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Committee against Torture
Thirty-fifth session
7 – 25 November 2004

DECISION

Communication No. 258/2004

Submitted by:	Mr. Mostafa Dadar (Represented by counsel, Mr. Richard Albert)
Alleged victims:	The complainant
State party:	Canada
Date of the complaint:	29 November 2004
Date of present decision:	23 November 2005

[ANNEX]

*Made public for decision of the Committee against Torture.

Subject matter: Return of complainant to country where he might be at risk of torture

Procedural issue: N/a

Substantive issues: Right not to be returned to a country where the complainant might be subjected to torture.

Articles of the Convention: Article 3

ANNEX

DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Thirty-fifth session

Concerning

Communication No. 258/2004

Submitted by:	Mostafa Dadar
Alleged victims:	The complainant
State party:	Canada
Date of the complaint:	29 November 2004 (initial submission)

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2005,

Having concluded its consideration of complaint No. 258/2004, submitted to the Committee against Torture by Mr. Mostafa Dadar under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision of the Committee against Torture under article 22 of the Convention

1.1 The complainant is Mr. Mostafa Dadar, an Iranian national born in 1950, currently detained in Canada and awaiting deportation to Iran. He claims that his deportation would constitute a violation of article 3 of the Convention against Torture. The Convention

entered into force for Canada on 24 July 1987. The complainant is represented by counsel, Mr. Richard Albert.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 30 November 2004. Pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Iran while his case was pending before the Committee. The State party acceded to such request.

Factual background

2.1 From 1968 to 1982 the complainant was a member of the Iranian Air Force, where he obtained the rank of captain. In December 1978, when rioting and widespread protests in the country was at its peak, and prior to the installation of the Ayatollah Khomeini, he was given the responsibility of commander of martial law at "Jusk" Air Force Base. He claims that he was given that assignment, *inter alia*, because he was an outspoken opponent of Ayatollah Khomeini and strongly loyal to the Shah.

2.2 On 13 February 1979, after Ayatollah Khomeini became President of Iran, he was arrested and kept in Q'asr prison in Tehran for almost 3 months. He was frequently interrogated and beaten. On 2 May 1979, he was released and soon afterwards was assigned to an Air Force base in Mehrabad, Tehran.

2.3 In December 1980, he was expelled from the Air Force on allegations of being loyal to the monarchist regime, but in February 1981, he was called back to service. He retained his rank of captain and was assigned to "Karaj" radar station in Tehran. In July 1981, he was expelled a second time from the Air Force, due to the fact that he had expressed sentiments of loyalty to the Shah. Subsequently, he became involved with the National Iranian Movement Association ("NIMA"), which staged an unsuccessful coup d'état against the Khomeini regime in 1982. In March 1982, in the aftermath of the coup d'état, many NIMA members were executed. The complainant was arrested, taken to Evin prison in Tehran and severely tortured. He was also kept incommunicado. On 9 July 1982, he was subjected to a false execution. On three occasions, authorities called his brother informing him of the complainant's execution. The complainant provides copy of a newspaper article referring to his detention and trial.

2.4 In December 1984, he was found guilty of an attempt against the security of the state and transferred to Mehr-Shar prison, near the city of Karaj. According to the complainant, this prison is partially underground and he was deprived of sunlight for most of the time. In May 1985, he was transferred to Gezel Hessar prison, where his health deteriorated drastically and he became paralyzed from the waist up.

2.5 In July 1987, he got a two-day medical pass to exit the prison in order to obtain medical treatment. At that time, some members of his family were in contact with a pro-monarchist organization known as the Sepah Royalist Organization, based in London. Arrangements had been made through Sepah for removing him from Iran. During his two-day release he fled to Pakistan with his wife.

2.6 The UNHCR Office in Karachi issued the complainant with an identity card and referred him to Canada, which permitted him to enter Canada with his wife as a Permanent Resident on 2 December 1988.

2.7 The complainant states that, while in Pakistan, he was actively involved in operations on behalf of the Shah. He provides copy of four letters from the Military Officer of the Shah, dated between 1987 and 1989, referring to his activities. The last one, dated 24 January 1989, states the following: "We would like to congratulate your landing in Canada as a permanent resident. We appreciate your sense of duty and thank you. We do not have any activity in Canada or any other country like Canada which would require your services. Certainly, you would be called to a tour of duty any time we need you." He also provides copy of a letter dated 4 April 2005 from the Secretariat of Reza Pahlavi stating: "Given Mr. Mostafa Dadar's background and extended high profile political activities, his return to Iran under existing circumstances will indeed subject him to methods used frequently by the intolerant clerics in Iran, namely, immediate imprisonment, torture and eventually execution".

2.8 In Canada, the complainant was treated for severe depression, anxiety and suicidal tendencies. He was diagnosed with chronic post-traumatic stress disorder, as a result of the treatment to which he was subjected while in prison. The complainant is now divorced from his wife, with whom he has two Canadian born children.

2.9 On 31 December 1996, the complainant was convicted of aggravated assault and sentenced to 8 years in prison. The assault was upon a woman the complainant had recently befriended and resulted in her being hospitalized in intensive care and in the psychiatric ward for several weeks, unable to speak or walk. She sustained permanent disability. At trial the complainant pled not guilty. He has maintained this position ever since. He lists a number of irregularities that occurred at the trial. He says, for instance, that the judge did not take into consideration the fact that he had been found in a sleepy and drug induced stupor at the crime scene. He had just woken up from a drug induced sleep having ingested a high quantity of sedatives prior to the time the assault occurred. The New Brunswick Court of Appeal dismissed his appeal. A motion for leave to appeal to the Supreme Court of Canada was dismissed in 1999.

2.10 The complainant indicates that, while in detention in Canada, he was offered to meet with the Canadian Intelligence and Security Service (CSIS). After the death of Zahra Kazemi, an Iranian-born Canadian photojournalist who died in detention in Iran in 2003, he provided accurate information to the CSIS about her place of arrest and detention, the kind of torture she was subjected to, the hospital where she was taken to, etc. He had obtained such information telephonically through his sources in Iran. The complainant provides this information as evidence of his involvement with the opposition forces in Iran.

2.11 On 30 October 2000 the Minister of Citizenship and Immigration issued a Danger Opinion pursuant to the Immigration Act, declaring the complainant to be a danger to the public. As a result, on 18 June 2001 he was ordered deported. On 20 August 2001, he filed an Application for Judicial Review of the Minister's Danger Opinion citing a breach of his entitlement to procedural fairness among other grounds. On 5 November 2001, the Minister consented to the application and the danger opinion was quashed. On 11 April 2002, the complainant was granted conditional release by the National Parole Board. On 15 May 2002, he was ordered detained by the Department of Citizenship and Immigration,

pursuant to s. 103 of the former Immigration Act, because it was believed that he posed a danger to the Canadian public.[1] He has remained in detention to date.

2.12 On 21 November 2002, the Minister of Citizenship and Immigration issued a second Danger Opinion. This Opinion was quashed by an Order of the Federal Court of Canada of 8 July 2003.

2.13 On 8 March 2004, the Minister issued a third Danger Opinion, which was upheld after the complainant filed an Application for Judicial Review. This opinion indicates that the complainant had been convicted of the following offences: Theft under $ 5000 in December 1995, for which he was fined $100; assault of his wife, on 12 July 1995, for which he was sentenced to four days in prison and one year probation; aggravated assault, on 14 January 1997, for which he was sentenced to eight years imprisonment. The Opinion acknowledged a Correctional Services of Canada Detention Review report dated 18 October 2001 and stated: "This report also indicates that the risk that Mr. D. poses to the general population is low but rises to moderate if he is in a 'conflicted' domestic relationship."

2.14 Regarding the risk of torture the Minister states the following: "I cannot, however, disregard the country conditions present in Iran at this time when considering whether or not a person who has been found to be a Convention refugee may be "refouled". I also cannot ignore the material prepared by the Immigration and Refugee Board concerning the lack of force of the monarchist movement in Iran at this time. While there is no doubt in my mind that the human rights situation in Iran is precarious, it is my opinion that Mr. D. would be of limited interest to Iranian authorities due to his former membership in this organization; though I do acknowledge that he claims that he is still a supporter of this movement. He left Iran some 17 years ago and was imprisoned 21 years ago. (…) In the event that I am in error and Mr. D. would be subjected to torture, death or to cruel and unusual treatment or punishment, I am guided by the principles expressed by the Supreme Court of Canada in the case of Suresh. In Suresh, the Supreme Court noted: (…) 'We do not exclude the possibility that in exceptional circumstances, deportation to face torture might be justified'".

2.15 The complainant indicates that the Correctional Services of Canada (CSC) is the main agency to make determinations in regard to the future risk of offenders if they were to be released to society. A report completed by a CSC parole officer is one of the most objective tools available to the CSC for determining if the subject of the report will pose any danger to the public if he was to be released. The reporting procedure governing risk assessment is based on file materials, psychological assessments, program performances, etc. The complainant report concluded that there were no reasonable grounds to believe that he was likely to commit an offence resulting in serious harm prior to the expiration of his sentence according to the law.

2.16 The complainant also sent to the Committee copies of two psychological assessment reports according to which he represented a low risk to the general public and a moderate risk in the context of a spousal relationship.

[1] At that time, a valid Danger Opinion was not yet in place, the first Danger Opinion having already been quashed.

2.17 The complainant challenges the Danger Opinion in that it states that there has not been a politically motivated arrest or execution of monarchists in Iran since 1996. He says that the founder of the Iran Nation Party, a monarchist political organization, and five of his colleagues were summarily executed in Tehran by members of the Iranian intelligence service in 1998. Monarchists in Iran are very active, but are unwilling to engage in a campaign of terror to achieve their goals.

2.18 The complainant further states that the Danger Opinion is based, in large part, on allegations made by his ex-wife. Such allegations should be regarded as being tainted by strong animosity against the complainant, by reason of their marital separation and divorce.

2.19 The complainant applied for judicial review of the third Danger Opinion. On 12 October 2004, the Federal Court of Canada upheld the Opinion. On 22 February 2005, the complainant filed an application for release on humanitarian and compassionate grounds. On 31 March 2005, he filed an application pursuant to s.84.(2) of the Immigration and Refugee Protection Act for release as a foreign national who has not been removed from Canada within 120 days after the Federal Court determines a certificate to be reasonable.

The complaint

3. According to the complainant, there are substantial grounds for believing that he would be subjected to torture if returned to Iran, in violation of article 3 of the Convention. He refers to reports indicating that torture is practiced extensively in Iran. Should the complainant be removed to that country, attempts to extract information from him will jeopardize not only the complainant's own life, but also the lives of several others in Iran who at one time or another aided or cooperated with him in his activities against the Iranian regime.

State party's submissions on the admissibility and merits of the complaint

4.1 In its submission of 24 March 2005, the State party indicates that it does not challenge the admissibility of the complaint on the ground of non-exhaustion of domestic remedies. It notes, however, that the complainant had not made an application under s 25(1) of the Immigration and Refugee Protection Act, despite the fact that, in his submission to the Committee, he had expressed his intention to do so.
However, the State party claims that the case is inadmissible because the complainant failed to establish a *prima facie* violation of article 3 of the Convention. If the Committee concluded that the communication was admissible, the State party submits, on the basis of the same arguments, that the case is without merit.

4.2 The State party indicates that in July 1995 the complainant was convicted of assault against his former wife, Ms. J.. They separated in 1995. They have two children who live with the mother. By court order, the complainant is not permitted access to the children out of concern for their safety and well being. In December 1995 he was convicted of theft of an amount under $5000 and was fined $100. In January 1997, he was convicted of aggravated assault upon his then girlfriend and sentenced to eight years of imprisonment. The assault occurred while he was on probation with respect to the 1995 assault conviction.

4.3 Throughout the appeal process, the complainant asserted that he did not commit the offence. However, he has made several statements which effectively amount to admitting his crimes, and has even expressed remorse for the victim. The State party refers, in this respect, to the submissions made by the complainant relating to the Ministerial Opinion Report dated 30 October 2000.

4.4 The Ministerial Opinion Report, dated 15 October 2000, concluded that there was little doubt that the complainant received harsh and inhuman treatment when he was in Iran. Relying on the *1999 US Country Report on Human Rights Practices,* the Opinion also observed that he could face harsh and inhuman treatment upon his return. However, the Opinion determined that the risk that the complainant represented to Canadian society outweighed any risk that he might face upon his return to Iran. As a result of the Report, the complainant was ordered deported on 18 June 2001. On 14 November 2001, due to procedural defects, the Federal Court ordered the Opinion set aside, and referred the matter back for re-determination.

4.5 A second Ministerial Opinion Report was issued against the complainant on 21 November 2002. The Risk Assessment given in the Request of Minister's Opinion, dated 17 July 2002, was that there were no substantive grounds to believe that the complainant would face torture, and that it was unlikely that he would be subject to other cruel, inhuman and degrading treatment or punishment, should he be removed to Iran. This assessment was based on the fact that the complainant did not provide details of his current involvement with the NIMA organization, that it had been 20 years since participating in the failed coup, and 16 years since he had left Iran. On 21 November 2002, the Minister gave his opinion. He noted that the situation in Iran had ameliorated somewhat, but that there was a risk that the complainant could be re-arrested due to his prison escape and again subjected to torture. It concluded, however, that the significant risk to the public in Canada had to be given greater weight than the risk that the complainant may be re-arrested and tortured upon his return to Iran. On 8 July 2003, due to procedural defects, the Federal Court of Canada ordered the Opinion set aside and referred the matter back for re-determination.

4.6 A third Ministerial Opinion Report was issued on 8 March 2004. It concluded that the complainant, like other returnees, may be subjected to a search and to extensive questioning upon return to Iran for evidence of antigovernment activities abroad. However, in itself, this did not establish any serious risk that he would face torture or other cruel, inhuman or degrading treatment or punishment. The report recalled that it had been 21 years since the complainant was imprisoned for his political activities and that there had been a large reform movement in Iran since 1997. Furthermore, it was difficult to accept that the complainant maintained any high profile within Iranian society. The Opinion also referred to the situation of pro-monarchists in Iran citing two papers that were prepared by the Research Directorate of the Immigration and Refugee Board in March 2000 and October 2002. The first one concluded that the monarchists were no longer organized and active in Iran. The second stated that monarchist demonstrations were dispersed using tear gas and clubs and that some individuals were arrested. The Opinion concluded that the complainant would be of limited interest to Iranian authorities due to his former membership in a pro-monarchist organization which no longer posed a threat to the current regime.

4.7 The report also pointed out to certain inconsistencies regarding the circumstances of the complainant's escape from prison. In a Community Assessment document dated 1 September 1998 the complainant's former wife stated that he was sentenced to two years' imprisonment and was released within that time frame, less 22 days for good behaviour. Furthermore, a psychological report dated 8 December 1988 indicated that the complainant went to Pakistan after release from jail.

4.8 The Ministerial Opinion report also indicated that the complainant had presented no specific evidence to establish that he did remain politically active while in Canada. He had not suggested that the Iranian authorities had actively sought him out at any time and there was no mention of any harassment by government officials towards his family members. Taken into consideration that he had been incarcerated for a number of years and, prior to that, lead what was apparently an isolated existence, it was unlikely that he had remained politically active in any significant way.

4.9 The State party concludes that the complainant did not *prima facie* establish substantial grounds for believing that his removal to Iran will have the foreseeable consequence of exposing him to a real and personal risk of being tortured. While it does not dispute that the complainant was at one time involved in a failed coup d'état or that he was imprisoned as a result of his participation in the coup, he has not shown that he faces any risk of torture if he is removed to Iran by reason of his past association with the NIMA. He has provided a newspaper clipping written in Persian and a letter from the Secretariat of Reza II. Both date back to 1988. He has provided no recent material to suggest that Iranian authorities have any interest or intention to prosecute or detain him and subject him to any treatment contrary to article 3. His participation in an attempted coup that took place over 20 years ago cannot be viewed as having occurred in the recent past.

4.10 The complainant has provided no evidence to suggest that members of his family in Iran have been the victims of retribution by the Iranian authorities because of his alleged political opinions, nor on account of any involvement in his alleged escape from prison and subsequent departure from Iran. In fact, all that remains is the complainant's bare assertion that he will be tortured or executed upon his return. Given the complainant's continuing equivocation with respect to whether he did or did not commit aggravated assault, as well as other inconsistencies that were noted by the Federal Court in its reasons for dismissing the complainant's application for judicial review, the State party submits that the complainant is not credible and that reliance should not be placed on his word alone.

4.11 Regarding the complainant's activities since leaving Iran, all the complainant has provided is his own unreliable statement that he continued his political involvement in Canada. In the absence of credible and recent evidence, it is impossible to conclude that he faces a danger that is personal, present and foreseeable. Finally, while the human rights situation in Iran remains problematic, the complainant has provided no evidence in support of his allegations that he himself is at any risk of torture.

4.12 The State party submits that three risk assessments were conducted prior to the determination that the complainant was a danger to the public and should be removed from Canada. The complainant had the opportunity to make submissions about the risks he would face on three separate occasions. He used these opportunities and made extensive submissions in relation to his particular circumstances. In none of the three separate

assessments was the conclusion reached that the complainant faced a substantial risk of torture if he were to be removed to Iran. In fact, in the most recent assessment, it was determined that the Iranian authorities would have a minimal interest in him. This finding was upheld by the Federal Court.

4.13 The State party contends that the Committee should not substitute its own findings on whether there were substantial grounds for believing that the complainant would be in personal danger of being subjected to torture upon return, since the national proceedings disclose no manifest error or unreasonableness and were not tainted by abuse of process, bad faith, manifest bias or serious irregularities. It is for the national courts of the States parties to the Convention to evaluate the facts and evidence in a particular case and the Committee should not become a "fourth instance" competent to re-evaluate findings of fact or to review the application of domestic legislation.

4.14 Alternatively, if the communication were declared admissible, the State party requests the Committee to conclude, based on the same submissions, that the communication is without merit.

Complainant's comments on the State party's submission

5. By letter of 11 July 2005, the complainant contends that the Danger Opinion of 8 March 2004 is based, in large part, on allegations made by his ex-wife. However, her statements must be regarded as being tainted by strong animosity against him by reason of their marital separation and divorce. He provides examples of statements made by her in other to demonstrate that she is not a credible witness. For instance, in statements before the police she feigned that she did not know the complainant's girlfriend; this was not true, as both women had a prior acquaintance that predated the assault. According to a police report dated 23 May 1996, police arrived at her residence on 27 April 1996 after she called them alleging that the complainant had threatened her. However, despite such allegations the complainant was not charged. The inference is that the complainant did not threaten her and that her allegations to the police were false.

Additional submission of the State party

6.1 By submission of 29 July 2005, the State party enumerates the list of sources that were consulted in the preparation of the Ministerial Opinion Report with respect to the role of Monarchists in Iran. Reports and publications from the United Nations, the US Department of State, as well as non-governmental organizations have documented human rights abuses in Iran, including the use of torture against particular groups. These groups generally include: prominent political dissidents, journalists, women, youth and religious minorities. There is scarce mention of monarchists in such reports. What little discussion there is of monarchists is limited to the period immediately following the 1979 Revolution. The complainant refers to a list of individuals belonging to the NIMA who were allegedly executed. However, the date of the executions was 9 November 1982.

6.2 The complainant refers to the 1998 killing of Dariush and Parvaneh Forouhar, founders of the Iran Nation Party, as an example of a recent incident of torture perpetrated against monarchists in Iran. While the State party is not in a position to comment on the circumstances that led to the killing, neither the 2004 US State Department Report relied on by the complainant, nor any other report found by the Government of Canada describe

the Forouhars or the Iran Nation Party as "hard core monarchists". Rather, they are described as "prominent political activists" or "prominent critics of the Government". Moreover, according to Human Rights Watch, Mr. Forouhar was also a former political prisoner under Shah Pahlavi, the founder of the monarchist movement. This casts doubt on the complainant's assertion that the Forouhars were part of a "hard core monarchist political organization". The State party concludes that the link between the Forouhars and the monarchists has not been made out.

6.3 The State party offers information about other alleged monarchists aiming to demonstrate that there have not been any politically motivated arrests or prosecutions of monarchists in Iran over the past several years. Furthermore, the complainant, by his own account, has not been involved with monarchists since he left Pakistan in 1988. As a result, his involvement cannot be said to rise to a level of prominence that would attract the attention of Iranian authorities.

Additional submission of the complainant

7.1 By letter of 27 September 2005, the complainant refers to one of the Danger Opinions, which used sources according to which, in February 2001, the Iranian police used tear gas to disperse a demonstration by monarchists and that dozens of demonstrators were arrested and a number of others were injured. He also submits that the Forouhars, although political prisoners under the Shah Pahlavi, are now pro-monarchist. He names other alleged monarchists or pro-monarchists who were arrested after July 1999, accused of organizing a protest against the Iranian regime and executed on 15 March 2003.

7.2 There are two major groups in Iran which oppose the present regime, namely the MEK and the monarchists. The MEK has been involved in terrorist activities and is therefore a less legitimate replacement for the current regime. Monarchists operate several television stations in different countries and are actively involved in disseminating information criticizing the current Iranian regime.

7.3 The complainant reiterates his involvement with monarchists since 1988. He refers to the letters of 24 January 1989 and 4 April 2005 (see para. 2.7) and states that he is an officer on-call for the monarchists. He reiterates that on 20 June 2003 he was interviewed by the Canadian Security and Intelligence Service, who offered to engage his services.

7.4 Regarding the sources referred to by the State party, the complainant submits that the majority of international human rights organizations have not had direct contact with prisoners of the Iranian regime that would allow them to accurately gauge the extent of the regime's brutality against its detractors, including monarchists.

7.5 The complainant refers to the poor human rights record of Iran and cites the 2002 Amnesty International Report, according to which torture and ill-treatment, including of prisoners of conscience, continued to be used.

Issues and proceedings before the Committee:

8.1 Before considering any claims contained in a complaint, the Committee against Torture decides whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 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. The Committee further notes that the State party does not challenge the admissibility of the complaint on the ground of non-exhaustion of domestic remedies and that the complainant has sufficiently substantiated his allegations for purposes of admissibility. Accordingly, the Committee considers the complaint admissible and proceeds to its consideration of the merits.

8.2 The issue before the Committee is whether the removal of the complainant to Iran would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. 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 a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.4 The Committee recalls its General Comment on article 3, which states that the Committee is to assess whether there are substantial grounds for believing that the complainant would be in danger of torture if returned, and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. The risk need not be highly probable, but it must be personal and present.

8.5 In assessing the risk of torture in the present case, the Committee notes that the complainant claims to have been tortured and imprisoned on previous occasions by the Iranian authorities because of his activities against the current regime and that, after his arrival in Canada, he was diagnosed with chronic post-traumatic stress disorder. This is not contested by the State party.

8.6 Although the complainant's torture and imprisonment occurred between 1979 and 1987, i.e. not in the recent past, the complainant claims that he is still involved with the Iranian opposition forces. The State party has expressed doubts about the nature of such involvement. However, there are no clear indications, from the information before the Committee, that such involvement is inexistent. In this regard, the complainant has submitted a number of letters referring to his activities as a member of the monarchist opposition group. In one of them, fears are expressed that he might be imprisoned, tortured and eventually executed if he returns to Iran under existing circumstances. The complainant has also submitted information in support of his claim that the Monarchists are still active inside and outside the country and that they continue to be persecuted in Iran. Furthermore, the State party has not denied that the complainant cooperated with the Canadian Intelligence and Security Service in 2003. The complainant submitted such

information to the Committee as evidence of his continuing involvement with Iranian opposition forces.

8.7 The Committee is aware of the human rights situation in Iran and notes that the Canadian authorities also took this issue into consideration when assessing the risk that the complainant might face if he were returned to his country. In this regard, it notes that, according to such authorities, there is no doubt that the complainant would be subjected to questioning if returned to Iran, as are all persons returned through deportation. In the Committee's view, the possibility of being questioned upon return increases the risk that the complainant might face.

8.8 The Committee notes that the complainant's arguments and his evidence to support them, have been considered by the State party's authorities. It also notes the State party's observation that the Committee is not a fourth instance. While the Committee gives considerable weight to findings of fact made by the organs of the State party, it has the power of free assessment of the facts arising in the circumstances of each case. In the present case, it notes that the Canadian authorities made an assessment of the risks that the complainant might face if he was returned and concluded that he would be of limited interest to the Iranian authorities. However, the same authorities did not exclude that their assessment proved to be incorrect and that the complainant might indeed be tortured. In that case, they concluded that their finding regarding the fact that the complainant presented a danger to the Canadian citizens should prevail over the risk of torture and that the complainant should be expelled from Canada. The Committee recalls that the prohibition enshrined in article 3 of the Convention is an absolute one. Accordingly, the argument submitted by the State party that the Committee is not a fourth instance cannot prevail, and the Committee cannot conclude that the State party's review of the case was fully satisfactory from the perspective of the Convention.

8.9 In the circumstances, the Committee considers that substantial grounds exist for believing that the complainant may risk being subjected to torture if returned to Iran.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to Iran would amount to a breach of article 3 of the Convention.

10. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]
