

[South Korea: Deportation of Christian convert to Iran would breach right to life and prohibition against torture](#)

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Ostavari v. Republic of Korea (1908/2009)

Summary

In March 2014, the Human Rights Committee was asked to consider whether the Republic of Korea (South Korea) would violate its obligations under the International Covenant on Civil and Political Rights if it deported an Iranian national that had converted to Christianity to Iran.

The communication was submitted under the Optional Protocol to the Covenant.

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Background

The author was born a Muslim in Iran. He developed an interest in Christianity after listening to an international Christian radio program. On 30 May 2005, he travelled to Korea on a three-month business visa, where he attended church, studied the Bible and converted to Christianity. On 4 November 2005, the author was charged, convicted and sentenced for cannabis consumption. Subsequent to his sentence, a deportation order was made and the author was placed in administrative detention pending removal.

On 28 December 2005, while detained, the author unsuccessfully applied for refugee status. On 23 June 2006, the Ministry of Justice rejected his appeal. The author did not appeal this decision within the statutory deadline as he claimed that the Ministry of Justice failed to notify him of his right to do so.

The author continued to practise his Christian faith while in detention and on 10 July 2006, formally converted to Christianity by being baptised. On 13 October 2006, the Immigration Office invited an official of the Iranian

Embassy to visit the author and to issue a new passport to facilitate his repatriation. The author informed the official from the Iranian Embassy that he had converted to Christianity.

On 20 February 2007, the author submitted a new application for refugee status, which was rejected on 20 April 2007. His appeal was rejected on 25 May 2007 and a further administrative appeal was rejected on 22 January 2008. The author appealed to the High Court but his claim was rejected on 11 November 2008. He lodged a further appeal before the Supreme Court which was rejected on 26 February 2009. The recurring grounds for the rejection of his asylum applications and appeals were principally that the author did not establish a 'well-founded fear of being persecuted'.

On 19 October 2009, the author submitted his complaint to the Committee. He alleged that his deportation to Iran would violate article 7 of the Covenant, as he would be subjected to torture or even death because the Iranian Penal Code imposes the death penalty on any Iranian male who abandons the Islamic faith. The author also claimed that his detention would be indefinite so long as the deportation order was neither revoked or withdrawn, and that his detention had not been subject to regular judicial review. Accordingly, he argued that Korea had also breached article 9 of the Covenant.

The Special Rapporteur on New Communications and Interim Measure successfully requested that the Korea refrain from deporting the author while his case was being considered by the Committee and guarantee the regular judicial review of the author's detention.

The Committee's decision

In considering the complaint's admissibility, the Committee noted that the same matter was not being examined under another procedure of international investigation or settlement. In respect of exhaustion of local remedies, the Committee observed that despite being detained since 12 December 2005, the author did not challenge his detention until 18 August 2009 and did not appeal an adverse administrative decision of 3 November 2009. The Committee concluded that the author had not exhausted domestic remedies in respect of the legality of his detention. Consequently, his claim concerning arbitrary detention pursuant to article 9 of the Covenant was inadmissible. In respect of his potential deportation to Iran, the Committee acknowledged that the author had filed several consecutive appeals and that he had no further means of effectively challenging the deportation order. The Committee also noted that although consultations were ongoing regarding the author's resettlement to a third country, such negotiations were discretionary, lacked legal force, and did not formally operate to stay his removal. The Committee concluded that consultations regarding the author's resettlement to a third country did not constitute a remedy that the author was required to exhaust under the Optional Protocol. The Committee therefore declared the author's claims with respect to articles 6 and 7 of the Covenant to be admissible.

On the merits, the Committee recalled its General Comment No. 31 in which it referred to States parties' obligation not to extradite or otherwise remove a person from their territory where there are substantial grounds for believing that there is a risk of irreparable harm. The Committee noted Korea's contention that the author's applications were rejected on the ground that the author lacked credibility and that a certain amount of deference should be granted to States in reviewing or evaluating evidence in determining the existence of such a risk.

In considering whether the author's removal to Iran would expose him to a real risk of irreparable harm, the Committee noted the author's conversion to Christianity, the fact he was visited in detention by Iranian officials whom he informed of his conversion, and reports indicating that although apostasy is not codified as a crime under Iranian law, prosecutors and judges can charge religious converts with apostasy. According to reports, those charged with apostasy have been imprisoned in solitary confinement, tortured, and even executed in some cases. The Committee also observed that the author had obtained a Bachelor in theology from an institution established 'to spread the Gospel effectively to unreached people groups' and that Christians engaged in proselytising in Iran are exposed to serious risks of persecution, as well as penal consequences. The Committee noted that Korea had failed to give due consideration to these facts during the course of the deportation proceedings. The Committee was of the view that the author, as a theologian with a conspicuous evangelist profile, would be exposed to a real risk of irreparable harm if he were forcibly returned to Iran. Thus, the Committee found that his removal to Iran by Korea would violate articles 6(1) and article 7 of

the Covenant.

The Committee recalled that under article 2(3) of the Covenant, Korea was under an obligation to provide the author with an effective remedy, including a full reconsideration of his claim and the risk of his suffering treatment contrary to the Covenant should he be returned to Iran. Furthermore, the Committee stated that Korea should not deport the author to any third country likely to deport him to Iran. Korea was also under an obligation to prevent similar violations in the future.

Korea must now submit its written response within six months of the Committee's decision, including information on the action taken in light of the Committee's recommendations, and ensure that the Committee's decision is published widely.

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