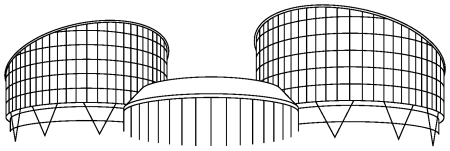

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF A. v. SWITZERLAND

(Application no. 60342/16)

JUDGMENT

STRASBOURG

19 December 2017

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

In the case of A. v. Switzerland,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking, *judges,*

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 28 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 60342/16) against the Swiss Confederation 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 A. ("the applicant"), on 19 October 2016. The President of the Section 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 Ms F. Lambert, a lawyer practising in Berne. The Swiss Government ("the Government") were represented by their Deputy Agent, Mr A. Scheidegger, of the Federal Office of Justice.

3. The applicant alleged, in particular, that it would be in breach of Articles 2 and 3 of the Convention to deport him to Iran owing to his conversion from Islam to Christianity in Switzerland.

4. On 21 October 2016 the duty judge decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be deported to Iran for the duration of the proceedings before the Court, and granted priority to the application under Rule 41, and anonymity to the applicant under Rule 47 § 4.

5. On 9 February 2017 the complaint concerning Articles 2 and 3 of the Convention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1982 and lives in Switzerland. He grew up in Iran and entered Switzerland in 2009.

A. The first set of asylum proceedings

7. The applicant applied for asylum under the name of L.B. on 13 August 2009, stating that he had entered Switzerland illegally the same day. He was questioned twice, on 18 August and 24 August 2009, by the Swiss authorities responsible for asylum and migration (until 31 December 2014 the authority was called the *Bundesamt für Migration*, but it was renamed with effect from 1 January 2015 as the *Staatssekretariat für Migration*, SEM – hereafter "the asylum authorities"). An interpreter was present at both hearings and the record was translated for the applicant prior to his signing it. A member of a non-governmental organisation was present at the second hearing as a neutral witness, in order to guarantee the fairness of the hearing. He had the opportunity to add comments at the end of the record of the hearing about any irregularities, but he made no such observations.

8. During the hearings the applicant stated that he had attended a number of demonstrations in connection with the presidential election in 2009. He had been arrested during one such demonstration on 15 June 2009 in I. He was subsequently placed in prison, where he was severely tortured every day. After twenty-two days in prison, he was scheduled to appear in court on 6 July 2009. He was placed in a bus with about thirty-five other people but managed to escape during a disturbance caused by one of the other detainees when disembarking from the bus. He then managed to hide with his relatives. After his escape, the authorities had sent a court summons to his home and, when he had failed to appear, the court had sentenced him in absentia to thirty-six months' imprisonment. He managed to leave the country on 25-26 July 2009 with the help of a smuggler. In support of his account, the applicant submitted copies of his identity card, a court summons of 9 July 2009 and a judgment of 21 July 2009. He explained that the judgment had been sent to his home and that a neighbour had given it to him prior to his departure.

9. On 4 February 2013 the asylum authorities rejected his asylum application and ordered him to leave Switzerland, finding that his account was not credible as it was contradictory and, in relation to key aspects, not sufficiently substantiated. Despite repeated questions, the applicant had been unable to describe what he had experienced during his imprisonment in a detailed and differentiated manner. He had also contradicted himself

regarding his transportation from the prison to court and his escape. Neither his alleged arrest in connection with his participation in a demonstration nor his subsequent detention and escape therefrom had been credible. The documents submitted by the applicant could not lead to a different result as they could easily be bought in Iran and falsified. Moreover, the alleged conduct of the Iranian authorities in sending a court summons to the applicant's home after his escape, rather than going there to arrest him on the spot, was not credible, nor was his submission that the judgment of 21 July 2009 had been sent to his home and given to a neighbour prior to his departure.

10. As the applicant did not appeal, the decision became final.

B. The second set of asylum proceedings

11. On 13 November 2013 the applicant, through a lawyer, lodged an application for his asylum application to be reconsidered. He was by that time using the identity of A. and stated that he had entered Switzerland legally under that name in May 2009 based on a visa to visit his sister, who lived there. In substance, he stated that his relationship with his father had broken down entirely and that as a result he risked being arrested upon his return because his father had ties to the secret service. Moreover, he had been baptised as a Christian on 25 August 2013. Emphasising that Iran applied the death penalty for apostasy, he alleged that he was at risk of ill-treatment on account of his conversion. He submitted a copy of his baptism certificate, issued by a Pentecostal church, a Protestant house church, to support his account.

12. On 17 January 2014 the asylum authorities, who treated the applicant's request as a second asylum application, questioned the applicant in person. An interpreter was present and the record was translated for the applicant prior to his signing it. A member of a non-governmental organisation was present as a neutral witness in order to guarantee the fairness of the hearing. He had the opportunity to add comments at the end of the record of the hearing if he witnessed any irregularities, but did not make any such observations.

13. During the hearing, the applicant stated that he had first had contact with a Catholic church in Switzerland in 2011 and then with the Pentecostal church from early 2013. The members of the latter had gradually become his family. One of them had invited him home once or twice a week to familiarise him with the Bible. He had regularly attended church services and after about six or seven months had been baptised in that church. For him, being a Christian meant believing in Jesus Christ and spreading his message. He stated that he continued to study the Bible and recited parts of it. The principle of honesty enshrined in Christianity was particularly important to him. Even if he were unable to manifest his belief in the future,

he would always retain the truthfulness of his faith, which nobody could take away from him. He submitted statements that he had attended different churches to support his account. The applicant did not make any submissions regarding the risk allegedly caused by the broken relationship with his father and the latter's ties to the secret service.

14. On 26 February 2014 the asylum authorities rejected the applicant's application. They considered that his conversion to Christianity did not in and of itself expose him to a real risk of ill-treatment. Such a risk could exist if he proselytised or attracted public attention in another way. Based on his statement, they considered that he did not intend to practise his faith in such a manner. There were no indications that the Iranian authorities were even aware of his conversion. They also doubted that the applicant's conversion was genuine and lasting, noting, in particular, that it had occurred after the applicant's first asylum application had been rejected, that the baptism had taken place in a house church rather than a church recognised by the State, and that the applicant did not base his conversion on the key aspects of Christianity, but on the personal relationships he had formed with members of his church community.

15. On 31 March 2014 the applicant, represented by a lawyer, appealed against that decision. He pointed out that there had been an increased number of arrests of members of Christian house churches since 2010 and argued that his conversion to Christianity in and of itself exposed him to a real risk of ill-treatment. A Christian convert faced a much greater risk of ill-treatment than those born into the Christian religion. His conversion to Christianity was genuine and lasting. He had first had contact with a Catholic church in Switzerland in 2011 and was serious in practising his faith, as evidenced by the documents he had submitted.

16. On 14 May 2014 the Federal Administrative Court dismissed the applicant's appeal as manifestly ill-founded. It expressed doubts as to whether his conversion had been genuine or was lasting, but found that this did not have to be determined. It considered that a person could only face a real risk of ill-treatment upon return to Iran if that person's Christian faith had been manifested in Switzerland in such a way as to make it visible to the outside and if it could be assumed that his or her family and acquaintances in Iran would learn about that active manifestation of faith, even if it was short of proselytising. If close family members were "fanatic" Muslims, they might denounce the conversion to the secret service. In addition, conversion to Christianity might be seen as treason. Where a conversion had taken place abroad, there had to be both an assessment of whether it was genuine and the extent to which it had become publicly known. Even assuming that the applicant's conversion had been genuine and was lasting, the court considered that he did not manifest his Christian faith in the manner described. There were no indications that the Iranian authorities had even become aware of his conversion.

C. The set of proceedings at issue

17. On 2 May 2016 the applicant, through a lawyer, lodged an application for temporary admission under section 83 of the Aliens Act. He relied on the risks presented by the Iranian authorities and non-state actors on account of his conversion and active membership of a Christian community in Switzerland, as well as his participation in a demonstration in Berne in August 2015 against human rights violations and the persecution of Christians by the Iranian authorities. In that connection, he had signed a letter of protest addressed by the organisers to the Iranian Government, which were thus aware of his conversion. To support his account he submitted photographs, letters of support from various persons and several reports.

18. On 14 June 2016 the asylum authorities rejected his application, which they had treated as a further asylum application. They noted that the applicant had previously been through two sets of asylum proceedings and that the alleged risk of ill-treatment on account of his conversion to Christianity had already been examined. It was not necessary to examine the matter again as the applicant had not put forward any arguments that could give rise to an assessment that was different from that of the Federal Administrative Court in its judgment of 14 May 2014.

19. It was true that the Iranian authorities took an interest in the activities of their citizens abroad, but such monitoring was focused on people who stood out from the large number of Iranians critical of the Government and who were perceived as a serious threat by the authorities because of their political or religious activities. Whether a person "stood out" was not so much a question of visibility and the possibility of identifying the person concerned, but was rather one of public exposure. The personality of the individuals concerned, the form of their appearances in public and the content of their public statements were relevant parameters in that regard. The asylum authorities considered that mere participation in a demonstration against the Iranian Government, without the applicant acting in a particular manner or holding a special function, was not sufficient for him to be perceived as a concrete threat by the Iranian authorities. They also noted that there were no indications that the authorities had taken any measures against him.

20. The Iranian authorities were aware that Iranian citizens at times attempted to rely on conversion to Christianity abroad in order to obtain refugee status in Western countries. Such circumstances would be taken into account by the Iranian authorities but would not, upon someone's return, lead to ill-treatment within the meaning of the refugee definition. Moreover, it was possible to practise religions other than Islam in Iran in a discreet and private manner. Citing the criteria contained in the Federal Administrative Court's judgment of 14 May 2014, the State Secretariat for Migration did

not contest, *per se*, the fact that the applicant was part of a Christian circle in Switzerland. There were, however, no indications that he was involved in a leading function or was particularly exposed in other ways in connection with his Christian faith. His participation in a demonstration and the signing of a letter of protest to the Iranian Government did not lead to a different conclusion. He was only an ordinary member of a Christian organisation and there was, therefore, no concrete risk that the Iranian authorities had become aware of his conversion. The asylum authorities concluded that the applicant did not meet the requirements of the refugee definition or those for temporary admission.

21. On 13 July 2016 the applicant lodged an appeal against that decision, in substance repeating his earlier submissions. On 30 August 2016 the Federal Administrative Court dismissed the appeal as manifestly ill-founded, fully endorsing the asylum authorities' reasoning.

22. On 4 October 2016 the State Secretariat for Migration set a deadline for the applicant's voluntary departure, which passed on 31 October 2016.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. The relevant domestic law and practice has been summarised in *M.O. v. Switzerland* (no. 41282/16, §§ 34-35, 20 June 2017).

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

24. The relevant European Union law and case-law of the Court of Justice of the European Union has been summarised in *F.G. v. Sweden* [GC] (no. 43611/11, §§ 48-51, ECHR 2016).

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

25. The relevant UNHCR guidelines and material have been summarised in *F.G. v. Sweden* (cited above, §§ 52-53).

V. RELEVANT COUNTRY INFORMATION ON THE SITUATION OF CHRISTIAN CONVERTS IN IRAN

26. Extensive information about the general human rights situation in Iran and the situation of Christian converts in particular can be found in *F.G. v. Sweden* (cited above, §§ 55-58). The information set out below

concerns events and developments occurring after the delivery of that judgment on 23 March 2016.

27. In his report of 26 May 2016 (A/HRC/31/69), the then UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran stated:

> "59. ... Dozens of persons were reportedly detained in prisons in the Islamic Republic of Iran as of January 2016, many for the involvement in informal house churches ... In its response, the Government notes that the operation of house churches is unlawful because they have not acquired the necessary permits from the authorities, that the establishment of house churches is unnecessary because there are more than 20 active, half-active and historical churches in the country and that Christians have not requested permission to build new churches ..."

28. In her report of 17 March 2017 (A/HRC/34/65, advance edited version), the UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran stated:

> "78. The Special Rapporteur expresses her concern regarding the targeting and harsh treatment of Iranian Christians from Muslim backgrounds ... [who] continue to face arbitrary arrest, harassment and detention, and are often accused of national security crimes such as 'acting against the national security' or 'propaganda against the state' ..."

29. The United Kingdom Home Office's Country Policy and Information Note "Iran: Christians and Christian converts" of February 2017, which was compiled from a range of external information sources, stated, *inter alia*, the following:

> "2.2.5 Christians who have converted from Islam are considered apostates – a criminal offence in Iran ... There are reports of some Christian converts (and sometimes their family members) facing physical attacks, harassment, threats surveillance, arrest, detention, as well as torture and ill-treatment in detention ...
>
> 2.2.6. In the country guidance case of SZ and JM (Christians – FS confirmed) Iran CG [2008] UKAIT 00082 the Upper Tribunal found ... [as] regards 'ordinary' converts (ie those who are not active evangelisers) ... that there is a risk, but not a real risk [within the meaning of the Court's case-law on Article 3 of the Convention], of serious harm if returned to Iran ...
>
> 2.2.7 Although this country guidance case was heard over 8 years ago the available country evidence indicates that the findings remain valid.
>
> 2.2.8 Those who have converted from Islam and whose conversion is likely to come to the attention of the authorities in Iran (including through evangelical or proselytising activities or the person having previously come to the adverse attention of the authorities for other reasons) are at real risk of persecution on return.
>
> 2.2.9 Some sources suggest that a person who has converted to Christianity abroad and returned to Iran would only be at risk if the authorities previously had an interest in their activities in Iran or if the convert would engage in evangelical or proselytising activities ...

> 2.2.10 Those persons who return to Iran having converted while abroad and who do not actively seek to proselytise may be able to continue practising Christianity discreetly ...
>
> 3.1.6. Converts ... who are not active evangelisers and who have not previously come to the adverse attention of the authorities for other reasons, are not in general at real risk on return."

30. In its annual report, published on 22 February 2017, Amnesty International stated, *inter alia*, that Christian converts faced discrimination in law and in practice, that they were persecuted for their faith, and that the authorities had detained dozens of Christian converts after raiding house churches where they had peacefully gathered to worship.

31. In its annual report, published on 12 January 2017, Human Rights Watch stated, *inter alia*, that the security forces had continued to target Christian converts of Muslim heritage as well as members of the "house church" movement, who gathered to worship in private homes.

THE LAW

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

32. The applicant complained that owing to his conversion from Islam to Christianity in Switzerland, it would be in breach of Articles 2 and 3 of the Convention to deport 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."

33. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

35. The applicant maintained his submissions made in the domestic proceedings. He stated that his conversion to Christianity was genuine and lasting. Referring to a number of reports on the situation of Christian converts, he argued that his conversion in and of itself put him at a real risk of being killed or ill-treated, in breach of Article 3 of the Convention. Iran applied the death penalty for apostasy and Christian converts were at a much higher risk of ill-treatment than persons born as Christians in Iran. He pointed out that the Iranian authorities increasingly sought out members of Christian house churches. Finally, he was not only at risk of ill-treatment at the hands of the state, but also from non-state actors, and could not rely on the Iranian authorities to protect him from such groups.

(b) The Government

36. The Government submitted that the applicant's complaint mainly challenged the Swiss authorities' assessment of the evidence and emphasised that it was not the Court's task to substitute its own assessment of the facts for that of the domestic courts, which were, as a general principle, best placed to assess the evidence before them. The Court had acknowledged, in respect of *sur place* activities, that it was generally very difficult to assess whether the person was genuinely interested in the activity in question or whether he or she had only become involved in it in order to create post-flight grounds and that a rigorous and in-depth examination of the circumstances and genuineness of *sur place* conversions was necessary (see *F.G. v. Sweden* [GC], no. 43611/11, § 123, ECHR 2016). The Government observed that the applicant's first application for asylum had been rejected in February 2013, based on credibility concerns, after he had twice been heard in person by the Swiss asylum authorities, and that that decision had become final. Noting that he had converted to Christianity less than six months later, which raised doubts as to whether the conversion was genuine and lasting, they emphasised that the Swiss asylum authorities had again examined him in person in relation to his new claim, which had been scrutinised in substance at two levels of jurisdiction in the

second and third sets of proceedings. A nuanced approach was called for as regards the situation of Christian converts in Iran. Relevant reports indicated that converts who, like the applicant, had not come to the attention of the authorities, including for reasons other than their conversion, and who practised their faith discreetly, did not face a real risk of ill-treatment upon their return.

(c) Third party observations

37. ADF International provided information on the situation of Christians in Iran, stating that they were under constant threat of discrimination and official brutality and that Christian converts ultimately faced the possibility of State-sanctioned execution. They submitted that the situation had deteriorated in recent years, as evidenced by the record number of arrests of house-church Christians and a marked increase in the ill-treatment of Christian converts.

2. The Court's assessment

38. The relevant general principles were summarised recently by the Court in *F.G. v. Sweden* (cited above, §§ 110-127).

39. In accordance with the Court's established case-law, the existence of a risk of ill-treatment must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of expulsion (ibid., § 115). However, if the applicant has not yet been deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (*Saadi v. Italy* [GC], no. 37201/06, § 133, ECHR 2008). Since the applicant has not yet been deported, the question of whether he would face a real risk of persecution upon his return to Iran must be examined in the light of the present-day situation.

40. The Court considers that the general human rights situation in Iran does not, *per se*, prevent the deportation of any Iranian national. Hence, the Court must assess whether the applicant's personal circumstances, notably his conversion from Islam to Christianity in Switzerland, are such that he would face a real risk of treatment contrary to Articles 2 and 3 of the Convention if he were deported to Iran.

41. At the outset, the Court observes that the present case differs from that of *F.G. v. Sweden* (cited above), in which the Court found 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. In the present case, the consequences of the applicant's *sur place* conversion were examined by the Swiss asylum authorities, who questioned the applicant in person, and by the Federal Administrative Court in the second set of asylum proceedings (see paragraphs 11-16 above). It was subjected to another assessment at two

levels of jurisdiction in the set of proceedings leading to the present application (see paragraphs 17-21 above).

42. In *T.M. and Y.A. v. the Netherlands* ((dec.), no. 209/16, 5 July 2016), which also concerned the deportation of Christian converts to Iran, the Court saw no grounds to depart from the conclusions drawn by the domestic authorities in that case concerning the credibility of the applicant's alleged conversion. It noted, *inter alia*, that the applicants had been heard and assisted by counsel at two levels of jurisdiction, that the domestic authorities had thoroughly examined all the relevant information, and that the applicants had not made any submissions about any circumstances or provided any supporting documents to the Court which called into question the domestic authorities' thoroughly reasoned conclusions.

43. In contrast, the domestic authorities in the present case did not base their conclusions on a rejection of the applicant's conversion as not being credible. Albeit expressing doubts as to whether his conversion was genuine and lasting, they considered that Christian converts would, in any event, only face a real risk of ill-treatment upon return to Iran if they manifested their faith in a manner that would lead to them being perceived as a threat to the Iranian authorities. That required a certain level of public exposure, which was not the case for the applicant, who was an ordinary member of a Christian circle (see paragraphs 16 and 18-21 above). They considered that the Iranian authorities were aware that Iranian citizens at times attempted to rely on conversion to Christianity abroad in order to obtain refugee status and would take such circumstances into account, resulting in the person not facing a real risk of ill-treatment upon his or her return (see paragraphs 20 and 21 above).

44. It was in that light that the Government submitted that a nuanced approach was called for as regards the situation of Christian converts in Iran, arguing that converts who had not come to the attention of the authorities, including for reasons other than their conversion, and who practised their faith discreetly, did not face a real risk of ill-treatment upon return. In that regard, the Court observes that the circumstances of the present case differ from those of the *Bundesrepublik Deutschland v. Y* (C-71/11) *and Z* (C-99/11), decided by the Grand Chamber of the Court of Justice of the European Union on 5 September 2012. In that case, the finding was that the domestic authorities had established, *inter alia*, that the persons concerned were deeply committed to their faith and considered that the public practice of it was essential for them to preserve their religious identity. In the present case, the domestic authorities, who questioned the applicant in person, did not reach similar conclusions, and the applicant has not submitted any evidence or arguments to the Court which would call for a different assessment of the applicant's faith, notably as regards the public practice of his faith.

45. The Court has regard to the fact that the applicant was examined in person by the domestic authorities with regard to his conversion to Christianity, that this claim was examined at two levels of jurisdiction in two sets of proceedings, and that there were no indications that the proceedings before those authorities were flawed. It also has regard to the reasoning advanced by the domestic authorities for their conclusions and the reports on the situation of Christian converts in Iran (see paragraphs 26-31 above). On the basis of these factors, and in the absence of any fresh evidence or argument before the Court, it sees no grounds to consider that the assessment made by the domestic authorities was inadequate (see *F.G. v. Sweden*, cited above, § 117).

46. In the light of the foregoing considerations, the Court finds that the applicant's deportation to Iran would not give rise to a violation of Articles 2 and 3 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that the applicant's deportation to Iran would not give rise to a violation of Article 2 or 3 of the Convention;

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

Done in English, and notified in writing on 19 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Helena Jäderblom
President