



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1035/2020* **

<i>Communication submitted by:</i>	I.P. (represented by counsel from the organization Migrant Arc-en-ciel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	9 October 2020 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 28 October 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	... November 2023
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Procedural issue:</i>	Substantiation of claims
<i>Substantive issues:</i>	Risk of torture or other cruel, inhuman or degrading treatment or punishment, if deported to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is I.P., a national of Sri Lanka born on 13 September 1983. He applied for asylum in Switzerland, but his application was rejected. He is facing deportation to Sri Lanka and submits that his deportation would constitute a violation by the State party of article 3 of the Convention. The State party has made the declaration under article 22 (1) of the Convention, effective from 2 December 1986. The complainant is represented by counsel.

1.2 On 28 October 2020, pursuant to article 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant to Sri Lanka while the communication was being considered.

Factual background

2.1 The complainant is of Tamil ethnicity. Starting in late 2005, he had to carry out small tasks for the Liberation Tigers of Tamil Eelam. He mainly transported weapons by

* Adopted by the Committee at its seventy-eighth session (30 October–24 November 2023).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



motorcycle and hid clothes.¹ One of his sisters joined the Liberation Tigers of Tamil Eelam in 1996, but he has had no contact with her since 2008. He was not a member but worked for the group because he lived in an area under its control. In July 2006, he was caught in the act and arrested by officers of the Criminal Investigation Department in Vavuniya. He was then held in solitary confinement at Joseph Camp and subjected to beatings for six days. After the third day, unable to stand the torture any longer,² the complainant told them everything.

2.2 On an unspecified date, the complainant was brought before a court and sent to a prison in Anuradhapura, where he had to perform forced labour. He was released in January 2007 because two government employees vouched for him. After his release, he had to remain in Vavuniya, report to the court every 14 days and sign in at Joseph Camp every Sunday. He was questioned and harassed each time and was sometimes beaten.

2.3 Because the requirements relating to reporting had become increasingly strict and several people reporting had been killed, the complainant stopped reporting in May 2007 and went into hiding. He went to the home of one of his sisters in Trincomalee and lived with her for almost two years. He encountered no problems during that time.

2.4 On 19 March 2009, the police arrested the complainant, and he was detained, interrogated and subjected to ill-treatment for 20 days. Because there was no evidence, the trial court of Trincomalee ordered his release on 8 April 2009, after which he was taken to a doctor who noticed some scars but said nothing about them because of the presence of two officers from the Criminal Investigation Department. The complainant was then required to sign in again regularly to confirm that he remained in the area. When it was learned³ that he had been detained in Vavuniya and had stopped reporting, the authorities began looking for him again. He went to Jaffna in May 2009 and had no problems there for almost two years. He received summonses from the court in 2010 and 2011 but did not respond and went to the house of his brother, who also lived in Jaffna. A warrant had been issued for his arrest. He went into hiding, rotating between the houses of his parents, acquaintances and brother. His brother was arrested in his place. The arrest was reported to the Human Rights Commission of Sri Lanka. Seeing no way out, the complainant moved to Colombo in early 2013 to live with his maternal uncle. As he felt no safer there, he left Sri Lanka in August 2014 with the help of a people smuggler and with a valid passport, which he had obtained in 2014.

2.5 The complainant arrived in Switzerland on 20 July 2015 and filed his first application for asylum the same day. The State Secretariat for Migration interviewed him on 21 July and 23 September 2015. On 24 September 2015, the State Secretariat asked the Embassy of Switzerland in Sri Lanka to conduct an investigation to determine the authenticity of the evidence submitted. On 28 September 2015, the complainant provided an official document from the trial court of Trincomalee and his brother's original International Committee of the Red Cross (ICRC) identity cards. The Embassy's report of 20 October 2015 concluded, on the basis of official information and its content, that the extract from the police report had been falsified. A hearing on the results of the Embassy's investigation took place on 22 June 2016. The complainant stated that an officer in charge had given the document to his sister.

2.6 On 30 June 2016, the State Secretariat for Migration rejected the complainant's asylum application and ordered his return. It found the complainant's claims regarding his repeated harassment by the authorities due to his work for the Liberation Tigers of Tamil Eelam not to be credible, noting, for example, contradictions relating to the circumstances of his arrest in 2006 or 2007. There were also considerable differences in his accounts of what happened next. According to the version given at the first hearing, the complainant had lived in Kovilkulam and gone to Joseph Camp every Sunday. At the second hearing, he stated that he had lived in Jaffna, not Kovilkulam. The State Secretariat for Migration was also of the view that the complainant's claims regarding his activities for the Liberation Tigers of Tamil

¹ The complainant states that he transported weapons and clothing four or five times over a seven-month period.

² During the interrogations, the complainant was made to lie on a table and was beaten and struck with objects. He was seated naked in the sun on a shiny metal chair. A wooden stick was used to hit him on the soles of his feet.

³ The complainant does not indicate to whom he is referring here.

Eelam were not plausible given his contradictory statements, including with respect to his contact persons, and the unexplained differences relating to how the arms were transported.

2.7 The State Secretariat for Migration noted significant differences between the accounts given of the complainant's persecution after his release in April 2009: according to one, the complainant had had no problems for around two years, while according to the other, the authorities had come to his home looking for him barely two months after his release. There were also the differences between the complainant's account of where he stayed following his release and the account provided by one of his sisters in a letter dated 23 July 2015, and the fact that the extract from the Uppuveli police report was thought to be fake because the signature had been forged and the document in question was an internal police record. The State Secretariat for Migration noted that the 8 April 2009 decision of the Trincomalee court that ordered his release revealed that the terrorism-related accusations had been unfounded. The State Secretariat was of the view that the length of the complainant's detention and his statements about it made his claims of persecution implausible, a view that was supported by the fact that the complainant remained in his country for several years after his release.

2.8 With the assistance of counsel, the complainant filed an appeal with the Federal Administrative Court on 2 August 2016. In an interim decision handed down on 8 August 2016, the Court authorized the complainant to remain in Switzerland until the merits of his case were decided, gave him seven days to supplement his appeal, denied his request for legal aid as his financial need had not been demonstrated and set a deadline of 23 August 2016 for the payment of an advance towards costs in the amount of 600 Swiss francs. On 30 August 2016, the Court noted that the advance had not been paid and declared the appeal inadmissible.

2.9 On 16 October 2017, the complainant, with the assistance of counsel, filed a second asylum application. One of the claims he made in it was that his wife had told him that, between July 2016 and August 2017, the security forces had come looking for him on several occasions both at his home and at his second sister's home and that his brother was in hiding and had broken off all contact for fear of being arrested. On 10 January 2018, the complainant supplemented his new asylum application with further evidence to demonstrate that the Sri Lankan authorities were still looking for him: a summons from the Jaffna District Court dated 24 November 2017, a decision of the Jaffna District Court dated 27 August 2014, a letter from a justice of the peace from the district of Jaffna dated 22 March 2017, a letter from the Tamil National People's Front dated 9 August 2017, an undated letter from his sister and a formal notice from the police counter-terrorism office.

2.10 On 2 November 2018, the State Secretariat for Migration denied the complainant's new asylum application. It first referred to the conclusions of its decision in the first asylum proceedings. With respect to the new pieces of evidence, it noted that the complainant had provided no explanation of how he had obtained them and why he had not adduced some of them during the first proceedings. The State Secretariat also noted that the new documents submitted had neither been certified nor been accompanied by copying cost notices, which could potentially be a sign of authenticity, and drew attention to factors that cast doubt on the authenticity of the new documents presented. It noted, for example, that the summons from the Jaffna District Court referred to a case file beginning with the letter "M"; however, according to a number of reliable sources and judging from many comparable authentic documents, that letter is not used in the numbering of cases. The decision of that court contained no file number and was unlike any of the many models of which the State Secretariat for Migration was aware. As for the formal notice, the State Secretariat noted that it bore no official police stamp. The three letters should be considered letters of convenience. Lastly, the complainant's claims that the Sri Lankan authorities had contacted his wife and sister in the course of their efforts to locate him were judged vague and unsubstantiated.

2.11 On 5 December 2018, the complainant appealed against the decision of the State Secretariat for Migration and submitted an ICRC certificate confirming that he had been detained in 2009, a medical certificate dated 4 December 2018, a citation to appear before the Jaffna District Court dated 15 December 2017 and a letter dated 19 June 2019 from his Sri Lankan lawyer. In an interim decision handed down on 19 December 2018, the Federal Administrative Court granted the complainant's request for legal aid.

2.12 On 14 September 2020, the Federal Administrative Court dismissed the complainant's appeal. It pointed to the improbability of the claims of harassment by the security forces, the doubts surrounding the origin and submission of the documents from Sri Lanka and the notorious ease with which documents from that country can be falsified and purchased. In the light of the detailed analysis carried out by the State Secretariat for Migration, the Court found that the documents submitted by the complainant had little evidential value, even if the originals of some of them were available. This conclusion extended to the evidence submitted in the appeal proceedings, namely the ICRC certificate dated 5 December 2018 and the Jaffna District Court summons dated 15 December 2017. The Court noted that, separately from the question of whether the documents submitted were authentic, the complainant had failed to explain why the Sri Lankan authorities would have an ongoing interest in persecuting him.

Complaint

3.1 The complainant claims that his deportation to Sri Lanka would constitute a violation of his rights under article 3 of the Convention.

3.2 The complainant points out that the State party authorities have refused to examine or verify the original evidence that he submitted to them, even though some of it had been verified and come from ICRC, a delegation from which had visited him in prison. In the complainant's view, the State party has limited itself to raising doubts about the authenticity of the documents submitted, without taking account of the truth.

3.3 The complainant asserts that he is of Tamil ethnicity and left Sri Lanka after violating the conditions of his release. He provided an original certificate from ICRC, bearing his photograph and information, that shows that he had indeed been in detention in Sri Lanka. According to the complainant, the fact that an individual is of Tamil ethnicity and has left the country can be a sufficient basis for concluding that he or she will be subjected to persecution should he or she return. In the light of the current situation in Sri Lanka, which is marked by mass human rights violations, and in view of the complainant's past, there are grounds for concluding that he will risk facing treatment contrary to article 3 of the Convention if returned to Sri Lanka. He adds that, since the change of power in 2019 and 2020, there has been targeted – even collective – persecution of certain segments of the population, particularly Tamils.

State party's observations on the merits

4.1 On 28 June 2021, the State party submitted its observations on the merits, reiterating the arguments made by the Swiss asylum authorities. It acknowledges that the human rights situation in Sri Lanka is worrying in many respects⁴ but points out that the Federal Administrative Court has already thoroughly examined that situation and the risk of torture in the event of return in a reference judgment,⁵ according to which not all returnees with a real or supposed, present or past link to the Liberation Tigers of Tamil Eelam necessarily risk persecution. Only persons accused of rekindling ethnic conflict face such a risk. The same applies to Sri Lankan nationals who have engaged in political activities in exile. In the present case, the complainant has failed to plausibly argue that he had attracted the attention of the Sri Lankan authorities after the end of hostilities.

4.2 The State party notes that, regardless of the Swiss authorities' conclusions regarding the likelihood of the complainant's detention from July 2006 to January 2007 and in March and April 2009, his claims do not concern acts to which he was subjected in the recent past. Furthermore, the claims are not supported by evidence from independent sources other than the observations said to have been tacitly made by a doctor to whom he was taken in April 2009.

4.3 In the State party's view, the complainant has no particular profile that could be of interest to the authorities of his country. In its decision of 30 June 2016, the State Secretariat for Migration had found the complainant's claims regarding his activities to be implausible given his contradictory statements, including with respect to his contact persons, and the

⁴ See [CAT/C/LKA/CO/5](#).

⁵ Federal Administrative Court, judgment E-1866/2015, 15 July 2016.

unexplained differences relating to how the arms were transported for the Liberation Tigers of Tamil Eelam. This conclusion is supported by, for example, his court-ordered release on 8 April 2009 and his ability, in 2014, to easily obtain a passport, with which he then left his country for the Islamic Republic of Iran. Moreover, the complainant does not claim to have been arrested or detained after April 2009, and his account of the efforts made by the security forces to find him does not reveal any particular interest in him on their part.

4.4 With respect to the complainant's credibility, the State party recalls that, during the first proceedings, the State Secretariat for Migration had had the evidence adduced verified by the Embassy of Switzerland in Colombo, on site, before using it to reach any conclusions. During the second asylum proceedings, both the State Secretariat and the Federal Administrative Court pointed to specific features of the documents adduced when raising doubts about their authenticity. The complainant does not indicate how their assessment was flawed or incomplete.

4.5 It should further be noted that the duration of the complainant's supposed detention and the time of his arrest have also not been established. According to the present communication, the complainant spent 11 months in detention, but at his 23 September 2015 interview with the State Secretariat for Migration, he said that the detention had lasted almost a week.

4.6 Lastly, the State party points out that the complainant, who said that he had to live in hiding with various members of his family because of the ongoing searches, was able to apply for and obtain a passport in 2014 and use it to leave his country, without difficulty, five years after the end of the second alleged period of detention. This demonstrates that the complainant was not wanted by the authorities and that it was possible for him to communicate with State institutions when needed. It can therefore not be believed that the Sri Lankan authorities were seriously looking for him for five years.

Complainant's comments on the State party's observations

5.1 On 27 October 2021, the complainant submitted comments, in which he contested the State party's arguments. To prove that he has grounds for fear if returned to Sri Lanka, he submitted three summonses issued by the high court of Trincomalee on 14 December 2020, 25 February 2021 and 21 May 2021 and a warrant for his arrest issued by the same court on 2 August 2021. He says that he has the originals of these documents and can provide them on request.

5.2 The complainant refers again to the human rights situation in Sri Lanka and argues that, because of his Tamil ethnicity and his past, he would, in the event of return, risk facing treatment contrary to article 3 of the Convention. His account is genuine, credible and supported by evidence. He has attached official documents showing that he is wanted by the authorities on account of his participation in an uprising against the Government and calling for the revival of the Liberation Tigers of Tamil Eelam.

State party's additional observations

6.1 On 1 February 2022, the State party submitted additional observations, noting that the complainant's comments contained nothing that called its position into question. With respect to the new documents submitted by the complainant, the State party notes that the arrest warrant dated 2 August 2021 bears the wrong file number, the stamp of the issuing authority does not appear on it, and the back of the warrant is missing. Since the complainant states that he has the original and can provide it if necessary, it should be noted that experience has shown that, consistent with Sri Lankan judicial practice, original arrest warrants are not handed over to the individuals arrested or to their family members. Furthermore, the grounds for the arrest are set out in an unusual manner. Lastly, the address given for the complainant on the warrant is one that was never mentioned by him during the asylum proceedings.

6.2 The State party also notes that the two summonses dated 14 December 2020 and 21 May 2021 have the same incorrect file number – BR 4340/S/09 – as the arrest warrant, and they too lack the issuing authority's stamp. Furthermore, the address that appears in the summonses has never been indicated by the complainant as his place of residence.

6.3 The State party points out that, during the domestic proceedings, the complainant had submitted several documents that both the State Secretariat for Migration and the Federal Administrative Court had found to have no evidential value. The same conclusion must be reached for the three new documents submitted by the complainant.

Complainant's comments on the State party's additional observations

7.1 In his comments of 20 May 2022, the complainant explains that a seal is affixed to an arrest warrant only after the person in question has been arrested, which has not happened in the present case. He then clarifies that he contacted his lawyer in Sri Lanka, who told him that it was impossible to obtain the originals of arrest warrants because they were not given to the individuals arrested or to their family members.

7.2 Regarding the grounds for the arrest, the complainant states that the warrant does indeed indicate that he is wanted in connection with activities related to the Liberation Tigers of Tamil Eelam. He also mentions that the address shown on the three recent documents is his grandmother's and that that address also appears on his identity card.

7.3 The complainant contests the State party's assertion that the issuing authority's stamp does not appear on the summonses dated 14 December 2020 and 21 May 2021 and again submits a copy to demonstrate the opposite. Lastly, he states that the fact that a document is only a copy is not in itself sufficient reason to strip the document of all evidential value.⁶ Furthermore, in a recent decision by the Committee, the Swiss authorities were criticized for contesting the genuineness of documents adduced by a complainant without taking any measures to verify it.⁷ Even if the document submitted is a copy, there is nothing to suggest that it is a forgery or has been falsified. Lastly, he has provided a copy of a letter dated 5 May 2022 from the magistrate of Trincomalee, confirming the dates of the three summonses and the arrest warrant.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested the exhaustion of all available domestic remedies by the complainant or the admissibility of the complaint.

8.3 In the absence of any other obstacle to the admissibility of the communication, the Committee proceeds with its consideration of the merits of the claims submitted by the complainant under article 3 of the Convention.

Consideration of the merits

9.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all the information made available to it by the parties.

9.2 In the present case, the issue before the Committee is whether the return of the complainant to Sri Lanka would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return (refouler) a person to another State where there are grounds for believing that he or she would be in danger of being subjected to torture.

⁶ European Court of Human Rights, *M.A. v. Switzerland*, application No. 52589/13, judgment, 18 November 2014, para. 62.

⁷ *M.G. v. Switzerland* (CAT/C/65/D/811/2017 and CAT/C/65/D/811/2017/Corr.1), para. 7.4.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Sri Lanka. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Moreover, although past events may be of relevance, the principal question before the Committee is whether the complainant currently runs a risk of torture if returned to Sri Lanka.⁸

9.4 The Committee refers to its general comment No. 4 (2017), according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to be shown to be “highly probable”, the burden of proof generally falls on the complainant, who must present an arguable case establishing that he or she faces a foreseeable, real and personal risk.⁹ The Committee also recalls that, in accordance with its general comment No. 4 (2017), it gives considerable weight to findings of fact made by organs of the State party concerned, while, at the same time, it is not bound by such findings and instead has the power, under article 22 (4) of the Convention, to make a free assessment of the information available to it, taking into account all the circumstances relevant to each case.¹⁰

9.5 In the present case, the Committee notes the complainant’s claims that he would be in danger of facing treatment contrary to article 3 of the Convention if returned to Sri Lanka, as he would risk detention, acts of torture and ill-treatment because of his perceived connections to the Liberation Tigers of Tamil Eelam, particularly given the human rights situation in Sri Lanka, his Tamil ethnicity and his absence from the country. It also takes note of the complainant’s assertions that he was detained, interrogated and ill-treated on two occasions and that the Sri Lankan authorities have, since then, been looking for him. In this regard, the Committee takes note of the documents provided by the complainant to support his claims – both those submitted to the Swiss authorities and those which were provided solely to the Committee after the Federal Administrative Court denied the complainant’s final appeal in the case relating to his asylum application and which were therefore not submitted to the authorities of the State party during the asylum proceedings.

9.6 The Committee notes the State party’s reference to the contradictions that the asylum authorities had identified in the complainant’s account and their conclusion that the complainant had failed to plausibly argue that he had attracted the attention of the Sri Lankan authorities. The Committee notes that the Swiss authorities duly examined – including with the help of the Embassy of Switzerland in Sri Lanka – the form and substance of the documents supposedly issued by the Sri Lankan authorities and expressed doubts as to their authenticity. The Committee also takes note of the State party’s argument that the complainant’s claims regarding the activities that he had carried out for the Liberation Tigers of Tamil Eelam were implausible in view of his contradictory statements and the fact that the trial court of Trincomalee ordered his release on 8 April 2009. In the State party’s view, the fact that the complainant was able to obtain a passport without difficulty in 2014 and use it to leave his country without difficulty five years after the end of his alleged second detention reveals that he was not wanted by the authorities and does not suggest a foreseeable and present risk that he would be subjected to treatment contrary to the Convention in the event of return.

⁸ *N.K. v. Switzerland* (CAT/C/77/D/989/2020), para. 7.3.

⁹ See, inter alia, *Dadar v. Canada* (CAT/C/35/D/258/2004), para. 8.4; and *A.R. v. Netherlands* (CAT/C/31/D/203/2002), para. 7.3.

¹⁰ Committee against Torture, general comment No. 4 (2017), paras. 11, 39 and 50.

9.7 In particular, the Committee notes that the Swiss authorities have apparently not called into question the credibility of the complainant's claims regarding his detention. They have, however, contested the credibility of his claims that his activities with the Liberation Tigers of Tamil Eelam had led to his persecution by the Sri Lankan authorities, the direct cause of his flight from the country. The Committee further observes that the complainant has provided no evidence to challenge the specific arguments given by the Swiss authorities for rejecting the evidence that he had adduced in support of his allegations.

9.8 The Committee notes, however, that even if it were to accept the claim that the complainant was subjected to acts of torture and ill-treatment in the past, the question is whether he remains, at present, at risk of torture in Sri Lanka in the event of his forcible return there.¹¹ The Committee also notes that, according to its jurisprudence, it is normally for the complainant to present an arguable case.¹² In the present case, the Committee is of the view that the complainant has not provided credible information suggesting that the Sri Lankan authorities are currently interested in him.

9.9 With respect to the argument relating to the worsening of the human rights situation in Sri Lanka, the Committee recalls that the occurrence of human rights violations in the complainant's country of origin is not, of itself, sufficient for it to conclude that the complainant is personally at risk of being tortured there. The Committee notes that the complainant had ample opportunity to provide the State Secretariat for Migration and the Federal Administrative Court with supporting evidence and more information about his claims during the two asylum proceedings. However, it cannot be concluded on the basis of the evidence provided that the complainant would personally be at risk of facing torture or inhuman or degrading treatment if he returned to Sri Lanka.

10. On the basis of the above, and in the light of the material before it, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his deportation to his country of origin would expose him to a real, foreseeable, personal and present risk of being subjected to treatment contrary to article 3 of the Convention.

11. The Committee, acting under article 22 (7) of the Convention, concludes that the return of the complainant to Sri Lanka would not constitute a breach of article 3 of the Convention by the State party.

¹¹ *N.K. v. Switzerland*, para. 7.10.

¹² See, for example, *N.B.-M. v. Switzerland* (CAT/C/47/D/347/2008), para. 9.9; *C.A.R.M. et al. v. Canada* (CAT/C/38/D/298/2006), para. 8.10; and *M.A.K. v. Germany* (CAT/C/32/D/214/2002), para. 13.5.