued into March. Once again, exorbitant bail payments have been demanded in order to secure temporary release for detained Christians. The renewed wave of repression has affected both the house church movement and approved denominations, the latter, a continuation of events that occurred at the end of 2011 when the government raided a church belonging to the sanctioned Assemblies of God (AOG) movement in Ahwaz, imprisoning all attendees, including Sunday School children. Whilst direct attacks on sanctioned churches were rare in 2011, so far 2012 has seen the arrest of the leaders of the Anglican Churches of St Paul's and St Peter's in Iran's third largest city, Esfahan. In May [2012] it was reported that the head of St Paul's Church, Pastor Hekmat Salimi, had been temporarily released on bail of around $40,000. See the CSW report directly for further information.

19.54 On 8 September 2012, the Guardian reported the release from prison of Christian pastor Youcef Nadarkhani but also noted that, 'In April [2012], another pastor, Farshid Fathi, 33, became the latest victim of state persecution of Christian

converts after being sentenced to six years in prison by a revolutionary court, Iran Christian News Agency reported'. The USCIRF Report 2013 noted that, 'Part of the evidence offered at trial was that Fathi possessed and unlawfully distributed Farsi language Bibles and Christian literature. He has spent a number of months in solitary confinement and remains in prison'.

19.55 The Joint report from the Danish Immigration Service, the Norwegian LANDINFO and Danish Refugee Council's fact-finding mission to Tehran, Iran, Ankara, Turkey and London, United Kingdom, 'On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', 9 November to 20 November 2012 and 8 January to 9 January 2013, published February 2013 [Danish fact finding report 2013], reported on the risk of persecution to Christian converts. The majority of the sources consulted wished to remain anonymous. The report included the following observations:

'An international organization in Ankara stated that the authorities perceive the evangelistic networks as a sort of intelligence network and would rather go after the evangelizers and proselytizers. The authorities would not go after individual converts, but if it turns into more organized activities, it is a different issue. It was added that the authorities for instance, have not cut the TV satellite channels that disseminate Christian TV. According to the source, the authorities are not chasing house church members but would rather go after the 'big fish', i.e. those that organize and who proselytize, as they are seen as a threat to society. The evangelizers who disseminate Christian information are more at risk than others, and an extreme effort is put into chasing the evangelizers, i.e. the pastors, according to the source. Asked about what could lead to the persecution of a Christian convert, a Western embassy stressed that engaging in evangelical activity or active manifestation of one's Christian identity in the public sphere will risk negative attention from the authorities and create problems. Wearing a cross would not be a problem in itself. It was added that a person's risk however, may also depend on what the individual has done in the past, for example, if previous activity has been registered by the authorities.'

...

19.58 On 16 June 2013, Mohabat reported that:

According to Mohabat News, the Revolutionary Court in Shiraz delivered the sentences of Mojtaba Seyyed-Alaedin Hossein, Mohammad-Reza Partoei (Koorosh), Vahid Hakkani, and Homayoun Shokouhi to their lawyer. All four Christian men were found guilty of attending a house-church, spreading Christianity, having contact with foreign ministries, propaganda against the regime and disrupting national security. Each was sentenced to three year and eight months in prison."

...

THE LAW

I. PRELIMINARY OBSERVATIONS

A. The Government

59. At the hearing on 3 December 2014 the Government pointed out that it would be in the interest of the proceedings for the Court to pass its judgment before 8 June 2015, since the deportation order at issue would expire on that day pursuant to Chapter 12, section 22, of the Swedish Aliens Act.

60. In their further observations of 23 June 2015, the Government requested that the Grand Chamber strike the case out of its list of cases in line with, for example, *P.Z. and Others v. Sweden* ((striking out), no. 68194/10, §§ 14-17, 18 December 2012).

61. They pointed out that the deportation order is no longer enforceable, that the applicant cannot be expelled from Sweden on the basis of that order, and that he will be granted a full ordinary examination on the merits of the case upon submitting a new application for asylum. Thus, having regard to Article 37 § 1 (c) of the Convention, the Government held that it is no longer justified to continue the examination of the application and that there are no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case (Article 37 § 1 *in fine*).

62. If the Grand Chamber does not strike the case from its list of cases, the Government held that it should be declared inadmissible since the applicant cannot claim to be a victim within the meaning of Article 34 of the Convention of a deportation order which is not enforceable. Accordingly, the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and should be declared inadmissible in accordance with Article 35 § 4.

63. In any event, since the applicant may now institute a new request for asylum, which will be examined on the merits by all the relevant authorities, he has not exhausted domestic remedies. In the alternative, the Government therefore submitted that the present application should be declared inadmissible for failure to exhaust domestic remedies under Article 35 §§ 1 and 4 of the Convention.

B. The applicant

64. The applicant stated that he wished to maintain the application and asked the Court to proceed to consider the application on the merits. If the Court discontinues the examination of his case, he will need to apply afresh

for asylum. In that case he intends to rely on his conversion to Christianity as one ground for asylum.

65. In the applicant's view, the "matter" before the Grand Chamber cannot be considered as having been resolved for the purposes of Article 37 § 1 (b) by the expiry on 8 June 2015 of the validity of the applicant's deportation order. He pointed out that the Swedish authorities have not granted him asylum or a residence permit in Sweden unlike, for example, the applicants in *M.E. v. Sweden* ((striking out) [GC], no. 71398/12, 8 April 2015) and *W.H. v. Sweden* ((striking out) [GC], no. 49341/10, 8 April 2015). Thus it cannot be concluded that he no longer risks being expelled.

66. Nor can it be concluded that it is no longer justified to continue the examination of the application for the purposes of Article 37 § 1 (c).

67. In any event, the case raises serious issues of fundamental importance, and respect for human rights thus requires that the Grand Chamber continue the examination of the case.

68. The applicant pointed out that when striking out the cases, *inter alia*, *Atayeva and Burman v. Sweden* ((striking out), no. 17471/11, 31 October 2013); *P.Z. and Others v. Sweden*, (cited above); and *B.Z. v. Sweden* ((striking out), no. 74352/11, 18 December 2012) by virtue of Article 37 § 1 (c), the Court had not issued a judgment at Chamber level.

69. In the present case, however, the Chamber has passed judgment, the case has been referred to the Grand Chamber, and a hearing has been held. Throughout each of those stages, the Government strongly resisted the applicant's complaints and the Chamber ruled against him. To strike out the complaint now would therefore cause the applicant considerable prejudice.

70. Moreover, the applicant maintained that the asylum proceedings had been flawed. If the Grand Chamber does not rule on those alleged flaws, there is a palpable risk that the previous decisions, including the Chamber judgment, will be viewed uncritically by the national authorities and courts as free from fault. In any event, it places the applicant at a fundamental disadvantage to have to pursue a fresh asylum claim against the backdrop of a series of potentially flawed decisions as to the risks facing him on return to Iran. In the applicant's view it is unjustified to subject him to such a procedure, when the Grand Chamber has the opportunity to rule on those alleged flaws now and is so close to determining the case.

71. Finally, he pointed out that the parties and the third parties have gone to considerable trouble to prepare and submit detailed submissions in the case, and the Grand Chamber has gone to the trouble and expense of convening a hearing in the case. That expense and that effort would be wasted if the case were struck out now. This would not be justified.

C. The Court's assessment

72. Article 37 § 1 of the Convention provides:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

73. The Court observes that, according to its established case-law, in cases concerning the expulsion of an applicant from a respondent State, once the applicant has been granted a residence permit and no longer risks being expelled from that State, the Court considers the case to have been resolved within the meaning of Article 37 § 1 (b) of the Convention and strikes it out of its list of cases, regardless of whether the applicant agrees (see, *inter alia*, *M.E. v. Sweden*, cited above, § 32; *H v. Norway* (dec.), no. 51666/13, 17 February 2015; *I.A. v. the Netherlands* (dec.), no. 76660/12, 27 May 2014; *O.G.O. v. the United Kingdom* (dec.), no. 13950/12, 18 February 2014; *Isman v. Switzerland* (dec.), no. 23604/11, 21 January 2014; *M.A. v. Sweden* (dec.), no. 28361/12, 19 November 2013; *A.G. v. Sweden* (dec.), no. 22107/08, 6 December 2011; and *Sarwari v. Austria* (dec.), no. 21662/10, 3 November 2011). The reason for this is that the Court has consistently approached the issue as one of a potential violation of the Convention, being of the view that the threat of a violation is removed by virtue of the decision granting the applicant the right of residence in the respondent State concerned (see, *M.E. v. Sweden*, cited above, § 33).

74. Moreover, in some cases, where the applicant was not granted a residence permit, the Court considered that it was no longer justified to continue the examination of the case by virtue of Article 37 § 1 (c) of the Convention and decided to strike it out of its list of cases, because it was clear from the information available that the applicant would not at the moment, and for a considerable time to come, be at risk of being expelled and subjected to treatment allegedly in breach of Article 3 of the Convention, and because the applicant could challenge a future removal before the domestic authorities, (see, among others, *I.A. v. the Netherlands*, cited above; *P.Z. and Others v. Sweden*, cited above, §§ 14-17; *B.Z. v. Sweden*, cited above, §§ 17-20; and, *mutatis mutandis*, under Article 8, *Atayeva and Burman v. Sweden*, cited above, §§ 19-24).

75. In all the above-cited cases, the Court found that there were no special circumstances regarding respect for human rights as defined in the

Convention and its Protocols which required the continued examination of the case (Article 37 § 1 *in fine*).

76. However, in cases as mentioned in paragraph 74 above where the risk of expulsion disappears prior to any decision on the admissibility of the application, the Court has sometimes declared the latter inadmissible because the applicant could no longer claim to be a victim within the meaning of Article 34 of the Convention (see, *inter alia*, *Atsaev v. the Czech Republic* (dec.), no. 14021/10, 7 July 2015; *Tukhtamurodov v. Russia* (dec.), no. 21762/14, 20 January 2015; *Andreyev v. Estonia* (dec.), no. 42987/09, 22 January 2013; *Etanji v. France* (dec.), no. 60411/00, 1 March 2005; *Pellumbi v. France* (dec.), no. 65730/01, 18 January 2005; and *Vijayanathan and Pusparajah v. France*, 27 August 1992, § 46, Series A no. 241-B). The word "victim" in Article 34 of the Convention indeed denotes a person directly affected – or at risk of being directly affected – by the act or omission at issue.

77. In the present case, the Court observes that under Chapter 12, section 22, of the Aliens Act, the deportation order, which acquired legal force on 8 June 2011 when the Migration Court of Appeal refused to grant leave to appeal (see paragraph 31 above), expired four years later, that is to say on 8 June 2015. The deportation order has thus become statute-barred and cannot be enforced.

78. It is undisputed that the applicant may institute new and full proceedings for asylum. Should he do so, his claims will be examined on the merits by the Migration Board and, in the event of appeal, by the courts. The applicant stated (see paragraph 64 above) that if the Court discontinues the examination of the case, he will submit a fresh application for asylum and rely on his conversion to Christianity as one ground.

79. Currently, however, the applicant is in limbo. He has not been granted asylum or a residence permit in Sweden and during any new asylum proceedings, he will unavoidably remain in an uncertain situation as regards the matters relied on under Articles 2 and 3 of the Convention in the present application. This being so, the Court is not satisfied that the applicant has completely lost his victim status. Nevertheless, in line with the case-law cited above in paragraph 74, the Court observes that, in principle, it may no longer be justified to continue the examination of the application (Article 37 § 1 (c) of the Convention).

80. It remains to be determined, whether in the present case there are special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case (Article 37 § 1 in fine).

81. It will be recalled that on 2 June 2014 the case was referred to the Grand Chamber in accordance with Article 43 of the Convention, which provides that cases can be referred if they raise "a serious question affecting

the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance".

82. The Court notes that there are important issues involved in the present case, notably concerning the duties to be observed by the parties in asylum proceedings. Thus, the impact of the current case goes beyond the particular situation of the applicant, unlike most of the similar cases on expulsion decided by a Chamber.

83. Against this background, in accordance with Article 37 § 1 *in fine*, the Court finds that there are special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

84. Consequently, the Court dismisses the Government's request to strike out the case from its list of cases.

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

85. The applicant complained that owing to his political past in Iran and his conversion from Islam to Christianity in Sweden it would be in breach of Articles 2 and 3 of the Convention to expel him to Iran. Those provisions read as follows:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3

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

A. The Chamber judgment

86. In its judgment of 16 January 2014, the Chamber held that the implementation of the expulsion order against the applicant would not give rise to a violation of Articles 2 or 3 of the Convention. It examined the two

provisions together and made an overall assessment of the risks related to the applicant's political past and his conversion to Christianity.

87. The Chamber noted that the applicant's request for asylum had been carefully examined by the domestic authorities and that there were no indications that those proceedings had lacked effective guarantees to protect the applicant against arbitrary *refoulement* or had otherwise been flawed.

88. As regards the applicant's alleged political activities in Iran, the Court found that no information had emerged to indicate that the applicant's political activities and engagement had been anything more than peripheral. It also agreed with the domestic authorities' assessment that the applicant's statements concerning his political activities had been vague and lacking in detail and that also before the Chamber, the applicant had failed to submit any detailed description of the webpages to which he referred or their alleged critical content. The applicant had submitted nothing, apart from his own statements, to substantiate the existence of those webpages. It also noted that the applicant had stated that his family in Iran had not been targeted because of his political activities. Lastly, it observed that the applicant had not claimed to have continued his political activities following his arrival in Sweden.

89. As regards the applicant's conversion, the Chamber observed that he had expressly stated, before the domestic authorities, that he did not wish to rely on his religious affiliation as a ground for asylum, since he felt that it was a private matter. In particular, he had had the opportunity to raise the question of his conversion during the oral hearing before the Migration Court but had chosen not to. This stance had changed only when the expulsion order against him became enforceable. The Chamber further observed that the applicant had claimed that he had converted to Christianity only after arriving in Sweden and that he had kept his faith a private matter. Having regard to all of the above, the Chamber found that there was nothing to indicate that the Iranian authorities were aware of his conversion.

B. The parties' submissions

1. The applicant

90. The applicant maintained that it would be in breach of Articles 2 and 3 of the Convention to execute the removal order against him for the following reasons.

91. As regards his political activities in Iran, it had not properly been taken into account, for example, that he had been ill-treated during his twenty days' detention in September 2009, that he had described in detail the hearing of October 2009 before the Revolutionary Court and provided

the name of the presiding judge, that he had submitted the original summons to re-appear on 2 November 2009, or that he had fled the country illegally.

92. He submitted that he would be exposed to a high risk on passing through the airport upon his return. That risk had increased because the Iranian authorities could now identify him from the Chamber judgment and would in future be able to do so from the Grand Chamber judgment as well.

93. The applicant had not wished to rely on his conversion in the original asylum proceedings because he considered his religion a private matter and because "he did not want to exploit his valuable new-found faith as a means of buying asylum". With hindsight, he considered that he had not at the time been provided with sufficient legal advice and support to understand the risk associated with his conversion. Nevertheless, in formal terms, his conversion had repeatedly been mentioned as a ground for asylum in the initial proceedings by his representatives. The applicant had replied willingly to questions about his conversion but the Migration Board had found that he lacked credibility in this respect, apparently because he did not belong to the "Church of Sweden" and since he had not submitted his baptism certificate but only a statement from the pastor at his church. Likewise, during the oral hearing before the Migration Court the applicant had submitted that his conversion would cause him problems upon his return to Iran.

94. Moreover, on 6 July 2011, when the applicant applied for a stay of execution of the removal order, he attached a letter in which his congregation explained why he had not wished to exploit his conversion in the original asylum proceedings. The congregation had also stated that the risk to the applicant had increased because he had come into contact with "reporters or spies" who would pass on information about his conversion to the Iranian authorities, and because the church, to which the applicant had belonged since 2011, broadcast its services on the Internet (see paragraphs 30 and 32 above).

95. Before the Grand Chamber, the applicant added that the risk had further increased owing to his specific work for the church. He also stated that upon return to Iran he would tell his family and friends about his conversion. They would not understand or accept it. They would disown him. He did not believe, though, that his family or friends would disclose his conversion to the authorities because they love him.

96. In a written statement of 13 September 2014 to the Grand Chamber, the applicant explained about his conversion, the way he currently manifested his Christian faith in Sweden and how he intended to manifest it in Iran, if the removal order were to be executed. In his view his conversion had reached the level of cogency, seriousness, cohesion and importance such as to bring it within the scope of Article 9. He had been a nominal Muslim in Iran but did not believe in Islam. His friends at the time had been aware of this. Having arrived in Sweden, one cold evening, he and some

friends had entered a gathering to have some tea and warm up. That was how he came to be in contact with the first Christian congregation. He had gone home, obtained a Bible in Farsi, and on starting to read it felt that "it went directly to his heart". He had continued going to Bible classes and attending prayer meetings and had been baptised in January 2010. It was correct that in March 2010 he had stated to the Migration Board that he did not think of Christianity as a religion, but that was due to his way of defining religion as a belief, like Islam, which required an intermediary, as opposed to Christianity where contact with God was direct. He had moved to a different church, where he had continued Bible classes and prayer meetings. If returned to Iran he would feel compelled by an internal drive to show his love for Jesus and for the Bible openly. At home, he would be likely, ideally, to have books on Christianity and a cross, and would probably engage in home-church activities or make contact with other Christians. He would also seek to disseminate Christian literature in Farsi, in particular on the Internet.

97. The applicant's statement was supported by a written statement of 15 September 2014 to the Grand Chamber, from a former pastor at the applicant's church, who stated, *inter alia*, that he had known the applicant since the beginning of 2012, that the applicant was an intellectual in his Christian belief, that he spoke English well, that they had good discussions about religion, and that after having been a Christian for about four years the applicant had obtained the skills and maturity to lead a group in Bible study lessons at his church.

98. Finally, the applicant maintained that the asylum proceedings had been flawed, mainly because the Swedish authorities had failed to give adequate regard to the risks facing him as a result of his conversion.

99. In particular, he contended that in the original set of proceedings it was not open to the authorities to ignore the risk related to his conversion, of which they were aware, by referring to the fact that he had not relied on it. Firstly because it was not possible for an individual to waive the protections accorded to him under Article 3 (see *M.S. v. Belgium*, no. 50012/08, §§ 121-125, 31 January 2012) and secondly because, even if Article 3 protections were in principle open to waiver, the applicant had not been given any warning as to the potential consequences for him if he chose not to rely on his religion as a ground for asylum. The authorities had never examined whether there had been a waiver in the present case or, if so, what exactly the waiver consisted of.

100. As to the second set of proceedings, in which the applicant had actively sought to rely on his conversion, his request had been dismissed because his conversion was not considered to be a "new circumstance". However, the authorities had failed to examine whether the applicant had a valid excuse for not relying on his conversion earlier. They had also failed to pay attention to the fact that the applicant had brought up the new

circumstance of his move to a new church in a new town and the broadcasting of a service over the Internet in which he could be seen.

2. The Government

101. The Government contended that, for the following reasons, it would not be in breach of Articles 2 and 3 to execute the removal order in question.

102. The political activities in which the applicant had been engaged in Iran could be considered to have taken place at a low level. That was supported by the fact that since 2009 the applicant had not received any new summons from the Revolutionary Court and that none of the applicant's remaining family members in Iran, according to his own information, had been subjected to any reprisals by the Iranian authorities.

103. Moreover, in the original asylum proceedings the applicant had specifically stated that he did not wish to rely on his conversion as a ground for asylum, since he considered it a private matter. His request for asylum for political reasons was finally refused on 8 June 2011, when the Migration Court of Appeal refused leave to appeal. It was not until 6 July 2011 that the applicant brought up his fear of persecution owing to his conversion, despite the fact that he had converted in December 2009 and despite his extensive contact with other Iranian converts and his Swedish congregation, through whom he must have been aware of the Iranian State's approach towards converts. The applicant had not explained why this fear of persecution had arisen just after the expulsion decision had become final and non-appealable, and in the Government's view this justified paying particular attention to the credibility of his account in this regard. In the re-opening proceedings, the applicant's conversion was not a new circumstance which could not have been relied on previously, nor did the applicant have a valid excuse for not having done so, as required by the conditions laid down in Chapter 12, sections 18 and 19, of the Aliens Act for a re-examination of the case.

104. In respect of the procedure applied in asylum cases, the Government submitted that in general the Swedish authorities followed the UNCHR handbook and the UNHCR Guidelines on International Protection regarding Religion-Based Refugee Claims and made an individual assessment of whether an alien had plausibly demonstrated that his or her conviction *sur place* was genuine in the sense that it was based on a genuine personal religious conviction. That included an assessment of the circumstances in which the conversion had taken place and whether the claimant could be expected to live as a convert upon returning to the home country. Furthermore, on 12 November 2012 the Director General for Legal Affairs at the Swedish Migration Board issued a "general legal position" concerning religion as a ground for asylum, including conversion, based on a judgment of the Migration Court of Appeal (MIG 2011:29), the UNCHR

Guidelines and the judgment by the CJEU in *Bundesrepublik Deutschland v. Y* (C-71/11) *and Z* (C-99/11), 5 September 2012. According to the legal position, the credibility of the conversion had to be carefully assessed in order to determine whether a genuine conversion had taken place. A person who had undergone a genuine change of faith or who risked being attributed a new religious belief and who therefore risked persecution should not be compelled to hide his or her faith solely in order to avoid persecution. In addition, on 10 June 2013 the Director General for Legal Affairs had issued a "general legal position" concerning the methodology for assessing the reliability and credibility of applications for international protection based on, *inter alia*, the assessment by the UNHCR in its report, "Beyond Proof: Credibility assessment in EU Asylum Systems", of May 2013.

105. In the present case, however, the applicant had not wished to rely on his conversion in the original asylum proceedings. Nevertheless, it was noteworthy that he had been a Muslim for almost fifty years in Iran and had converted to Christianity *sur place* shortly after his arrival in Sweden. The credibility issue therefore called for particular attention. Like the Migration Court, and the Migration Board in the proceedings before the Migration Court, the Government did not question the fact that the applicant had formally converted to Christianity in Sweden or been baptised on 31 January 2010, but they pointed out that because the applicant had specifically stated that he considered his conversion a private matter, which he did not wish to rely on as a reason to claim asylum, none of the domestic authorities had undertaken an examination of the genuineness of his conversion or of what kind of religious practice he considered essential in order for him to preserve his religious identity.

106. In respect of the general risk for converts in Iran, the Government pointed to various international reports, and contended that it was possible for a Christian convert to live in Iran and to practise his religion within the private sphere or together with others of the same religious belief. The applicant had continuously held that his faith was a private matter and had acted accordingly. In addition, in an interview with the Migration Board in March 2010 he had stated that he did not regard Christianity as a religion. In view of this the Government found it unreasonable to believe that upon his return to Iran the applicant would engage in religious practice that would expose him to a real risk of persecution.

3. Third party observations

107. The European Centre for Law and Justice, the Alliance Defending Freedom assisted by Jubilee Campaign, the AIRE Centre, ECRE, the International Commission of Jurists, and the UNHCR submitted, among other things, that Christian converts were one of the most persecuted religious minorities in Iran. The Islamic regime had systematic mechanisms in place in an attempt to identify all members in their society who had

converted from Islam to Christianity. These mechanisms had made it increasingly likely for the government to identify a Christian convert in Iran, even if practising in secret. If identified by the Iranian government, Christian converts would often, at least, suffer substantial harm or interference with their lives by way of deprivation of liberty, assaults and continual harassment, and in the worst case scenario the individual could face severe ill-treatment and death.

108. They also maintained that in the context of a risk assessment upon removal, in keeping with the Court's settled case-law, a full and *ex nunc* evaluation was required. To overlook the fact that the circumstances might have changed over time would render the applicant's rights theoretical and illusory. The assessment should take applicable EU and refugee law into account. They therefore invited the Court to hold that, in the light of the CJEU's judgment in *Bundesrepublik Deutschland v. Y* (C-71/11) and *Z* (C-99/11), 5 September 2012, the applicant could not be expected to conceal his religion to avoid persecution covered by Article 3 of the Convention. Coerced, self-enforced concealment of one's religious conversion as the direct, foreseeable consequence of enforcing the removal of individuals to countries where they would face a real risk of the death penalty as apostates would entail a real risk of mental, psychological suffering falling within the scope of Article 3 of the Convention. Further, under refugee law, requiring self-enforced, coerced suppression of a fundamental aspect of one's identity, such as one's religious belief, one's sexual orientation or one's political opinion had been held inconsistent with the fundamental tenets of the Refugee Convention.

109. In respect of the procedural aspect, the UNHCR pointed out that the obligations in the 1951 Convention required the State authority to ascertain all the relevant facts so as to identify and recognise refugees who were entitled to protection under the Convention. Accordingly, the determination of whether an applicant had a well-founded fear of persecution or faced a risk of other serious harm was based on facts that were material to the asylum claim, including, for example, facts that the applicant had presented but requested to be disregarded owing to their private nature or where the applicant considered them to be irrelevant. It was for the examiner ultimately to decide which facts were relevant and material to the overall assessment. In respect of the burden of proof it generally rested on the person making the assertion. However, in view of the particularities of a refugee's situation and his or her position of vulnerability, they might not be able to provide the relevant information. Accordingly, there was a shared duty between the applicant and the examiner to ascertain and evaluate all the relevant facts. In fulfilling this shared duty, examiners might, in some cases, need to use all the means at their disposal to gather the necessary evidence in support of the application.

C. The Court's assessment

1. Introduction

110. At the outset the Court observes that in the context of expulsion, where there are substantial grounds to believe that the person in question, if expelled, would face a real risk of capital punishment, torture, or inhuman or degrading treatment or punishment in the destination country, both Articles 2 and 3 imply that the Contracting State must not expel that person. The Court will therefore also examine the two Articles together (see, among other authorities, *mutatis mutandis*, *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 314, ECHR 2014 (extracts); *T.A. v. Sweden*, no. 48866/10, § 37, 19 December 2013; *K.A.B. v. Sweden*, no. 886/11, § 67, 5 September 2013; *Kaboulov v. Ukraine*, no. 41015/04, § 99, 19 November 2009; and *F.H. v. Sweden*, no. 32621/06, § 72, 20 January 2009).

2. General principles regarding the assessment of applications for asylum under Articles 2 and 3 of the Convention

(a) The risk assessment

111. The Court reiterates that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, for example, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 113, ECHR 2012; *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII; *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94; and *Boujlifa v. France*, 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI). However, the expulsion of an alien 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 in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the destination country. In these circumstances, Article 3 implies an obligation not to deport the person in question to that country (see, among other authorities, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, ECHR 2008).

112. The assessment of whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires the Court to examine the conditions in the destination country in the light of the standards of Article 3 of the Convention (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). These standards entail that the ill-treatment the applicant alleges he 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 level is relative, depending on all

the circumstances of the case (see *Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II).

113. The assessment of the existence of a real risk must necessarily be a rigorous one (see *Chahal v. the United Kingdom*, 15 November 1996, § 96, *Reports* 1996-V, and *Saadi v. Italy*, cited above, § 128). It is in principle for the applicant 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 (see, for example, *Saadi v. Italy*, cited above, § 129, and *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). In this connection, 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, among other authorities, *N. v Sweden*, no. 23505/09, 20 July 2010; *Hakizimana v. Sweden* (dec.), no. 37913/05, 27 March 2008; and *Collins and Akaziebie v. Sweden* (dec.), no. 23944/05, 8 March 2007).

114. The assessment must focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation there and of his or her personal circumstances (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 108, Series A no. 215). In this connection, and where it is relevant to do so, the Court will have regard to whether there is a general situation of violence existing in the country of destination (see, *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 216, 28 June 2011).

115. If the applicant has not already been deported, the material point in time for the assessment must be that of the Court's consideration of the case (see *Chahal*, cited above, § 86). A full and *ex nunc* evaluation is required where it is necessary to take into account information that has come to light after the final decision by the domestic authorities was taken (see, for example, *Maslov v. Austria* [GC], no. 1638/03, §§ 87-95, ECHR 2008 and *Sufi and Elmi, v. the United Kingdom*, cited above, § 215). This situation typically arises when, as in the present case, deportation is delayed as a result of the indication by the Court of an interim measure under Rule 39 of the Rules of Court. Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known by the Contracting State at the time of the expulsion. The assessment must focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation

there and of his or her personal circumstances (see, for example, *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007 and *Vilvarajah and Others v. the United Kingdom*, cited above, §§ 107 and 108).

116. It is for the Court to consider in an expulsion case whether, in all the circumstances of the case before it, substantial grounds have been shown for believing that the person concerned, if returned, would face a real risk of being subjected to treatment contrary to Article 3 of the Convention. If the existence of such a risk is established, the applicant's removal would necessarily breach Article 3, regardless of whether the risk emanates from a general situation of violence, a personal characteristic of the applicant, or a combination of the two. However, it is clear that not every situation of general violence will give rise to such a risk. On the contrary, the Court has made it clear that a general situation of violence would only be of sufficient intensity to create such a risk "in the most extreme cases" where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return (see, *Sufi and Elmi*, cited above, §§ 216 and 218. See also, among others, *L.M. and Others v. Russia*, nos. 40081/14, 40088/14 and 40127/14, § 108, 15 October 2015 and *Mamazhonov v. Russia*, no. 17239/13, §§ 132-133, 23 October 2014).

(b) The nature of the Court's inquiry

117. In cases concerning the expulsion of asylum-seekers, the Court does not itself examine the actual asylum applications or verify how the States honour their obligations under the Geneva Convention relating to the status of refugees. Its main concern is whether effective guarantees exist that protect the applicant against arbitrary refoulement, be it direct or indirect, to the country from which he or she has fled. By virtue of Article 1 of the Convention the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Articles 13 and 35 § 1 of the Convention (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 286-287, ECHR 2011). The Court must be satisfied, however, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or third States, agencies of the United Nations and reputable non-governmental organisations (see, among other authorities, *NA. v. the United Kingdom*, no. 25904/07, § 119, 17 July 2008).

118. Moreover, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the

evidence before them (see, among other authorities, *Giuliani and Gaggio v.* Italy [GC], no. 23458/02, §§ 179-80, 24 March 2011; *Nizomkhon Dzhurayev v. Russia*, no. 31890/11, § 113, 3 October 2013; and *Savriddin Dzhurayev v. Russia*, no. 71386/10, § 155, ECHR 2013 (extracts). As a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned (see, for example, *R.C. v. Sweden*, no. 41827/07, § 52, 9 March 2010).

(c) The procedural duties in the examination of applications for asylum

119. In the context of deportation, the Court has on various occasions set out the obligations incumbent on States in respect of the procedural aspect of Articles 2 and 3 of the Convention (see, *inter alia*, *Hirsi Jamaa and Others v. Italy*, cited above, §198; *M.E. v. Denmark*, no. 58363/10, § 51, 8 July 2014; and *Sufi and Elmi*, cited above, § 214).

120. Regarding the burden of proof, the Court found in *Saadi v. Italy* (cited above, §§ 129-32; see also, among others, *Ouabour v. Belgium*, no. 26417/10, § 65, 2 June 2015 and *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 261, ECHR 2012 (extracts)), that it was in principle for the applicant to adduce evidence capable of proving that there were 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; and that where such evidence was adduced, it was for the Government to dispel any doubts raised by it (ibid., § 129). In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the destination country, bearing in mind the general situation there and his personal circumstances (ibid., § 130). Where the sources available describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (ibid., § 131). In cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court considers that the protection of Article 3 of the Convention enters into play when the applicant establishes, where necessary on the basis of the above-mentioned sources, that there are serious reasons to believe in the existence of the practice in question and in his or her membership of the group concerned (ibid., § 132).

121. As regards asylum procedures, the Court observes that Article 4(1) of the Qualifications Directive (see paragraph 48 above) provides that member States of the European Union may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection, and that paragraph 67 of the UNHCR handbook (see paragraph 53 above) states as follows:

> "It is for the examiner, when investigating the facts of the case, to ascertain the reason or reasons for the persecution feared and to decide whether the definition in the 1951 Convention is met with in this respect. It is evident that the reasons for persecution under these various headings will frequently overlap. Usually there will be more than one element combined in one person, for example a political opponent who belongs to a religious or national group, or both, and the combination of such reasons in his person may be relevant in evaluating his well-founded fear".

122. The Court also notes that the UNHCR, in its third-party observations (see paragraph 109 above), submitted that although the burden of proof generally rested on the person making the assertion, there was a shared duty between the applicant and the examiner to ascertain and evaluate all the relevant facts; that in fulfilling this shared duty, examiners might, in some cases, need to use all the means at their disposal to produce the necessary evidence in support of the application.

123. In respect of *sur place* activities the Court has acknowledged that it is generally very difficult to assess whether a person is genuinely interested in the activity in question, be it a political cause or a religion, or whether the person has only become involved in it in order to create post-flight grounds (see, for example *A.A. v. Switzerland*, no. 58802/12, § 41, 7 January 2014). That reasoning is in line with the UNCHR Guidelines on International Protection regarding Religion-Based Refugee Claims of 28 April 2004, which state "that particular credibility concerns tend to arise in relation to *sur place* claims and that a rigorous and in-depth examination of the circumstances and genuineness of the conversion will be necessary ... So-called "self-serving" activities do not create a well-founded fear of persecution on a Convention ground in the claimant's country of origin, if the opportunistic nature of such activities will be apparent to all, including the authorities there, and serious adverse consequences would not result if the person were returned" (see paragraph 52 above). See also the Court's finding in, for example, *Ali Muradi and Selma Alieva v. Sweden* ((dec.), no 11243/13, §§ 44-45, 25 June 2013) to this effect.

124. Furthermore, the Court observes that in respect of a first-instance determination of eligibility for international protection, the CJEU, in a judgment (*A, B, C v. Staatssecretaris van Veiligheid en Justitie,* cited above), held, *inter alia*, that Article 4(3) of Directive 2004/83 and Article 13(3)(a) of Directive 2005/85 had to be interpreted as precluding the competent national authorities, in the context of that assessment, from finding that the statements of the applicant for asylum lacked credibility merely because the applicant had not relied on his declared sexual orientation on the first occasion he had been given to set out the ground for persecution (see paragraph 51 above).

125. It is in principle for the person seeking international protection in a Contracting State to submit, as soon as possible, his claim for asylum with the reasons in support of it, and to adduce evidence capable of proving that there are substantial grounds for believing that deportation to his or her

home country would entail a real and concrete risk of exposure to a life-threatening situation covered by Article 2 or to treatment in breach of Article 3.

126. However, in relation to asylum claims based on a well-known general risk, when information about such a risk is freely ascertainable from a wide number of sources, the obligations incumbent on the States under Articles 2 and 3 of the Convention in expulsion cases entail that the authorities carry out an assessment of that risk of their own motion (see, for example, *Hirsi Jamaa and Others v. Italy* [GC], cited above, §§ 131-133, and *M.S.S. v. Belgium and Greece* [GC], cited above, § 366).

127. By contrast, in relation to asylum claims based on an individual risk, it must be for the person seeking asylum to rely on and to substantiate such a risk. Accordingly, if an applicant chooses not to rely on or disclose a specific individual ground for asylum by deliberately refraining from mentioning it, be it religious or political beliefs, sexual orientation or other grounds, the State concerned cannot be expected to discover this ground by itself. However, considering the absolute nature of the rights guaranteed under Articles 2 and 3 of the Convention, and having regard to the position of vulnerability that asylum seekers often find themselves in, if a Contracting State is made aware of facts, relating to a specific individual, that could expose him to a risk of ill-treatment in breach of the said provisions upon returning to the country in question, the obligations incumbent on the States under Articles 2 and 3 of the Convention entail that the authorities carry out an assessment of that risk of their own motion. This applies in particular to situations where the national authorities have been made aware of the fact that the asylum seeker may, plausibly, be a member of a group systematically exposed to a practice of ill-treatment and there are serious reasons to believe in the existence of the practice in question and in his or her membership of the group concerned (see paragraph 120 above).

3. Application of those principles to the present case

128. In applying the above principles to the present case, the Court finds it appropriate to separate the examination of the case into two parts: first, the applicant's political activities in Iran; and second his conversion to Christianity in Sweden.

(a) The applicant's political activities

i. The general situation in Iran

129. The applicant did not claim that the general circumstances obtaining in Iran would on their own preclude his return to that country. Moreover, the Court notes that a general situation of violence will not normally in itself entail a violation of Article 3 in the event of an expulsion to the country in question (see *H.L.R. v. France*, 29 April 1997, §41,

Reports 1997-III). However, the Court has never excluded the possibility that the general situation of violence in a country of destination may be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there is a real risk of ill-treatment simply because the individual concerned will be exposed to such violence in that country (see *Sufi and Elmi*, cited above, § 218 and *NA. v. the United Kingdom*, cited above, § 115).

130. In the present case, while being aware of the reports of serious human rights violations in Iran, (see paragraphs 55-58 above) the Court does not find them to be of such a nature as to show, on their own, that there would be a violation of the Convention if the applicant were returned to that country (see also, *S.F. and Others v. Sweden*, no. 52077/10, § 64, 15 May 2012). The Court will thus proceed to ascertain whether the applicant's personal situation is such that his return to Iran would contravene Articles 2 and 3 of the Convention.

ii. The particular circumstances of the applicant's situation

131. The Court notes that the applicant gave testimony in the presence of his counsel and an interpreter during a two-hour interview before the Migration Board on 24 March 2010 and before the Migration Court on 16 February 2011. His case was examined on the merits by two bodies and leave to appeal was refused by the Migration Court of Appeal.

132. From the records it can be seen that both the Migration Board and the Migration Court took into account that since 2007 the applicant had worked with individuals, connected to different universities, who were known to oppose the regime. He had mainly worked on creating and publishing web pages. His computer had been taken from his business premises while he was in prison in September/October 2009. Material that was critical of the regime was stored on his computer. While he had not personally criticised the regime, President Ahmadinejad, or the highest leaders, the applicant had visited some websites and had received cartoons via e-mail. Therefore, in the applicant's view, there was enough evidence to prove that he was an opponent of the system. It was much the same material as he had had on his computer in 2007. The domestic authorities found that the information concerning the applicant's political activities was vague and lacked detail. Moreover, he had not pointed to or substantiated the existence of any web pages allegedly created by him over a period of two years. They also found it remarkable that the applicant had been able to continue to publish regime-critical material from 2007 until the elections in 2009, if indeed the Iranian authorities had been aware of his activities in 2007.

133. The domestic authorities also took into account the fact that the applicant had been arrested for 24 hours in April 2007.

134. They did not question the fact that, the day before the elections on 12 June 2009, the applicant and his friends had been arrested, questioned and detained in the polling station overnight.

135. They also found it established that the applicant had participated in a demonstration and had been arrested and imprisoned again in September 2009 for twenty days and had been ill-treated, and that he had been brought before the Revolutionary Court in October 2009, which had released him.

136. The domestic authorities further took into account the fact that the applicant had submitted an original summons to appear on 2 November 2009 before the Revolutionary Court. They found, however, that the summons could not in itself substantiate a need for protection. It was merely a summons and there were no reasons given as to why the applicant had to appear there.

137. Making an overall assessment, the national authorities found that the political activities in which the applicant had been engaged in Iran could be considered to have taken place at a low level, which was supported by the fact that since 2009 the applicant had not received any new summonses from the Revolutionary Court and that none of the applicant's family members remaining in Iran had been subjected to any reprisals by the Iranian authorities.

138. In these circumstances, the Court is not convinced by the applicant's claim that the Swedish authorities had failed to duly take into account his ill-treatment during his twenty days' detention in September 2009, his detailed description of the hearing before the Revolutionary Court in October 2009 or the fact that he had submitted the original summons to re-appear on 2 November 2009.

139. Nor is there any evidence in the case to indicate that the Swedish authorities did not duly take the risk of detention at the airport into account when assessing globally the risk faced by the applicant.

140. The Court finds that it cannot be concluded, either, that the proceedings before the Swedish authorities were inadequate and insufficiently supported by domestic material or by material originating from other reliable and objective sources.

141. Moreover, and as concerns the risk assessment, there is no evidence to support the allegation that the Swedish authorities were wrong to conclude that the applicant was not a high-profile activist or political opponent. The case is thus distinguishable from, *inter alia, S.F. and Others v. Sweden* (cited above), in which the applicant had been involved in extensive political activities and placed under observation by the Iranian regime; *K.K. v. France* (no. 18913/11, 10 October 2013), in which the applicant was a former member of the Iranian intelligence services; and *R.C. v. Sweden* (cited above), which, among others, concerned the risk of detention at the airport upon return.

142. Finally, as to the applicant's allegation before the Grand Chamber that the Iranian authorities could identify him from the Chamber judgment and would be able to do so in the future from the Grand Chamber judgment, the Court points out that the applicant was granted anonymity when his request for a Rule 39 indication was granted in October 2011 and that, based on the material before the Court, there are no strong indications of an identification risk (see, by contrast, *S.F. and Others v. Sweden*, cited above, §§ 67-70, and *NA. v. the United Kingdom*, cited above, §143).

143. It follows that Articles 2 and 3 of the Convention would not be violated on account of the applicant's political past in Iran, if he were to be expelled to this country.

(b) The applicant's conversion

144. In the present case, the Swedish authorities were confronted with a *sur place* conversion. Initially, they therefore had to assess whether the applicant's conversion was genuine and had attained a certain level of cogency, seriousness, cohesion and importance (see, *inter alia*, *S.A.S. v. France* [GC], no. 43835/11, § 55, 1 July 2014; *Eweida and Others v. the United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, § 81, ECHR 2013, and *Bayatyan v. Armenia* [GC], no. 23459/03, § 110, ECHR 2011), before assessing whether the applicant would be at risk of treatment contrary to Articles 2 and 3 of the Convention upon his return to Iran.

145. The Court observes that, according to the Swedish Government (see paragraph 104 above), in asylum cases the Swedish authorities generally follow the UNCHR handbook and the UNHCR Guidelines on International Protection regarding Religion-Based Refugee Claims and make an individual assessment of whether an alien has plausibly demonstrated that his or her conviction *sur place* is genuine in the sense that it is based on genuine personal religious conviction. That includes an assessment of the circumstances in which the conversion took place and whether the claimant can be expected to live as a convert upon return to the home country. Furthermore, on 12 November 2012 the Director General for Legal Affairs at the Swedish Migration Board issued a "general legal position" (see paragraph 46 above) concerning religion as grounds for asylum, including conversion, based on a judgment by the Migration Court of Appeal (MIG 2011:29), the UNHCR Guidelines and the judgment of the CJEU in *Bundesrepublik Deutschland v. Y* (C-71/11) and *Z* (C-99/11), 5 September 2012. According to the legal position, the credibility of the conversion must be carefully assessed in order to determine whether a genuine conversion has taken place. A person who has undergone a genuine change of faith or who risks being attributed a new religious belief and who therefore risks persecution should not be compelled to hide his or her faith solely in order to avoid persecution. In addition, on 10 June 2013 the Director General for Legal Affairs issued a "general legal position" (see

paragraph 47 above) concerning the methodology for assessing the reliability and credibility of applications for international protection based on, *inter alia*, the assessment by the UNHCR in its report "Beyond Proof: Credibility assessment in EU Asylum Systems" of May 2013.

146. In the original asylum proceedings, before the Migration Board, the applicant did not wish to rely on his conversion. The matter was referred to by the Migration Board, but the applicant explained that he considered his religion to be a private matter and "did not want to exploit his valuable new-found faith as a means of buying asylum". With hindsight, he considered that he had not at the time been provided with sufficient legal advice and support to understand the risk associated with his conversion.

147. The Court notes that the applicant had lived almost the whole of his life in Iran, spoke English well (see paragraph 97 above) and was experienced with computers, web pages and the Internet. He was also a regime critic. It is thus difficult to accept that he would not have become aware of the risk for converts in Iran by himself or via the congregation in the church where he was baptised shortly after his arrival in Sweden, or via the pastor who furnished him with the declaration of 15 March 2010 to be submitted to the Migration Board. Nor is the Court convinced that the applicant was not provided with sufficient legal advice and support to understand the risk associated with his conversion. It notes that the applicant never complained about these issues in the domestic proceedings. Moreover, during the hearing before the Migration Board on 24 March 2010 the official even interrupted the meeting so that the applicant could confer with his counsel on this specific point. The applicant stated that his conversion was a private matter, but it does not appear that he found this to be an impediment preventing him from talking about his religion (see paragraph 13 above). Furthermore, in his appeal to the Migration Court the applicant did rely on his conversion as a ground for asylum, and submitted the baptism certificate of 31 January 2010, explaining that the reason why he had not initially wished to rely on his conversion was that he did not want to trivialise the seriousness of his beliefs. In addition, before the Migration Court on 16 February 2011, although stating anew that he did not wish to rely on his conversion as a reason for asylum, he did state that "it would, however, obviously cause [him] problems upon return".

148. Turning to the Swedish authorities, on 24 March 2010 they became aware that there was an issue of the applicant's *sur place* conversion, when the Migration Board held an oral interview with him, in the presence of his counsel and an interpreter. More specifically, the Board became aware of it because the applicant handed over the declaration of 15 March 2010 from a pastor in his congregation certifying that the applicant had been a member since December 2009 and had been baptised. The Migration Board official therefore actively questioned the applicant about his conversion and encouraged him and his counsel to confer about it, then learned that the

applicant did not wish to rely on the conversion as a ground for asylum (see paragraph 13 above).

149. On 29 April 2010 the Migration Board rejected the applicant's request for asylum. As to the applicant's conversion to Christianity, the Migration Board found that the certificate from the congregation pastor could only be regarded as a plea to the Migration Board that the applicant be granted asylum. It noted that the applicant had not initially wished to invoke his conversion as a ground for asylum and that he had stated that his new faith was a private matter. It concluded that to pursue his faith in private was not a plausible reason for believing that he would risk persecution upon return and that he had not shown that he was in need of protection in Sweden for that reason.

150. Accordingly, despite the fact that the applicant did not wish to rely on his conversion, the Migration Board nevertheless did make some assessment of the risk that he might encounter on that ground upon his return to Iran.

151. In his appeal to the Migration Court the applicant did rely on his conversion and explained why he had not previously wished to rely on it.

152. During the oral hearing before the Migration Court, the applicant decided not to rely on his conversion as a ground for asylum, but added that "it would, however, obviously cause [him] problems upon return". The views of the Migration Board were also heard. It did not question the fact that the applicant, at the time, professed the Christian faith, but it did not find that that fact in itself was sufficient for him to be considered in need of protection. It referred to the British Home Office's operational guidance note of January 2009.

153. However, the Migration Court did not consider further the question about the applicant's conversion, the way he manifested his Christian faith in Sweden at the time, how he intended to manifest it in Iran if the removal order was to be executed, or about what "problems" the conversion might cause him upon his return. In its decision of 9 March 2011 dismissing the appeal, the Migration Court observed that the applicant was no longer relying on his religious views as a ground for persecution. Accordingly, the Migration Court did not carry out an assessment of the risk that the applicant might encounter, as a result of his conversion, upon returning to Iran.

154. In his request for leave to appeal to the Migration Court of Appeal, the applicant alleged that he had relied on his conversion before the Migration Court. Moreover, he maintained that his fear that his conversion had become known to the Iranian authorities had increased. Those submissions were considered not sufficient for leave to appeal to be granted and the Migration Court of Appeal therefore refused the applicant's request to that effect on 8 June 2011, after which the removal order became enforceable.

155. On 6 July 2011 the applicant requested that the Migration Board stay the execution of the removal order. He relied on his conversion. His request was refused by the Migration Board and the Migration Court, which found that the conversion could not be considered a "new circumstance" that could justify a re-examination of his case. On 17 November 2011 the Migration Court of Appeal refused leave to appeal.

156. Thus, despite being aware that the applicant had converted in Sweden from Islam to Christianity and that he might therefore belong to a group of persons who, depending on various factors, could be at risk of treatment in breach of Articles 2 and 3 of the Convention upon returning to Iran, the Migration Board and the Migration Court, due to the fact that the applicant had declined to invoke the conversion as an asylum ground, did not carry out a thorough examination of the applicant's conversion, the seriousness of his beliefs, the way he manifested his Christian faith in Sweden, and how he intended to manifest it in Iran if the removal order were to be executed. Moreover, in the reopening proceedings the conversion was not considered a "new circumstance" which could justify a re-examination of his case. The Swedish authorities have therefore never made an assessment of the risk that the applicant might encounter, as a result of his conversion, upon returning to Iran. Having regard to the absolute nature of Articles 2 and 3 of the Convention, though, it is hardly conceivable that the individual concerned could forego the protection afforded thereunder. It follows therefore that, regardless of the applicant's conduct, the competent national authorities have an obligation to assess, of their own motion, all the information brought to their attention before taking a decision on his removal to Iran (see paragraph 127 above).

157. Moreover, before the Grand Chamber the applicant has submitted various documents which have not been presented to the national authorities, for example, his written statement of 13 September 2014 (about his conversion, the way he currently manifests his Christian faith in Sweden and how he intends to manifest it in Iran if the removal order is executed), and the written statement of 15 September 2014 by the former pastor at the applicant's church (see above §§ 96-97). In light of the material presented before the Court and of the material previously submitted by the applicant before the national authorities, the Court concludes that the applicant has sufficiently shown that his claim for asylum on the basis of his conversion merits an assessment by the national authorities. It is for the domestic authorities to take this material into account, as well as any further development regarding the general situation in Iran and the particular circumstances of the applicant's situation.

158. It follows that there would be a violation of Articles 2 and 3 of the Convention if the applicant were to be returned to Iran without an *ex nunc* assessment by the Swedish authorities of the consequences of his conversion.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

159. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

160. The applicant made no claim in respect of non-pecuniary damage. Accordingly, the Court makes no award under this head. In any event, the Court considers that its finding of the present judgment constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (see, to this effect, *Tarakhel v. Switzerland* [GC], no. 29217/12, § 137, ECHR 2014 (extracts); *Beldjoudi v. France,* 26 March 1992, §§ 79 and 86, Series A no. 234-A; *M. and Others v. Bulgaria*, no. 41416/08, §§ 105 and 143, 26 July 2011; and *Nizamov and Others v.* Russia, nos. 22636/13, 24034/13, 24334/13 and 24528/13, § 50, 7 May 2014).

161. Before the Chamber, the applicant made a claim in respect of pecuniary damage for alleged loss of income as a web designer with 19,000 Swedish Kroner (SEK) per month from 9 March 2011 until he is being granted asylum.

162. The Government maintained that this claim should be rejected since the applicant has failed to establish both that he has suffered any pecuniary damage and that there is a causal link between a finding of a violation and the alleged pecuniary damage.

163. The Court reiterates that it is able to make awards by way of the just satisfaction provided for in Article 41 where the loss or damage on which a claim is based has been caused by the violation found, but that the State is not required to make good damage not attributable to it (see *Saadi v. Italy* [GC], cited above, § 186).

164. The applicant has not in any way substantiated a loss of income. Moreover, having regard to the Courts finding in the present case, that there would be a violation of Articles 2 and 3 of the Convention if the applicant were to be returned to Iran without a proper *ex nunc* assessment by the Swedish authorities of the consequences of his religious conversion, it can see no causal link between the conditional violation found and the pecuniary damage alleged by the applicant.

B. Costs and expenses

165. The applicant claimed 67,175 Euros (EUR) including value added tax (VAT) for costs and expenses, which comprised:

1) EUR 1,415 for lawyer's fees incurred in the proceedings before the Chamber, equal to 8.4 hours at an hourly rate of SEK 1,205 (exclusive of VAT);

2) EUR 42,683 for lawyers' fees incurred in the proceedings before the Grand Chamber, equal to 311 hours at an hourly rate of EUR 134,05 (exclusive of VAT) and 7 hours at an hourly rate of EUR 136;

3) EUR 9,860 for travel costs and an allowance for expenses incurred by his three counsel in attending the hearing before the Grand Chamber, including hotel bills for two nights (EUR 1,190) and excess baggage charge (EUR 235);

4) EUR 319 for costs related to a meeting between the applicant and his counsel;

5) EUR 12,898, equal to 25 % VAT on items 2) and 3).

166. The Government did not question the hourly rate invoked by the applicant as it corresponded to the general Swedish hourly legal aid fee, but they found that the number of hours invoiced before the Grand Chamber was excessive in relation to the subject matter and the complexity of the case. They considered that an amount corresponding to 120 hours would be reasonable, thus approximately EUR 16,231 (VAT excluded). Moreover, the Government found that the travel costs and expenses were excessive.

167. According to the Court's established case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum.

168. In respect of the lawyer's fees, be it before the Chamber or the Grand Chamber, the Court can accept an hourly rate as claimed by the applicant. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 25,000 including VAT (see, for example, *Söderman v. Sweden* [GC], no. 5786/08, § 125, ECHR 2013; *Tarakhel v. Switzerland*, cited above, § 142; *X and Others v. Austria* [GC], no. 19010/07, § 163, ECHR 2013; *Nada v. Switzerland* [GC], no. 10593/08, § 245, ECHR 2012; and *Al-Jedda v. the United Kingdom* [GC], no. 27021/08, § 117, ECHR 2011).

169. Turning to the other costs and expenses before the Grand Chamber, the Court considers that those were actually and necessarily incurred, and reasonable as to quantum.

170. In conclusion, the Court awards the applicant the sum of EUR 37,644 including VAT in cost and expenses. This sum includes the

amount granted as legal aid by the Court, namely EUR 3,902. The remaining amount, EUR 33,742 is to be paid by the respondent State.

C. Default interest

171. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT,

1. *Dismisses*, by sixteen votes to one, the Government's request to strike the case out of its list of cases.

2. *Holds*, unanimously, that it would not give rise to a violation of Articles 2 and 3 of the Convention, on account of the applicant's political past in Iran, if he were to be deported to that country;

3. *Holds*, unanimously, that there would be a violation of Articles 2 and 3 of the Convention if the applicant were to be returned to Iran without an *ex nunc* assessment by the Swedish authorities of the consequences of his religious conversion;

4. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months, EUR 33,742 (thirty-three thousand seven hundred and forty-two euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement.
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 March 2016.

Johan Callewaert	Guido Raimondi
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Concurring opinion of Judge Bianku;

(b) Partly concurring, partly dissenting opinion of Judge Jäderblom, joined in respect of part 1 by Judge Spano;

(c) Separate opinion of Judge Sajó;

(d) Joint separate opinion of Judges Ziemele, De Gaetano, Pinto de Albuquerque and Wojtyczek.

G.R.A.
J.C.

CONCURRING OPINION OF JUDGE BIANKU

I agree with the finding of a violation in this case. However I would like to add the following remarks.

Today's judgment correctly confirms the Court's position in paragraph 115, underlining that "[a] full and *ex nunc* evaluation is required where it is necessary to take into account information that has come to light after the final decision by the domestic authorities was taken". This has been the consistent approach of the Court in relation especially to deportation cases, in order to make its protection practical and effective.

I consider it necessary to recall that the Court established the principles relevant to its assessment of the risk of ill-treatment in the *Cruz Varas and Others v. Sweden* judgment (20 March 1991, §§ 74-76 and 83, Series A no. 201), and has further clarified and consolidated these principles in *Vilvarajah and Others v. the United Kingdom* (30 October 1991, §§ 107-108, Series A no. 215).

It is therefore clear, since those 1991 judgments, that for the purposes of the risk assessment analysis under Article 3 of the Convention, the *ex nunc* analysis approach has been used by the Court in relation both to developments in the destination country and to the developing situation of the applicants themselves while in the country where they are seeking asylum – the so-called *sur place* activities (see *S.F. and Others v. Sweden*, no. 52077/10, §§ 68-71, 15 May 2012)[1]. Today's judgment is a confirmation of the application of the *ex nunc* analysis in relation to *sur place* activities.

Paragraph 156 of the judgment affirms that "regardless of the applicant's conduct, the competent national authorities *have an obligation* to assess, of their own motion, all the information brought to their attention before taking a decision on his removal to Iran" (emphasis added).

I merely wish to point out that this *should have been clear* to the national authorities, as for more than twenty years now they have had such a procedural obligation. In view of the consistent approach of *ex nunc* analysis taken in Strasbourg, also used by national courts for many years in their risk assessment[2], and now codified at EU level[3], I would have

[1] See also Article 5 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

[2] See among many others decisions, Court of Appeal of England and Wales, 28 October 1999, *Danian v Secretary of State for the Home Department* [1999] EWCA Civ 3000; decision of the Helsinki Administrative Court, 25 Oct 2010, 10/1389/1; decision of the Irish High Court, 21 January 2011, *H.M. v Minister for Justice, Equality, Law Reform*, [2011] IEHC 16; and decision of the Swedish Migration Court, 1 March 2011, UM 20938-10 (all reported at http://www.asylumlawdatabase.eu/en).

preferred it if today's judgment had found clearly that, because of the lack of *ex nunc* risk assessment, combined with an *ex proprio motu* investigation and analysis of material by the Swedish authorities (see *Vilvarajah and Others*, cited above, § 107)[4], the latter had not conducted an Article 3-compliant assessment of the applicant's situation. I believe that only an assessment at national level which is compliant with Article 3, as established by the Court, would gradually reduce the need for Strasbourg to intervene and proceed itself with an *ex nunc* analysis of continuously evolving and difficult situations at a second stage.

[3] Article 46 § 3 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

[4] See also, as to the need for such investigation, the decision of the Swedish Migration Court of Appeal, 18 September 2006, UM 122-06 (http://www.asylumlawdatabase.eu/en).

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE JÄDERBLOM, JOINED IN RESPECT OF PART 1 BY JUDGE SPANO

1. Potential violation of Articles 2 and 3 of the Convention

When assessing a risk at the individual level in an asylum case the circumstances to be considered can be of a more or less general nature. As regards Muslims who have converted to Christianity in Iran, country reports show that there are risks in certain situations. However for a convert who keeps a low profile, in the sense that he is not proselytising or does not manifest his Christianity in a political context, but attends home services and keeps religious materials in the home, there is not normally a risk of ill-treatment of a degree or nature sufficient to engage Articles 2 and 3. The applicant's initial unwillingness to rely on his conversion to Christianity meant that he was *de facto* treated in the same way as would be any former Muslim who relies on a "low profile" practice of Christianity.

A basic principle developed in the Court's case-law for assessing a risk that leads to a prohibition of expulsion is that it is for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that he would be exposed to a real risk of ill-treatment. According to UNHCR principles, although the burden of proof generally rests on the person making the assertion, there is a shared duty between the applicant and the examiner to ascertain and evaluate all the relevant facts (see paragraph 109 of the judgment). I subscribe to this view.

There are two explanations as to why the applicant did not invoke his conversion in the first set of proceedings before the Migration Board and the Migration Court. (As regards the appeal to the Migration Court of Appeal, it is reiterated that that court functions mainly as a body for development of jurisprudence and did not deal with the case on the merits.) Apart from the possibility that the conversion was not genuine at the time when his asylum request was assessed – which I do not suggest –, the applicant either did not understand the severity of the danger of his conversion and the way he planned to practise his new religion, or he did not intend to practise it in any way that would pose a danger to him in Iran.

The question is what danger the applicant should have been aware of at the time of the proceedings at national level, and subsequently what danger the authorities were supposed to assess. In this respect a distinction must be made between a person who has fled his or her country on account of persecution on religious grounds and a person, like the applicant, who has converted *sur place*. In the latter situation it is not only the applicant who has to imagine what his situation may be upon return, on the basis of his foreseen religious activities, but the national authorities must also try and

assess, not difficulties already experienced, but those which can be expected. It should be noted that the CJEU case of *Germany v. Y and Z* (see paragraph 50 of the judgment) did not concern *sur place* conversions but an assessment of future risks pertaining to persons who allegedly had already been victims of persecution on the basis of their religious beliefs and practices. That case did not deal with the procedural requirements of the national authorities. In contrast, the CJEU in the *A, B, C* case (see paragraph 51 of the judgment) disapproved of the practice of carrying out detailed questioning as to the sexual practices of persons seeking asylum on the ground of risks of persecution based on their homosexuality, and found that a lack of credibility could not be concluded merely because an applicant for asylum did not rely on his declared sexual orientation on the first occasion he was given to set out the ground for persecution. However, in my opinion, that case cannot be compared to the case at hand. A person's sexual affiliation may be a most sensitive and intimate aspect of an individual's life and the CJEU recognises that it may be difficult to bring such an issue out in public or in front of an authority's decision makers. That is not the situation in our case, where the applicant from the very beginning of his conversion was attending public meetings and services in Swedish churches. Furthermore, in the present case the applicant's credibility is not an issue, but rather his vagueness in respect of his intended future practice of a new-found religion and the Swedish authorities' lack of automatic investigation in this respect.

The applicant did not explain, either before the Migration Board or in any of the national courts, how he intended to observe his new-found religion in Iran. He never mentioned that he intended to proselytise or publish Christian texts. The applicant has, since his application was first brought to the Court, claimed that he intends to practise his new faith in an extrovert manner. Whether this applied also at any time while his asylum application was being dealt with in the first set of proceedings by the Swedish authorities is simply not known, because he did not explain this. The fact that he mentioned in the Migration Court that the conversion would be problematic upon his return to Iran is of course something that the court could have elaborated upon, but as we have seen there could be other explanations for this. It is clear from what his counsel replied at the hearing before the Grand Chamber that the applicant would encounter problems with his family and friends in Iran, who would not accept his conversion, and that he would therefore suffer socially from the conversion for these reasons. Such consequences, however, are not a ground for asylum.

The applicant had lived most of his life in Iran, was experienced in use of the internet and spoke English. Furthermore he was represented throughout the asylum proceedings by legal counsel. The applicant discussed the conversion issue with counsel on several occasions beginning at the stage of the initial interviews before the Migration Board. It is thus difficult to

imagine that the applicant, being advised by counsel, was in any way precluded from bringing any relevant fact or risk to the attention of the authorities and courts. Furthermore the Migration Board asked him about his conversion (already at the interview of 24 March 2010) and thus actively brought the issue into the case, and he was given opportunity to reflect on it.

It is common knowledge that conversion to Christianity is, in itself, not enough to provoke ill-treatment by the Iranian authorities. There has to be an element of extrovert observance of the faith in order for that to be so. This was most certainly known by the applicant and the Swedish authorities. In Sweden tens of thousands of asylum applications are normally dealt with every year by the Migration Board, and the four Migration Courts deal with several thousand asylum cases per year. Officials and judges are specialised in the situation in particular countries, including Iran.

Bearing in mind the specific situation of the applicant, in particular his knowledge of the situation in his home country, the legal assistance he was provided with and also the low-level risk for converts who practise Christianity discreetly, it would in my opinion be reasonable to expect of the applicant that he should at least mention that he is intending to observe his new-found faith in an extrovert and therefore dangerous manner. Had the applicant adduced this circumstance, it would have been up to the authorities to investigate how it would affect the risk assessment and to evaluate these facts. This, in my opinion, is how far the UNHCR principle on shared duty would go in a situation such as the present one. Consequently I am not convinced that the Swedish authorities failed in their obligation to carry out an assessment of relevant facts or risks in the original asylum proceedings.

The question is whether there were circumstances, such as developments as regards his observance of his new religion, which called for a second fresh assessment of the applicant's asylum claim on the basis of his conversion. In the second set of proceedings it would have been vital to assess whether there had been a development in the manner in which the applicant might be expected to observe his new-found religion in Iran, just as any other *sur place* activities should be assessed. The applicant did not himself give any further explanation in the second set of proceedings as regards the manner in which he foresaw how he would practise his new religion in Iran; he gave no account of any activity beyond the low-profile practice that is generally accepted in that country. It is therefore not surprising that the applicant was considered not to have invoked new circumstances in this regard and I am therefore not able to conclude that the Swedish authorities failed in their obligations as regards the second set of proceedings.

However, the applicant has brought new material before the Court in which he explains how he will practise his religion in Iran if expelled. The

circumstances presented to the Court are of a kind that may reveal a risk of ill-treatment and should therefore be taken into account by the Swedish authorities before any new decision is taken as regards his possible expulsion. For that reason I have voted with the majority for a potential violation of Articles 2 and 3 of the Convention.

2. It is no longer justified to continue the examination of the application

Although I have voted with the majority in respect of Articles 2 and 3, I would have preferred to see the application struck out of the Court's list of cases for the following reasons.

Article 37 § 1 of the Convention provides:

> "The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

According to the Court's established case-law in cases concerning the expulsion of an applicant from a respondent State, once the applicant has been granted a residence permit and no longer risks being expelled from that State, the Court considers the case to have been resolved within the meaning of Article 37 § 1 (b) of the Convention and strikes it out of its list of cases, regardless of whether the applicant agrees (see, *inter alia*, *M.E. v. Sweden* (striking out) [GC], no. 71398/12, § 32, 8 April 2015; *H v. Norway* (dec.) no. 51666/13, 17 February 2015; *I.A. v. the Netherlands* (dec.), no. 76660/12, 27 May 2014; *O.G.O. v. the United Kingdom* (dec.), no. 13950/12, 18 February 2014; *Isman v. Switzerland* (dec.), no. 23604/11, 21 January 2014; *M.A. v. Sweden* (dec.), no. 28361/12, 19 November 2013; *A.G. v. Sweden* (dec.), no. 22107/08, 6 December 2011; and *Sarwari v. Austria* (dec.), no. 21662/10, 3 November 2011). The reason for this is that the Court has consistently approached the issue as one of a potential violation of the Convention, being of the view that the threat of a violation is removed by virtue of the decision granting the applicant a right of residence in the respondent State concerned (see *M.E. v. Sweden*, cited above, § 33). In cases concerning the expulsion of an applicant from a respondent State where it is clear from the information available that he or she is not, at the moment and for a considerable time to come, at risk of being expelled and subjected to treatment allegedly in breach of Article 3 of the Convention, and the applicant can challenge a future removal decision

before the domestic authorities and the Court, the latter has in several cases considered that it is no longer justified to continue the examination of the case and that it must be struck out of its list of cases by virtue of Article 37 § 1 (c) of the Convention (see, among others, *I.A. v. the Netherlands*, no. 76660/12, 27 May 2014; *mutatis mutandis*, under Article 8, *Atayeva and Burman v. Sweden* (striking out), no. 17471/11, §§ 19-24, 31 October 2013; *P.Z. and Others v. Sweden* (striking out), no. 68194/10, §§ 14-17, 18 December 2012; and *B.Z. v. Sweden* (striking out), no. 74352/11, §§ 17-20, 18 December 2012). In all these cases the Court found that there were no special circumstances regarding respect for human rights, as defined in the Convention and its Protocols, which required the continued examination of the case (Article 37 § 1 *in fine*).

The present judgment has been delivered well over four years after the final decision at domestic level and after the removal order expired. The order thus cannot be enforced. The applicant may institute new and full proceedings for asylum explaining how his extrovert religious practice will lead to ill-treatment in Iran, and his claims will be examined on the merits by the Migration Board and, in the event of appeal, by a court. Indeed, the applicant has stated that if the Court discontinues the examination of the case, he will submit a fresh application for asylum and rely on his conversion to Christianity as one ground. The applicant is not, at the moment and for a considerable time to come, at risk of being deported to Iran. Should his new asylum request be rejected by the domestic authorities and courts, he will be able to lodge a new application with the Court.

The practical effects of the expiry of the removal order and the finding of a potential violation in the present case are the same, namely that an *ex nunc* assessment of the consequences of the applicant's conversion will take place. The majority's reasoning does not bring forward any new substantial principles in the Court's case-law. In these circumstances it is no longer justified to continue the examination of the present application and I cannot find any special circumstances regarding respect for human rights, as defined in the Convention and its Protocols, which require the continued examination of the case. Accordingly, it is appropriate to strike the case out of the list pursuant to Article 37 § 1 (c) of the Convention.

SEPARATE OPINION OF JUDGE SAJÓ

I share the conclusions of the separate opinion of my fellow judges Ziemele, De Gaetano, Pinto de Albuquerque and Wojtyczek.

I am of the view that the national authorities have a positive obligation to assess an asylum applicant's situation from the perspective of Articles 2 and 3 of the Convention of their own motion, relying on the available information. They should have known that the applicant would face the death penalty if deported to Iran. They should have known this in view of the personal information provided by the applicant himself. There is considerable material about the persecution of non-Muslims, including Christians, in present-day Iran. However, the national authorities did not review the internationally available information and documentation and that failure *per se* rendered their decision contrary to the rule of law and entailed a violation of the procedural requirements of Articles 2 and 3. The resulting enforceable deportation order thus put the applicant's life at immediate risk.

Furthermore, I would have preferred a separate analysis of the extent to which the Convention right to manifest one's religion freely (i.e., in the present case, rather than hiding one's Christian faith in Iran, as was suggested by the domestic authorities) has extraterritorial application.

JOINT SEPARATE OPINION OF JUDGES ZIEMELE, DE GAETANO, PINTO DE ALBUQUERQUE AND WOJTYCZEK

1. In our view, there has been a violation of Articles 2 and 3 of the European Convention on Human Rights (the Convention) on account of the deportation order issued in respect of the applicant, on both substantive and procedural grounds. Procedurally, we find that the asylum proceedings were affected by serious shortcomings which prejudiced the final domestic decision. Substantively, we find that the national courts did not comply with the Convention standard when they held that the applicant would not be at risk, as a result of his conversion to Christianity, if deported to Iran. Since we do not dispute that the applicant would not now be at risk in Iran on account of his political beliefs, the scope of this separate opinion is limited to discussing the compatibility or otherwise of the domestic deportation order and proceedings with the Convention in the light of his religious conversion.

Victim status

2. Although the validity of the deportation order expired on 8 June 2015, we are of the view that the applicant's victim status remains unaffected, since he has not been granted a residence permit in Sweden, and the result of any new asylum proceedings that he might bring is uncertain. Had the Court discontinued the examination of the applicant's case, the Chamber judgment would have become operative, with the strong possibility of its being regarded uncritically in any future proceedings by the national authorities and courts. In view of the respondent Government's tooth and nail resistance to the applicant's complaints at the level of both the Chamber and the Grand Chamber, the Chamber judgment would have palpably increased the risk of the applicant's deportation in clear violation of his fundamental human rights.

The procedural violation

3. It is undisputed that in the original asylum proceedings, the applicant specifically stated that he did not want to rely on his conversion to Christianity as a ground for asylum. The crux of the case is then whether, since the authorities were aware of the applicant's conversion, they should nevertheless, of their own motion, have carried out an assessment of that risk as well.

We are of the view that the national authorities and courts had an obligation to assess, of their own motion, the applicant's need of international protection in the light of all the circumstances that were known

or could have been known to them. The national authorities did not have the choice of not considering a known risk under Article 3, for religious reasons, simply because the asylum seeker did not actively pursue it in the domestic proceedings or did not fully understand the consequences of not formally relying on it as a ground for asylum. Instead, the national authorities preferred to address the applicant's situation as if he had renounced any reliance on the risk resulting from his religious conversion.

We do not accept, as a matter of fact, that the applicant did renounce any reliance on such risk. The file does not provide evidence of any informed and voluntary waiver on the part of the applicant. Furthermore, taking into account the absolute nature of the prohibition of *refoulement* and the non-derogable rights in Articles 2 and 3 of the Convention, such a waiver, even if it were proven, which was not the case, would not have been a relevant consideration. The national authorities and courts, therefore, had an obligation to consider the risk to the applicant, following his conversion, in the event of his return to Iran. They failed to do this.

4. In actual fact, the Migration Board noted that the applicant had not initially wished to invoke his conversion as a ground for asylum and had stated that his faith was a private matter and that therefore he was not in need of protection in Sweden[1]. Subsequently, the Migration Court did not even refer to this issue, in view of the fact that the applicant was no longer relying on his religious views as a ground for persecution[2]. In spite of the applicant's explicit argument based on the risk resulting from his religious beliefs, as used in his request for leave to appeal to the Migration Court of Appeal, the appellate court ignored the argument and refused the applicant's request for leave to appeal[3]. Later on, when seeking the re-examination of his case, the applicant insisted on the danger to life, attendant upon conversion from Islam to another religion, that he would face in Iran[4]. Again the Migration Board dug in its heels and stated that the applicant had initially given up the idea of invoking his new religious beliefs and that he was therefore precluded from raising the issue as if it were a new circumstance[5].

The Migration Board's position, which was confirmed by the Migration Court and the Migration Court of Appeal[6], was subsequently rejected by the 2013 "general legal position" of the Director General for Legal Affairs at the Swedish Migration Board concerning the methodology for assessing the reliability and credibility of applications for international protection. This document in effect provides that the initial burden of proof rests on the

[1] See paragraph 21 of the judgment above.
[2] See paragraph 28 of the judgment above.
[3] See paragraphs 30-31 of the judgment above.
[4] See paragraph 32 of the judgment above.
[5] See paragraph 33 of the judgment above.
[6] See paragraphs 35 and 36 of the judgment above.

applicant, stressing at the same time that the responsibility for the assessment of an application lies jointly with the applicant and the examining authority[7]. In this connection, the said "general legal position" is consistent with the burden of proof standards set by this Court[8] and by the Office of the United Nations High Commissioner for Refugees (UNHCR)[9].

5. Even though they accepted the genuine character of the applicant's conversion, the national authorities and courts proceeded on the assumption that the applicant would not be at risk, if deported to Iran, because he could change his social behaviour in order to keep his new faith a strictly private matter. In other words, the Swedish authorities and courts presupposed that the applicant would, or indeed should, refrain in Iran from taking part in church services, prayer meetings and social activities, unlike what he had been doing in Sweden. Such position was explicitly stated by the Migration Board, which considered that to pursue his faith in private was not considered to be a plausible reason for believing that he would risk persecution upon return[10].

Neither the Migration Court nor the Migration Court of Appeal rejected this position. Yet some months later the Director General for Legal Affairs at the Swedish Migration Board delivered a new "general legal position", of 12 November 2012, concerning religion as grounds for asylum, which clearly affirmed that a converted person should not "be compelled to hide his or her faith solely in order to avoid persecution"[11]. Coincidentally, the Grand Chamber of the Court of Justice of the European Union (CJEU) had just delivered its judgment in the case of *Bundesrepublik Deutschland v. Y.* (C-71/11) *and Z* (C-99/11), on 5 September 2012, holding:

> "the applicant's fear of being persecuted is well founded if, in the light of the applicant's personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from religious practices."

Both the Director General's general legal position and the CJEU judgment were based on the long-standing guideline of the UNHCR on international protection regarding religion-based refugee claims, of 28 April 2004, according to which one should not be compelled to hide, change or renounce one's religious beliefs in order to avoid persecution[12].

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[7] See paragraph 47 of the judgment above.
[8] *R.C. v. Sweden*, no. 41827/07, § 53, 9 March 2010.
[9] UNHCR, Note on Burden and Standard of Proof in Refugee Claims, 16 December 1998, para. 6; and Handbook on Procedures and Criteria of Determining Refugee Status, HCR/IP/4/Eng/Rev.1, 1992, paras. 196-197.
[10] See paragraph 21 of the judgment above.
[11] See paragraph 46 of the judgment above.
[12] See paragraph 52 of the judgment above.

6. We agree with this principled position, which is totally in line with the Court's well-established case-law on the State's duty of neutrality in religious matters and the incompatibility of this duty with any power on the State's part to assess the legitimacy of religious beliefs or the ways and forms in which those beliefs are expressed[13]. As the United Kingdom Supreme Court ruled in a case where the claim for asylum was based on homosexuality, using a convincing historical allusion, to hold otherwise would countenance the return of Anne Frank to Nazi-occupied Netherlands, had she managed to escape from there, on the basis that she could have hidden in the attic and therefore could have successfully avoided the possibility of Nazi detention[14]. The Supreme Court held that such a position would be "absurd and unreal". Thus, we cannot accept the respondent State's assumption that the applicant would not be persecuted in Iran because he could engage in a low-profile, discreet or even secret practice of his religious beliefs. Not only is the external manifestation of one's faith an essential element of the very freedom protected by Article 9 of the Convention, but at least – and certainly – in the case of Christianity, bearing external witness to that faith is "an essential mission and a responsibility of every Christian and every Church"[15].

Therefore, we conclude that there has been a procedural violation of Articles 2 and 3 of the Convention on account of the serious shortcomings affecting the domestic proceedings and the ensuing final decision.

The substantive violation

7. Under the Convention, an asylum-seeker cannot be subjected to *refoulement* to his or her country of origin or any other country where he or she risks incurring serious harm caused by any identified or unidentified person or public or private entity. The act of *refoulement* may consist in expulsion, deportation, removal, extradition, formal or informal transfer, "rendition", rejection, refusal of entry or any other measure which would result in compelling the person to remain in or return to his or her country of origin. The risk of serious harm may result from foreign aggression, internal armed conflict, extrajudicial killing, enforced disappearance, death penalty, torture, inhuman or degrading treatment, forced labour, trafficking in human beings, persecution, trial based on a retroactive or indeterminate criminal law or on evidence obtained by torture or inhuman and degrading treatment, thus from a "flagrant violation" of the essence of any Convention right in the destination State (direct *refoulement*) or from further delivery of the

[13] *Eweida and Others v. the United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, § 81, ECHR 2013, and the references indicated therein.
[14] *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department*, (2010) UKSC 31, 7 July 2010, § 107.
[15] *Kokkinakis v. Greece*, no. 14307/88, §§ 31 and 48, 25 May 1993.

person by the destination State to a third State where there is such a risk (indirect *refoulement*). We note that the prohibition of *refoulement* is a treaty rule in respect of which no derogations are permitted and no reservations are admitted[16]. Furthermore, the prohibition of *refoulement* is a principle of customary international law, binding on all States, even those which are not parties to the United Nations Refugee Convention or any other treaty for the protection of refugees. The Court has clearly recognised the principle of *non-refoulement* as a binding rule of international law in, among other cases, *Hirsi Jamaa and Others v. Italy* [GC][17].

8. Born in Iran, the applicant became a Christian soon after entering Sweden, at least by December 2009. His conversion is sufficiently borne out by his baptism certificate of 31 January 2010, the declaration of 15 March 2010 from a pastor in Sweden certifying that the applicant had been a member of his congregation since December 2009 and had been baptised, and the letter of 13 April 2011 from his new congregation, which stated that the applicant had converted shortly after his arrival in Sweden, that he had shown with honest intent and interest that he was willing to learn more about his new faith and that he took part in church services, prayer meetings and social activities[18]. The respondent Government did not dispute any of this.

9. The applicant's conversion to Christianity is a criminal offence punishable by death in Iran[19]. In addition to the risk of social persecution as a Christian[20], the applicant risks criminal prosecution for the crime of

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[16] Articles 33 and 42 § 1 of the 1951 Geneva Convention relating to the Status of Refugees, Article VII § 1 of the 1967 Protocol and Article 53 of the Vienna Convention on the Law of Treaties.

[17] *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 134, 23 February 2012, which refers to the UNHCR Note on International Protection of 13 September 2001 (A/AC.96/951, § 16).

[18] The Migration Court did not question the fact that the applicant professed the Christian faith (paragraph 24 of the judgment above).

[19] The last convert to Christianity in Iran to be judicially convicted of apostasy and sentenced to death was Mehdi Dijab in 1994, although the sentence was not carried out. This absence of recent punishment does not mean that there has been no execution of Christian converts outside the judicial system. For example, Mehdi Dijab and other Protestant pastors were murdered outside the court system. According to international sources, the last death penalty for apostasy that was actually carried out occurred in 1990 (see, for example, the Law Library of Congress, Global Legal Research Center, "Laws Criminalizing Apostasy in Selected Jurisdictions", May 2014). Other non-Christian "apostates" have faced the death penalty, like Seyed Ali Gharabat, a former commander of the Islamic Revolutionary Guard Corps who was convicted of apostasy and executed in 2011, Hasan Yousefi Eshkevari, a former member of parliament who was convicted of apostasy and sentenced to death in 2000 but eventually released in 2005, and Hashem Aghajari, a university professor found guilty of apostasy and sentenced to death in 2002 but whose sentence was overturned by the Supreme Court in 2004.

[20] See the passage cited in paragraph 57 of the present judgment: "any convert who wishes to practice his or her faith upon return would face serious risk". The situation for persons

apostasy[21]. Although the Iranian State has never codified the crime of apostasy, it authorises the enforcement of certain Islamic laws even when the crime is not specifically mentioned in the Criminal Code. Since apostasy is not explicitly proscribed by the Iranian Criminal Code and there are many

converted to Christianity entails monitoring by informants and the Iranian intelligence service, reporting by family and acquaintances, search of home-churches and detention of home-church members. The most authoritative international documents on the human rights situation in Iran and the risk posed to Christian converts in this country are the Reports of the Human Rights Council's appointed Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, of 18 March 2014, A/HRC/25/61, which specifically refers to the crime of apostasy in its paragraph 41, and of 12 March 2015, A/HRC/28/70, which states in paragraph 52: "As of 1 January 2015, at least 92 Christians remain in detention in the country allegedly due to their Christian faith and activities. In 2014 alone, 69 Christian converts were reportedly arrested and detained for at least 24 hours across Iran. Authorities reportedly continued to target the leaders of house churches, generally from Muslim backgrounds. Christian converts also allegedly continue to face restrictions in observing their religious holidays." The Human Rights Committee itself has also referred to this problem in its Concluding Observations on Iran, of 29 November 2011, CCPR/C/IRN/CO/3, paragraph 23. In addition to the documents referred to in the judgment, the persecution of Christians and especially of Muslims having converted to Christianity has been thoroughly analysed in the following documents: Austrian Red Cross Accord (Austrian Center for Country of Origin and Asylum Research and Documentation), "Freedom of Religion; Treatment of Religious and Ethnic Minorities", COI Compilation, September 2015; Human Rights Watch Country Summary: Iran, January 2015; United States Commission on International Religious Freedom Annual report on Iran, 2015; United States Department of State, Bureau of Democracy, Human Rights and Labor, International Religious Freedom Report for 2015: Iran; United Kingdom Home Office, Country Information and Guidance, "Iran: Christians and Christian Converts", December 2014; Law Library of the United States Congress, Global Legal Research Center, "Laws Criminalizing Apostasy in Selected Jurisdictions", May 2014; Brian O'Connell, "Constitutional apostasy: the ambiguities in Islamic law after the Arab Spring", in *Northwestern Journal on International Human Rights*, Fall 2012; United States Commission on International Religious Freedom, "The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Majority Muslim Countries and Other OIC Members", 2012; Kamran Hashemi, *Religious Legal Traditions, International Human Rights Law and Muslim States*, Martinus Nijhoff Publishers, 2008; and European Centre for Law and Justice and American Center for Law and Justice, "International Legal Protection of the Right to Choose One's Religion and Change One's Religious Affiliation: Iran", September 2007.

[21] See the 2014 Iran Human Rights Documentation Center's report, "Apostasy in the Islamic Republic of Iran", which details the jurisprudential as well as the legal context in which apostasy cases are prosecuted in Iran. The report takes an in-depth look at a number of apostasy cases involving a diverse range of defendants, and provides an account of the legal and religious issues raised in each case. It is also relevant to note that some prominent national courts have already granted refugee status to Iranian Christian converts on the basis of the fear of persecution, like the New Zealand Immigration and Protection Tribunal (*AP(Iran)*, (2011) NZIPT 800012, 29 September 2011), the Australian Refugee Review Tribunal (*RRT Case no. 1002841*, (2010) RRTA 681), the Court of Appeal of England and Wales (*MM (Iran) v. Secretary of State for the Home Department*, [2010] EWCA Civ 1457, 17 November 2010), and the Canadian Federal Court (*Mostafa Ejtehadian v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 158, 12 February 2007).

different interpretations of Islamic law on apostasy, judges have the discretion to adjudicate apostasy cases based on their own understanding of Islamic law[22], which they can impose invoking Article 167 of the Iranian Constitution[23].

Moreover, the crime of apostasy is punishable even when there is no social unrest, which further aggravates the intrinsically introspective character of the criminal punishment. Furthermore, the crime of apostasy applies differently to men and women, Muslims and non-Muslims, Shia and Sunni Muslims, and Muslims born to Muslim parents and Muslims born to non-Muslim parents. Members of other religious communities and non-believers may become Muslims, without fearing any prosecution. Women apostates are not liable to the death penalty as men are.

10. In our view, the criminalisation of apostasy breaches international human rights law[24]. Such punishment is inherently arbitrary, in so far as the criminalisation of the act of changing one's religion violates the right to freedom of religion and it effectively coerces Muslim citizens to refrain from adopting a different faith. As Article 18 of the Universal Declaration of Human Rights puts it, freedom of religion encompasses necessarily the "freedom to change [one's] religion or belief"[25]. Furthermore, as a matter of law, both the objective and subjective requirements for the criminal punishment of the act of apostasy are uncertain and ambiguous, as are the

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[22] On the punishment of apostasy according to Islamic law, see Ahmed Akgündüz, *Islamic Public Law*, Iur Press, 2011, pp. 370-377.

[23] Article 167 of the Iranian Constitution reads: "The judge is bound to endeavour to judge each case on the basis of the codified law. In case of the absence of any such law, he has to deliver his judgement on the basis of authoritative Islamic sources and authentic *fatwa*. He, on the pretext of the silence of or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgement."

[24] The same stance has been taken by the Report of the United Nations Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, A/HRC/22/51, 24 December 2012, which recommends that "States should repeal any criminal law provisions that penalize apostasy", giving on page 17 the example of Pastor Youcef Nadarkhani who was found guilty of apostasy in Iran and given a death sentence in 2010, but later sentenced for a lesser offence. It further concludes: "The Special Rapporteur would like to reiterate that extraditions or deportations which are likely to result in violations of freedom of religion or belief may themselves amount to a violation of human rights. In addition, such deportations violate the principle of non-refoulement, as enshrined in article 33 of the 1951 Geneva Convention relating to the Status of Refugees." The anti-criminalisation position has always been the position of the Human Rights Committee, ever since General Comment 22 on the right to freedom of thought, conscience and religion, CCPR/C/21/Rev.1/ADD.4, 27 September 1993, § 5: "Article 18(2) bars coercions that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert."

[25] In fact, even the Koran itself guarantees freedom of religion ("Duress is not permissible in religion, as the path has become clear from falsehood" (Koran, 2:256)) and no verse in the Koran prescribes punishment for conversion to other faiths.

penalties applicable, the differences of treatment between the categories of legal subjects being discriminatory.

11. Finally, the commission of such an offence may be proven in accordance with evidential rules which are at odds with the basic tenets of equality and fairness. Not only do the evidential rules discriminate between testimony provided by male and female, or by Muslim and non-Muslim witnesses, worse still, they admit the use of the private "knowledge of the judge" to ground a criminal conviction. In the light of the above, prosecution and trial for apostasy as a criminal offence represents a flagrant denial of justice[26].

12. In sum, the order for the applicant's deportation to Iran, where he could be tried under the above-mentioned criminal and procedural law, equates to a violation of principles deeply enshrined in the universal legal conscience. The deportation order subjected him to the serious risk of being tried under a criminal law in flagrant breach of the right to freedom of religion and the principle of criminal legality, and in a criminal trial which would constitute a flagrant denial of justice. The implementation of such a deportation order would amount to a grave violation of the principle of *non-refoulement*.

Consequently, we conclude that there has been a substantive violation of Articles 2 and 3 of the Convention on account of the deportation order issued against the applicant. In the light of the above, we further add that, *rebus sic stantibus,* the respondent State should not deport the applicant to Iran.

[26] Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the sixteenth to the twenty-first century*, Cambridge University Press, 2005, pp. 177-179, and Abdullah Saeed and Hassan Saeed, *Freedom of religion, apostasy and Islam*, Ashgate, 2004, pp. 99-108.