

EUROPEAN COURT OF HUMAN RIGHTS

GRAND CHAMBER

APPLICATION NO. 43611/11

F.G.

Applicant

v.

SWEDEN

Respondent

**WRITTEN OBSERVATIONS
OF THIRD PARTY INTERVENERS:**

**Alliance Defending Freedom
Jubilee Campaign**

**Filed on
25 September 2014**

Introduction

1. Alliance Defending Freedom (“ADF”) is an international legal organization dedicated to protecting and defending fundamental freedoms including freedom of religion and freedom of expression. As a legal alliance of more than 2,200 lawyers dedicated to the protection of fundamental human rights, it has been involved in over 500 cases before national and international forums, including the Supreme Courts of the United States of America, Argentina, Honduras, India, Mexico and Peru, as well as the European Court of Human Rights and Inter American Court of Human Rights. ADF has also provided expert testimony before several European parliaments, as well as the European Parliament and the United States Congress. ADF has Special Consultative Status with the Economic and Social Council of the United Nations, as well as accreditation with the Organization for Security and Cooperation in Europe, the European Union (the European Union Agency for Fundamental Rights and the European Parliament) and the Organization for American States.
2. Jubilee Campaign is an international nonprofit organization which promotes the human rights and religious liberty of ethnic and religious minorities such as those in Pakistan, Iran, Egypt, Nigeria, China, North Korea and elsewhere. It assists individuals and families seeking asylum in the West from religious based persecution as well as promoting the care and well-being of larger groups of refugees fleeing religious and ethnic persecution. Jubilee Campaign holds consultative status at the United Nations from the Economic and Social Council and advocates on behalf of religious minorities before international bodies such as the UN General Assembly in New York, the Human Rights Council in Geneva, and the International Criminal Court in The Hague. Jubilee Campaign is also a member of Refugee Council USA, a coalition of U.S. based organizations that welcome and protect refugees.
3. On 16 January 2014, the Fifth Section handed down its judgment in *F.G. v. Sweden*, holding by four votes to three that the applicant’s rights under Article 2 and 3 of the Convention were not violated by the actions of the Respondent state. Judges Zupančič, Power-Forde and Lemmens disagreed with the majority and wrote a dissenting opinion, in which they stated two substantive reasons for differing with the majority:

Firstly, there is, in our opinion, an unacceptable failure to assess, thoroughly, the risk which the applicant faces arising from his conversion to Christianity. Secondly, insofar as the majority implies that any such risk, if it exists, could be avoided by the applicant’s concealment of his religious conversion, we consider that such a requirement is wholly unreasonable and no authority for such a proposition can be found in the case law of this Court.

4. The Interveners agree entirely with this analysis and intend to more fully develop these points in this written submission.

i. Religious Persecution and Asylum Cases

5. The case law of this Court makes it clear that “expulsion by a Contracting State of an asylum seeker may give rise to an issue under Article 3, and hence engage the responsibility of that State

under the Convention, where substantial grounds have been shown for believing that the person concerned faced a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he was returned.”¹ Applicants at risk of religious persecution are examined under Article 3 in the same way as the complaints of, for example, political opponents and members of stigmatized groups. This Court has recognized that the risk of religious persecution can render the return of an asylum seeker to their country of origin incompatible with their Article 3 rights.

6. In one such decision, this Court found a violation of Article 3 when a state had refused an application for asylum from a Coptic Christian from Egypt.² It was held that the existence of a risk of ill-treatment had to be examined in the light of the general situation in the country and the circumstances specific to the applicant’s case. The Court took note of reports of the situation of Coptic Christian in Egypt at the time in which there were many detailed accounts of violence and persecution towards Coptic Christian and an unwillingness on the part of the authorities to prosecute the perpetrators. In another case, this time involving an applicant from Pakistan, this Court held that, in light of the situation in Pakistan, the protections afforded by Article 3 would prevent removal for those who publicly practice the Ahmadiyya religion and proselytize.³
7. It is clear that the risk must be a “real” one of harm⁴ attaining a minimum level of severity,⁵ and that the “present conditions [in the country in question] are decisive.”⁶ In the recent cases of *Z.N.S. v. Turkey*,⁷ *Ahmadpour v. Turkey*⁸ and *M.B. and Others v. Turkey*,⁹ this Court found that such a risk existed in Iran, and held that the deportation of Christian converts would violate Article 3 of the Convention.

ii. The Risk of Religious Persecution in Iran

Background

8. Iran has a population of 80 million of which 99.4% are Muslim. The Iranian state is intertwined with Shia religion, an influence which became stronger when, in 1979, the Pahlavi monarchy was toppled by Ayatollah Ruhollah Khomeini. The result is a regime controlled by Shia Islamic jurists¹⁰ in which are combined “republican and theocratic elements, but the latter far outweigh the former.”¹¹

¹ *Vilvaraja and others v. The United Kingdom* (1991) App. No. 13163/87, § 103.

² *M.E. v. France* (2013) App. No. 50094/10.

³ *N.K. v. France* (2013) App. No. 7974/11.

⁴ *Cruz Varas and Others v. Sweden* (1991) App. No. 15576/89, § 69.

⁵ *Ibid.*, at § 83.

⁶ *Chahal v. United Kingdom* (1996) App. No. 22414/93, § 86.

⁷ (2010) App. No. 21896/08.

⁸ (2010) App. No. 12717/08.

⁹ (2010) App. No. 36009/08.

¹⁰ Paul Marshall (Ed.), *Radical Islam’s Rules: The Worldwide Spread of Extreme Sharia Law*, Rowman and Littlefield, 2005, p. 46.

¹¹ Paul Marshall and Nina Shea, *Silenced: How Apostasy & Blasphemy Codes are Choking Freedom Worldwide*, Oxford University Press, 2011, p. 37.

9. Christians are a minority within the country, accounting for around 0.25% of the population. However, the majority of this figure is attributable to the Armenian, Assyrian and Chaldean “ethnic” Christians. They do not carry out any missionary-type activities which has proven critical to their survival.¹² “Non-ethnic” Christians including Protestants and Evangelicals face “systematic discrimination and persecution in all walks of life in Iran. The leaders of these communities frequently face arbitrary arrest and imprisonment (and are typically prosecuted under vague national security-related charges).”¹³
10. The Constitution of the Islamic Republic of Iran states that Islam is the official religion. Moreover, Article 4 provides that, “All civil, penal ... administrative, cultural, political and other laws and regulations must be based on Islamic criteria.”¹⁴ Whilst Article 23 of the Constitution provides for freedom of belief, Article 14 provides for “ethical” treatment of “non-Muslims” but only insofar as they “refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran.”¹⁵ Even more troubling for a Christian appearing in front of the authorities is Article 167 which provides that in the absence of codified law, the Judge *must* rely on “Islamic sources and ... fatwa.” Fatwas prescribing death have been issued against opponents of the regime¹⁶ and individuals.¹⁷

Individual Cases

11. Pastor Benham Irani was arrested in 2011 and sentenced to six years’ imprisonment on charges of “action against the state.” He had been the leader of a 300-member evangelical congregation in Karaj, a city less than 15 miles outside of the capital, Tehran. He remains incarcerated in one of Iran’s most notorious prisons and has told of being held in appalling conditions, beaten by prison authorities¹⁸ and severe deteriorations in his health including acute stomach ulcers, impaired vision and temporary losses of consciousness.¹⁹ As recently as September 2014, the charge of “spreading corruption on Earth” was laid against Pastor Irani which carries the death penalty.²⁰

¹² Minority Rights Group International, “World Directory of Minorities and Indigenous Peoples – Iran: Christians”, 2008. Available at <<http://www.refworld.org/docid/49749d0b2d.html>>.

¹³ International Campaign for Human Rights in Iran, “Written Submission to the UN Universal Periodic Review”, 15 March 2014. Available at <<http://www.iranhumanrights.org/wp-content/uploads/ICHRI-UPR-Submission-2014-final.pdf>>.

¹⁴ Constitution of the Islamic Republic of Iran, 1979. English translation available at <<http://www.alaviandassociates.com/documents/constitution.pdf>>.

¹⁵ *Ibid.*, Article 14.

¹⁶ Christina Lamb, “Khomeini fatwa ‘led to killing of 30,000 in Iran’”, The Guardian, 4 February 2001. Available at <<http://www.telegraph.co.uk/news/worldnews/middleeast/iran/1321090/Khomeini-fatwa-led-to-killing-of-30000-in-Iran.html>>.

¹⁷ Mia de Graaf, “Iranian mullah revives death fatwa against Salman Rushdie over Satanic Verses 25 years after it was issued”, The Daily Mail, 16 February 2014. Available at <<http://www.dailymail.co.uk/news/article-2560683/Iranian-mullah-revives-death-fatwa-against-Salman-Rushdie-Satanic-Verses-25-years-issued.html>>.

¹⁸ Christian Solidarity Worldwide, “Iran: Pastor Irani beaten in prison and taken to unknown location”, 9 June 2014. Available at <<http://dynamic.csw.org.uk/article.asp?t=news&id=2076>>.

¹⁹ Christian Solidarity Worldwide, “Pastor Benham Irani”. Available at <<http://www.csw.org.uk/pastorbenhamirani.htm>>.

²⁰ Stoyan Zaimov, “Pastor Behnam Irani Facing Death Penalty for ‘spreading corruption on earth’”, Christian Post, 5 September 2014. Available at <<http://www.christianpost.com/news/pastor-behnam-irani-facing-death-penalty-for-spreading-corruption-on-earth-125933/>>.

12. Pastor Matthias Haghnejad is another Christian leader facing similar charges. He was arrested in July 2014 for “crimes against God”. This is punishable, under the Iranian penal code, with death. He was arrested during a raid of his home in which Christian literature was confiscated.²¹
13. Saeed Abedini is an Iranian American Christian pastor who has been detained in Iran since summer 2012. In 2013, he was sentenced to eight years’ in prison on charges of undermining national security through his Christian evangelistic activities many years previously. Abedini is a Muslim convert to Christianity and is credited with starting around 100 house churches in the early 2000s when this was tolerated by the Iranian government.²² The charges he faced including having “undermined the Iranian government by creating a network of Christian house churches and...attempting to sway Iranian youth away from Islam.”²³ He has now been imprisoned for more than two years with the US Department of State accepting that he has been “detained...on charges related to his religious beliefs.”²⁴

International Condemnation

14. The situation in Iran is so severe that the United Nations Human Rights Council saw fit to appoint a “Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran” who, on 18 March 2014, presented his report at the twenty-fifth session of the Human Rights Council.
15. The report highlights the lack of effective judicial processes in saying that:

[A]spects of Iranian laws, policies, attitudes and practices extensively identified by the United Nations human rights machinery regrettably continue without redress and persist in undermining the independence of the State’s judicial organs, and in nullifying safeguards for fair trials. This is all the more alarming when considering the frequent use of the death penalty, in particular for crimes not considered the ‘most serious offences’ under international law.²⁵

16. The report states that “as at 14 January 2014, at least 895 ‘prisoners of conscience’...were reportedly imprisoned. This number includes...292 religious practitioners.” The Special Rapporteur was “struck by the magnitude, frequency and recurring nature of certain incidents ... The details given ... depict situations of arbitrary detention, particularly the apparent arrest and

²¹ CBN News, “Iran Pastor Facing Death for ‘Crimes against God’”, CBN News, 15 August 2014. Available at <<http://www.cbn.com/cbnnews/world/2014/August/Iran-Pastor-Facing-Death-for-Crimes-against-God/>>.

²² Lisa Daftari, “American pastor imprisoned without notice of charges while visiting family in Iran”, Fox News, 19 December 2012. Available at <<http://www.foxnews.com/world/2012/12/19/american-pastor-imprisoned-without-notice-charges-while-visiting-family-in-iran/>>.

²³ Perry Chiaramonte, “Iran sentences American pastor Saeed Abedini to 8 years in prison”, 27 January 2013. Available at <<http://www.foxnews.com/world/2013/01/27/iran-sentences-american-pastor-saeed-abedini-to-8-years-in-prison/>>.

²⁴ John Kerry, “Press Statement: US Citizens Detained or Missing in Iran”, US Department of State, 29 August 2014. Available at <<http://www.state.gov/secretary/remarks/2014/08/231163.htm>>.

²⁵ Human Rights Council, “Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran”, 18 March 2014, A/HRC/25/61.

detention of individuals for the peaceful exercise of fundamental rights, including the right to expression, association or belief.”²⁶

17. In relation to the conditions in detention, the Special Rapporteur states that:

[Former] detainees often report being subjected to torture or cruel, inhumane or degrading treatment and prolonged solitary confinement to coerce confessions to accusations or admissions about other people. Many detainees also reported being held largely incommunicado, without access to a lawyer. Some prosecutions reportedly failed to meet international standards, marked by limited access to case files and the right to present a defence. Under the law, religious minorities, including recognized Jews, Christians and Zoroastrians, also face discrimination in the judicial system, such as harsher punishments than Muslims for certain crimes, and are barred from serving as judges.²⁷

18. A section of the report is devoted to the Christian minority in the country and it is observed that: “[the] Christians most commonly prosecuted appear to be converts from Muslim backgrounds or those that proselytize or minister to Iranian Muslims.” Furthermore, it is unlikely that this will change given that “Iranian authorities at the highest levels have designated house churches and evangelical Christians as threats to national security.”²⁸

19. The persecution detailed in the reports is not limited to Christian leaders. The sacramental manifestation of Christian beliefs can result in criminal prosecutions, with four Christians sentenced to 80 lashes each for drinking wine during communion in October 2013.²⁹

20. The report confirms that apostasy is considered a capital offence and, although prosecutions are rare, “officials routinely threaten to prosecute Christian converts for apostasy.”³⁰ Although the offence of apostasy is not found in any Iranian criminal law, it arises out of an interpretation of Islamic law commonly used by the Iranian courts.³¹ The UN report continues:

[In] general, Christian religious practice is monitored and heavily regulated...for example, Muslim converts to Christianity cannot enter Armenian or Assyrian churches, as all churchgoers must register with the Government...Authorities often place cameras in churches. Christians, especially converts, are careful to use certain euphemistic language in communications.³²

²⁶ *Ibid.*, at § 28.

²⁷ *Ibid.*, at § 36.

²⁸ *Ibid.*, at § 40.

²⁹ John Hall, “Four Christians sentenced to 80 lashes in Iran for drinking ceremonial wine during communion service”, *The Independent*, 25 October 2013. Available at <<http://www.independent.co.uk/news/world/middle-east/four-christians-sentenced-to-80-lashes-in-iran-for-drinking-ceremonial-wine-during-communion-service-8904279.html>>.

³⁰ See note 25 at § 41.

³¹ International Campaign for Human Rights in Iran, “The Cost of Faith: Persecution of Christian Protestants and Converts in Iran”, 2013. Available at <http://www.iranhumanrights.org/wp-content/uploads/Christians_report_Final_for-web.pdf>.

³² See note 25 at p.80.

21. In its 2013 report, the International Campaign for Human Rights in Iran states that “Supreme Leader Seyyed Ali Khamenei and other Iranian officials consider Christian converts to be apostates and part of a broader foreign conspiracy aimed at undermining ideological support for the state.”³³ It states:

[R]esearch reveals that interrogators, prosecutors, and courts consistently refer to standard Christian practices as evidence of criminal activity or a criminal act itself. Membership in a house church, evangelical activities, and participation in a Christian conference are all seen by authorities as criminal acts, and security officers routinely confiscate standard Christian items such as bibles, religious literature, and crosses during arrests.³⁴

22. The Iranian authorities make a distinction between ethnic Armenians and Assyrians who, though closely monitored, are able to practice their Orthodox faith and other denominations like Protestantism which are much more likely to be harassed, imprisoned or even murdered.³⁵

23. The contents of the UN report and the International Campaign for Human Rights in Iran report are echoed by a separate report prepared by the US Commission on International Religious Freedom.³⁶ The report summarizes the situation in Iran as follows:

Already poor religious freedom conditions in Iran continue to deteriorate, particularly for religious minorities, especially Baha’is, Christians, and Sufi Muslims, as well as for dissenting Shi’i and Sunni Muslims. Harassment, arrests, and imprisonment intensified, a trend likely to worsen ... the government of Iran continues to engage in systematic, ongoing, and egregious violations of religious freedom, including prolonged detention, torture, and executions based primarily or entirely upon the religion of the accused.³⁷

24. Despite Iran ratifying the International Covenant on Civil and Political Rights in June 1975, the Human Rights Committee, responsible for monitoring Convention compliance, has reported that Iran routinely flouts its obligations under the Convention. In its most recent Concluding Observations on Iran in 2011, the Committee states its concern “about the continued imposition of corporal punishment ... in particular amputations and flogging for a range of crimes, including enmity against God.”³⁸

25. The Committee also notes concern about “discrimination against members of the Christian minority, including arrests based on charges of proselytizing and a ban on conducting Christian

³³ *Ibid.*, p. 6.

³⁴ *Ibid.*, p. 7.

³⁵ Liana Aghajanian, “Iran’s Oppressed Christians”, New York Times, 14 March 2014. Available at <http://www.nytimes.com/2014/03/15/opinion/irans-oppressed-christians.html?_r=0>.

³⁶ US Commission on International Religious Freedom, “Annual Report 2013”, April 2013. Available at <<http://www.uscirf.gov/sites/default/files/resources/2013%20USCIRF%20Annual%20Report%20%282%29.pdf>>.

³⁷ *Ibid.*, p. 70-71.

³⁸ Human Rights Committee, “Concluding observations of the Human Rights Committee on the Islamic Republic of Iran”, 103rd Session of the Human Rights Committee, 29 November 2011. CCPR/C/IRN/CO/3, § 16.

services in Farsi” and a worrying future development in that “article 225 of the draft Penal Code is aimed at making the death penalty mandatory for convicted male apostates.”³⁹

26. “Country of Particular Concern” is a designation used by the US Secretary of State when a nation is guilty of particularly severe violations of religious freedom. The term “particularly severe” denotes “systematic, ongoing egregious violations.” Iran has continuously, since 1999, been designated a “country of particular concern” under the US International Religious Freedom Act and is one of only nine countries to be so designated in 2014.
27. In conclusion, the situation in Iran for a Christian is a bleak one with little sign of improvement. Those at the greatest risk appear to be converts from Islam, particularly those who seek to worship in community with others or speak freely about their faith. These people are viewed as deviant by the state and routinely subject to arbitrary arrest and detention in conditions violative of Article 3.
28. The Chamber was required to assess the level of risk to the applicant in terms of the general circumstances in Iran.⁴⁰ However, the majority judgment makes no reference to the general situation in Iran, as described above, for a Christian convert. This is not missed by the dissenting judgment of Judges Zupančič, Power-Forde and Lemmens, which states that there was:

[A]n unacceptable failure to assess, thoroughly, the risk which the applicant faces arising from his conversion to Christianity...There can be no real doubt that conversion to Christianity constitutes a serious human rights issue for any Iranian living in Iran. The Government accepts that conversion from Islam to Christianity is considered illegal under Islamic law and that it is punishable by death.⁴¹

iii. Public Manifestation of Religious Belief

29. As recognized by the minority, there is a second aspect of the Chamber’s decision that the Interveners submit is incorrect: the notion that risk can be mitigated by keeping one’s religious faith private.
30. Regarding the issue of conversion to Christianity and its relevance to the applicant’s asylum application, the majority of the Fifth Section noted that the applicant had so far kept his faith “a private matter” and therefore concluded: “[T]here is nothing to indicate that the Iranian authorities are aware of his conversion. Consequently, the Court considers that the applicant would not face a risk of ill-treatment by the Iranian authorities on this ground.”⁴² Thus, the Fifth Section essentially concluded that conversion to Christianity can remain private and hidden, and if done so, converts in Iran can avoid being subject to ill-treatment. As explained below, such a conclusion mischaracterizes and unduly limits the nature of freedom of religion.

³⁹ *Ibid.*, at § 23.

⁴⁰ *F.G. v. Sweden* (2013) App. No. 43611/11, § 35.

⁴¹ *Ibid.*, Dissenting Judgment of Judges Zupančič, Power-Forde and Lemmens.

⁴² *Ibid.*, at § 41.

31. Freedom of thought, conscience and religion is a fundamental human right not only enshrined in Article 9 of Convention, but also in many other seminal international and regional human rights treaties⁴³ and non-binding documents.⁴⁴ This Court has elevated the rights guaranteed by Article 9 as being one of the cornerstones of a democratic society and one of the vital elements that make up the identity of believers and their conception of life.⁴⁵ Accordingly, Article 9 has taken the position of a substantive right under the European Convention.⁴⁶ Indeed, of all the qualified rights in the Convention, Article 9 is the least qualified.⁴⁷ As former President of the Court, Sir Nicolas Bratza recently wrote; Article 9 is “a precious asset.”⁴⁸ Similarly, the United Nations Human Rights Committee has stated that freedom of thought, conscience and religion is a “profound” and “far reaching” right of a “fundamental character”; one which State Parties may not suspend or derogate from even in times of public emergency pursuant to Article 4.2 of the ICCPR.⁴⁹
32. In the seminal case of *Eweida and others v. the United Kingdom*⁵⁰, the Court provided helpful commentary on the nature of religious freedom. The Court first noted that, as set out in Article 9 § 1, freedom of religion is not limited to private conscience; it “also encompasses the freedom to manifest one’s belief, alone and in private, but also to practice in community with others and in public.”⁵¹ Secondly, the manifestation of religious belief may take various forms, including “worship, teaching, practice and observance,”⁵² however; the manifestation of religion cannot be limited to acts of “worship or devotion.”⁵³ Thirdly, the Court reiterated its previous case-law that, “Bearing witness in words and deeds is bound up with the existence of religious convictions.”⁵⁴ Fourthly, providing that the State is satisfied that the religious belief attains a certain level of cogency, seriousness, cohesion and importance, the State cannot “assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed.”⁵⁵ Lastly, the Court explicitly rejected the argument that “if a person is able to take steps to circumvent a limitation placed on his or her freedom to manifest religion or belief, there is no interference with the right under Article 9 § 1.”

⁴³ For example, Article 18, Universal Declaration of Human Rights (1948), Article 18, International Covenant on Civil and Political Rights (1966) and Article 10, Charter of Fundamental Rights of the European Union (2000).

⁴⁴ For example, the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981; UN Resolution on the Elimination of all forms of religious intolerance 1993; OSCE Vienna Concluding Document 1989, Principle 16.

⁴⁵ See *Kokkinakis v. Greece* (1993) App. No. 14307/88, § 31.

⁴⁶ See, for example, *Vojnity v. Hungary* (2013) App. No. 29617/07, § 36.

⁴⁷ See Carolyn Evans, *Freedom of Religion Under the European Convention on Human Rights*, Oxford University Press, 2001, p. 137. Evans also points out that when the Convention was being written, the final draft of Article 9(2) was the narrowest of the proposed articles.

⁴⁸ Sir Nicolas Bratza, The ‘Precious Asset’: Freedom of Religion Under the European Convention on Human Rights, *Ecclesiastical Law Journal*, Vol. 14, Issue 2, May 2012, pp 256-271.

⁴⁹ HRC, *General Comment No 22: The Right to Freedom of Thought, Conscience and Religion* (1993).

⁵⁰ (2013) App. Nos. 48420/10, 59842/10, 51671/10 and 36516/10.

⁵¹ *Ibid.*, at § 80.

⁵² *Ibid.*

⁵³ *Eweida*, cited above, at § 82.

⁵⁴ *Ibid.*, citing *Kokkinakis* § 31 and *Leyla Şahin v. Turkey* [GC], App. no. 44774/98, § 105, ECHR 2005-XI).

⁵⁵ *Eweida*, cited above, at § 81, citing *Manoussakis and Others v. Greece* (1996), Reports 1996-IV, p. 1365, § 47; *Hasan and Chaush v. Bulgaria* [GC], App. No. 30985/96, § 78, ECHR 2000-XI; *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], App Nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 1, ECHR 2003-II).

33. Thus, given the Court’s longstanding acceptance that that freedom of religion includes the right to *public* manifestation of religious belief, not least in the recent case of *Eweida and others v. the United Kingdom*, in which the nature of religious freedom was elucidated, the Fifth Section’s majority holding on religious belief and manifestation appears incompatible with the case law of this Court. Moreover, in implying that by keeping his faith “a private matter”, the applicant in question could avoid punishment on return to Iran, the judgment is also in stark contrast to the Court of Justice of the European Union.

iv. Comparative Jurisprudence

34. On 5 September 2012 the Grand Chamber of the Court of Justice of the European Union (“CJEU”) decided the cases of *Germany v. Y* (Case C-71/11) and *Germany v. Z* (Case C-99/11). The case involved a dispute between the German Federal Administrative Court (*Bundesverwaltungsgericht*) and two Pakistani nationals – both of whom are active members of the Ahmadiyya community in Pakistan. The activities of the Ahmadiyya community are severely restricted in Pakistan. In particular, Y and Z cannot profess their faith publicly without those practices being considered blasphemous.⁵⁶ As such, Y and Z sought asylum in Germany. The German court sought a preliminary ruling by the CJEU on the interpretation of Article 9(1) 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.”

35. Article 9(1) of the Directive seeks to define what constitutes an act of persecution within the meaning of the refugee definition as set out in Article 1A(2) of the 1951 Convention relating to the Status of Refugees. The German court essentially asked the CJEU three questions: *First*, to what extent is an infringement of freedom of religion, and in particular the right of the individual to live his faith openly and fully, likely to be an “act of persecution” within the meaning of Article 9(1)(a) of the Directive? *Secondly*, should the concept of an act of persecution be restricted to infringements affecting only what is referred to as a “core area” of freedom of religion? *Thirdly*, is a refugee’s fear of persecution is well-founded within the meaning of Article 2(c) of the Directive where the refugee intends, on his return to his country of origin, to perform religious acts which will expose him to danger to his life, his freedom or his integrity or rather is it reasonable to expect that person to give up the practice of such acts?⁵⁷

36. Prior to the Court’s decision, the Advocate General delivered his opinion on the cases.⁵⁸ In his opinion, Advocate General Bot affirmed that freedom of religion cannot be limited to the private sphere. The Advocate General stated that if the so-called “core area” of religious belief comprised only of “private conscience”, it would render any protections for “the external manifestation of that freedom” effectively “meaningless”.⁵⁹ He further held that “...there is nothing in the case-law of the Court or, specifically, of the European Court of Human Rights, to support the proposition that the ‘core area’ of freedom of religion must be limited to private conscience and the freedom

⁵⁶ Joined Cases C-71/11 and C-99/11, (Ref. ECLI:EU:C:2012:518), §§ 30-31.

⁵⁷ *Ibid.*, at § 45.

⁵⁸ Opinion of Advocate General Bot, 19 April 2012 (Ref. ECLI:EU:C:2012:224).

⁵⁹ *Ibid.*, at § 46.

to manifest one's religion in private or within the circle of those who share the faith, thus excluding the public manifestation of religion."⁶⁰

37. Moreover, the Advocate General stated that, "The manifestation of religion is inseparable from faith and is an essential component of freedom of religion, whether it be practiced in public or in private." He pointed to the jurisprudence of the European Court of Human Rights and the former Commission,⁶¹ where it was held that the term "in private or in public" in the Convention "means nothing other than allowing the faithful to manifest their faith in one form or the other, and should not be interpreted as being mutually exclusive or as leaving a choice to the public authorities."⁶²
38. The Advocate General clearly stated that religious freedom is much more than merely the freedom to *believe*. In concluding that national authorities cannot expect asylum seekers to "forego religious [activities], and specifically to forego manifesting his faith",⁶³ the Advocate General gave a broad understanding of religious freedom, one that includes manifestation and not merely belief.
39. The Grand Chamber of the CJEU followed the Advocate General's reasoning entirely. In answering the questions of the German court, and in clear contrast to the decision of the Fifth Section in the present case, the CJEU held that an act of persecution may occur "as a result of interference with the external manifestation of that freedom."⁶⁴ Moreover, "In assessing an application for refugee status on an individual basis, [domestic] authorities cannot reasonably expect the applicant to abstain from [public] religious practices."⁶⁵

Conclusion

40. This Court has recognized on numerous occasions—including circumstances in which Christian converts face deportation to Iran—that the risk of religious persecution can render the return of an asylum seeker to their country of origin incompatible with Article 3 of the Convention. As documented by countless national and international reports, NGO research, and eyewitness testimonies, the situation in Iran for those who convert from Islam to Christianity is life-threatening. The Interveners respectfully submit that the majority of the Fifth Section failed to adequately assess the general situation for Christian converts in Iran. Moreover, the Interveners submit that in implying that such life-threatening circumstances could be mitigated so long as the faith of the asylum seeker remained private, the majority of the Fifth Section provided an unduly narrow interpretation of religious freedom: one that is out of step with the Court's Article 9 case law and the comparative jurisprudence of the CJEU.

⁶⁰ *Ibid.*, at § 49.

⁶¹ For example, *Metropolitan Church of Bessarabia and Others v Moldova* (2001), ECHR Reports 2001-XII § 114 and *X v United Kingdom* (1981), D.R., 22, p. 39, § 5.

⁶² Advocate General opinion, cited above, at § 50.

⁶³ *Ibid.*, at § 106.

⁶⁴ *Ibid.*, at § 81.

⁶⁵ *Ibid.*

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Appendix A - National and International Reports on the Human Rights Situation in Iran

Title (Click to access)	Date	Body
Report of the Working Group on the Universal Period Review	15 March 2010	UN Human Rights Council
Concluding Observations of the Committee on the Elimination of Racial Discrimination: Islamic Republic of Iran	20 September 2010	Committee on the Elimination of Racial Discrimination
Concluding Observations of the Human Rights Committee	29 November 2011	UN Human Rights Committee
Report of the Working Group on arbitrary detention	24 December 2012	UN Human Rights Council
The cost of faith: Persecution of Christian protestants and converts in Iran	1 January 2013	International Campaign for Human Rights in Iran
Concluding observations on the second periodic report of the Islamic Republic of Iran	10 June 2013	Committee on Economic, Social and Cultural Rights
Annual Report: Iran	1 January 2014	US Commission on International Religious Freedom
Country Reports on Human Rights Practices for 2013: Iran	1 February 2014	US Department of State
Policy Brief: Prisoners of Belief - Individuals jailed under blasphemy laws	1 March 2014	US Commission on International Religious Freedom
Submission to Universal Period Review	15 March 2014	Iran Human Rights Documentation Centre
Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran	18 March 2014	UN Human Rights Council
Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran	7 April 2014	UN Human Rights Council

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Title (Click to access)	Date	Source
Christian Bishop in Iran is reported missing	27 January 1994	New York Times
Bishop's killing puts focus on persecution in Iran	6 February 1994	New York Times
Bearing the cross	27 December 2005	The Guardian
The cost of religious conversion in Iran	9 May 2009	The Guardian
Religious cleaning in Iran	22 July 2009	National Review
Iran Rejects UN Call for rights probes	17 February 2010	NewsMax
The Christians who suffer for their faith at Christmas	24 December 2010	The Guardian
Iran arrests Christians as more Muslims convert	1 July 2011	CBN News
Lined up and hanged in front of a baying mob: Human rights group condemns surge in public Iranian executions	22 July 2011	Daily Mail
Christian Pastor Yousef Nadarkhani faces potential execution	27 September 2011	onFaith
Iran to execute Christian who refuses to renounce faith	29 September 2011	The Times
Iran: Christian pastor faces execution for 'apostasy'	30 September 2011	Human Rights Watch
Iranian Christian convert sentenced to two years in prison	29 January 2012	Mohabat News
When will the West act against persecution of Christians in the Middle East?	30 January 2012	Fox News
Persecution of Christians soars in Iran	12 February 2012	WND
12 Christians in Iran await verdicts after Easter Sunday apostasy trial	11 April 2012	Fox News
Iranian lawyer Mohammad Ali Dadkhah sentenced to nine years in jail	3 May 2012	The Guardian

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Title (Click to access)	Date	Source
Recant your faith to get back your daughter	21 July 2012	The Times
Christians face arrest, persecution in Iran, UN experts say	20 September 2012	Reuters
Iran engaged in 'severe clampdown' on critics, UN Says	2 October 2012	New York Times
Iranian intelligence agents target, arrest Christian converts	10 October 2012	Daily Caller
Pastor to spend Christmas in Iranian prison, imprisoned for his faith	24 December 2012	onFaith
Tehran re-arrests Pastor Nadarkhani on Christmas Day	3 January 2013	The Times
They slapped me and asked about Christian churches in Tehran'	13 January 2013	The Times
The perils of religious persecution in Iran	13 May 2013	Forbes
Iranian Christians face 'systematic persecution and prosecution'	20 May 2013	Christian Today
Iran's new 'moderate' president unlikely to ease Christian persecution	18 June 2013	Christian Post
Iran: Man sentenced to 10 years in prison for distributing copies of the Gospel	20 August 2013	La Stampa
Iranians jailed for 'house church' attendance	30 October 2013	World Watch Monitor
Iran flogs Christians for taking communion wine	31 October 2013	Morning Star News
Iran's crackdown on Christians hasn't let up	31 October 2013	World Magazine
Convert from Islam flees Iranian authorities' torture, threats	22 November 2013	Morning Star News
Another church forced to close its doors on Farsi-speaking Christians	1 January 2014	Mohabat News

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Title (Click to access)	Date	Source
Arrests, attacks mar Christmas celebrations for persecuted church	7 January 2014	World Magazine
Iran sentences Christian convert to year in prison	8 January 2014	CBN News
Four Christian converts arrested in Karaj on New Year's Eve	10 January 2014	International Campaign for Human Rights in Iran
Warsi sounds warning over persecutions of Christians in Middle East saying it has become a 'global crisis'	22 January 2014	Daily Mail
Iran's oppressed Christians	14 March 2014	New York Times
Iran jails dozens of evangelical Christians	18 March 2014	Religious Freedom Coalition
UN report assails Iran for persecution of religious minorities	1 April 2014	The Jerusalem Post
A number of Christian converts arrested at Easter Service	28 April 2014	Mohabat News
Rouhani powerless to act as crackdown on Christians intensifies	10 May 2014	The Times
Persecuted Christians flee Iran, find hope and homes in Germany	18 May 2014	Fox News
Extremism fuels abuse of Christians in Mideast	3 July 2014	CNN
Christian sentenced by Iranian judge to have his lips burnt with a cigarette for eating during Ramadan	23 July 2014	Daily Mail
A Christian prisoner in Iran	1 September 2014	The Wall Street Journal
Iran house church raided by officials; two Christian converts arrested	4 September 2014	Christian Today
Christian Pastor in Iran sentenced to death for 'spreading corruption'	5 September 2014	The Gospel Herald

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Title (Click to access)	Date	Source
More evangelicals facing death penalty in Iran	6 September 2014	BosNewsLife
UN panel raps Iran over imprisonment of Christian Pastor Saeed Abedini	18 September 2014	Iran News Update
Christians in Iran face intense persecution	23 September 2014	Christian News Today
The fight of their lives	29 September 2014	The New Yorker
