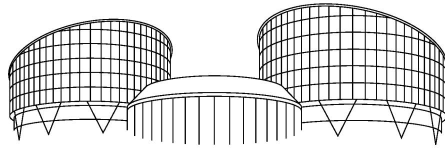

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 209/16
T.M. and Y.A.
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 5 July 2016 as a Chamber composed of:
Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova, *judges,*
and Stephen Phillips, *Section Registrar,*
Having regard to the above application lodged on 24 December 2015,
Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with,
Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,
Having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms T.M. and Mr Y.A., are a mother and son of Iranian nationality. They were born in 1961 and 1988 respectively and are currently living in the Netherlands. The duty judge decided that the applicants' identities should not be disclosed to the public (Rule 47 § 4 of the Rules of Court). They were represented before the Court by Mr P.C.M. Schijndel, a lawyer practising in The Hague.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

A. The circumstances of the case

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

3. The applicants entered the Netherlands on 23 March 2014 holding a Schengen visa issued by the Netherlands consulate in Tehran, Iran for the purpose of visiting a family member. Their visa expired on 28 April 2014. On 27 May 2014 the applicants applied for asylum in the Netherlands. The applicants were interviewed individually by the Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst*, "the IND") on 19 August 2014 and 22 September 2014.

4. Both applicants submitted that three or four days prior to their scheduled return to Iran from the Netherlands, the first applicant, who had been staying at a family member's house, had been called by her daughter, E. The daughter had warned the applicants not to return to Iran as they were in danger because the house church which they attended had been raided by the Iranian authorities. Several people, including E.'s husband, had been arrested. The applicants had not been able to get in touch with E. since. They stated that that was the direct reason for their asylum application.

5. In her interviews the first applicant stated that a colleague in Iran, with whom she had worked since July or August 2013, had proselytised her. The colleague held house church meetings which the first applicant had attended for the first time in October or November 2013. During that visit, which the first applicant later confirmed had taken place on 24 November 2013, she had said a prayer in order to convert to Christianity. She had then informed her son, the second applicant, about her conversion after which the latter had joined her at the next house church meeting a week later. Prior to her visit to the house church she had been provided with a Bible by her colleague, which she had shared with her son and had kept on the open shelves of a bookcase in her house. She had chosen Christianity because she had been suffering because of Islam and therefore resented that religion, especially after she had been raped by a local mullah. She had taken the Bible with her to the Netherlands, despite being aware of possible negative repercussions if it had been discovered by the Iranian authorities at the airport. She had covered it with the outside of an Iranian newspaper and had hidden it among her clothes in her suitcase.

6. The second applicant stated in his interviews that at a certain point in time he had been introduced to Christianity by his mother, that this had triggered his curiosity about that religion, and that he had gone to the house church meetings with her. He had started to read more about Christianity on the Internet while in Iran and as a result his beliefs had strengthened. Also, he resented Islam, which he considered a violent religion, in contrast to the Christian faith, which appealed to him because of the precepts of forgiveness and love. The second applicant also stated that house church

meetings had often been held at his mother's colleague's house and that no security measures had been taken to prevent their activities being discovered by the authorities. During such meetings the attendees would read the Bible or extracts from it and then hold a discussion. The second applicant added that he had shared a Bible with his mother and that it had been placed in different rooms in their house, including in a bookcase that could be partly closed. He added that although he said prayers during the house church meetings he had not said a prayer specifically for his conversion, which had been a process that had happened over the course of several meetings.

7. The applicants also stated that they had converted E. and her husband in December 2013. They added that they had been attending church services in the Netherlands and that their baptism was scheduled for October 2014.

8. The applicants were baptised at the Tilburg Evangelical Baptist Church (*Evangelische Baptisten Gemeente Tilburg*) on 19 October 2014.

9. On 20 November 2014 the applicants were notified of the intention of the Deputy Minister of Security and Justice (*Staatssecretaris van Veiligheid en Justitie*) to reject their asylum applications as their asylum statements had not been believed. The Deputy Minister stated that the applicant's delay in lodging an asylum application raised doubts about the reasons for their application. The reasons they had given, that they had had difficulties in informing their family member in the Netherlands about the problems in Iran and that the first applicant had needed time to recover from an injury, did not excuse such a delay. As to the applicants' conversion to Christianity, the Deputy Minister held that it did not appear that there had been a deep internal belief and a corresponding process of conversion, and that all of the activities they said they had been involved in Iran seemed very informal, especially considering the short length of time that had gone into their alleged conversion and for the first applicant to convert her son, daughter and son-in-law. The Deputy Minister held that the applicants' statements about the house church meetings detracted from the credibility of their account as they had seemingly gained easy access to those meetings and because no security measures had been taken to ensure that they would not be discovered by the authorities, which was strange considering the situation for Christians in Iran. The Deputy Minister also held that both applicants had only given a superficial account of the conversion process, especially the timeline of the various events leading up to and following that process, the contacts with the first applicant's colleague and about the people who had attended the house church meetings. Furthermore, the Deputy Minister noted that the applicants had made contradictory statements about where in their house the Bible had been kept, had also been unable to explain where the first applicant's colleague had been able to get a copy of the Bible, and why they had taken the risk of travelling to the Netherlands with a Bible when they knew what the consequences would be if it was discovered by the Iranian authorities when leaving or returning to

Iran. The Deputy Minister also noted that it was strange that the applicants had not been able to provide details about the telephone call from E., such as the information she had given about the raid at the house church, and why she had called the applicants' relative rather than one of them directly.

10. On 10 December 2014, counsel for the applicants submitted their comments on the notification.

11. By decisions taken on 8 January 2015 the Deputy Minister, confirming the assessment in his notice of intent, rejected the applicants' asylum applications. He added that the applicants' baptism did not in itself constitute a fact that confirmed the sincerity of their conversion, as it was relatively easy to join a church and register oneself as a convert at a church. The fact that the applicants had demonstrated that they had some knowledge of the Bible did not invalidate the finding that their conversion lacked credibility as such knowledge was easily acquired. Furthermore, a letter of 7 August 2014 from a Mr H.W. of the Tilburg Evangelical Baptist Church, confirming the sincerity of the applicants' conversion, was insufficient to lead to a different finding as it had still been incumbent on the applicants to make a plausible case for the genuineness of their conversion. The Deputy Minister held in that connection that the first applicant had been unable to name the church where she had intended to be, and had later been, baptised; she had only known the first name of the minister at that church, and had stated that she had only had one conversation prior to her scheduled baptism. That contradicted Mr H.W.'s letter, which referred to discussions about baptism prior to the actual ceremony. The Deputy Minister held that neither applicant had demonstrated a deep-rooted, inner conviction of being a Christian and therefore a sincere conversion had not taken place.

12. The applicants lodged an appeal against the Deputy Minister's rejection of their application with the Regional Court (*rechtbank*) of The Hague. They argued, *inter alia,* that their statements could not have led the Deputy Minister to conclude that because there had not been a lengthy process leading up to their conversion then that conversion was improbable. The applicants submitted a joint letter from Mr K.J.D. and Mr A.P. of 11 January 2015 from the Appingedam Evangelical Baptist Church, and a separate letter of 19 February 2015 from Mr A.P. The first letter confirmed that the applicants had attended Bible studies and weekly church services and that they were sincere in their beliefs. The second letter stated that the applicants demonstrated that they had gone through an internal process of conversion.

13. Following a hearing held on 29 July 2015 in the presence of the applicants and their counsel, the Regional Court of The Hague on 25 August 2015 dismissed their appeal. As to the assessment of an asylum claim based on religious grounds, the court held:

> "... the Deputy Minister applies a fixed policy in the assessment of religious grounds put forward by an alien in an asylum application. That policy involves the Deputy

> Minister putting questions to an alien which – in so far [as these] are applicable in a particular situation – can generally be divided into questions about the motivation for and the process of conversion, including the meaning and practical performing of baptism and a baptism ceremony, and about the personal meaning of the conversion or of the religion for an alien. Furthermore, those questions concern the general, basic knowledge about the religion's doctrine and practices. Finally, the Deputy Minister expects that an alien who submits that attendance at church is part of his religion, is able to answer questions about that, for example, where the church he attends is located, what time the service or mass takes place, and what happens during the service or mass. Similar questions are put by the Deputy Minister to an alien about other ways in which he exercises his professed religion, such as evangelisation activities. ... the Deputy Minister rightly takes as a point of departure the fact that conversion by an alien who is from a country where conversion to another religion than the predominant one in that country is socially unacceptable should be based on a deliberate and conscious decision, which an alien should be able to explain."

14. The Regional Court proceeded to uphold the Deputy Minister's view that the applicants had failed to demonstrate that their decision to convert to Christianity and the process of conversion had been deliberate and conscious. The Regional Court referred in that regard to, *inter alia*, the alleged conversion of the first applicant which, she stated, had occurred at her very first house church meeting after saying a prayer; the relatively short time in which trust had been built up between the applicants and the first applicant's colleague; the absence of measures to prevent the discovery of the house church; the contradictory statements about where the applicants kept their Bible; and the applicants' failure to provide information about how the first applicant's colleague had been able to obtain a copy of the Bible and to provide details about E.'s telephone call.

As regards the applicants' argument that even if it was assumed that they had not converted in Iran then they had done so in the Netherlands, the Regional Court agreed with the Deputy Minister that it was relatively easy to join a church, study the Bible and get baptised, but that such circumstances could not be decisive. A certain amount of knowledge of the Christian religion could not, in and of itself, lead to the conclusion that a conversion had been sincere. Although the letters from H.W., K.J.D. and A.P. might be capable of corroborating a conversion, it was nevertheless incumbent on the applicants themselves to provide convincing statements about their alleged conversion and the process leading up to it. The Regional Court noted that the applicants had not been able to state the names of the churches they had attended in the Netherlands and had known only the first names of the ministers at those churches.

The Regional Court concluded that the applicants had failed to make a plausible case that they feared persecution or inhuman treatment in Iran.

15. On 29 September 2015 a further appeal lodged by the applicants was dismissed by the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State (*Raad van State*).

B. Developments after application to the Court

16. An application to the Court was lodged on 24 December 2015. On 7 January 2016 the duty judge decided to indicate to the Government of the Netherlands that it was desirable in the interests of the parties and the proper conduct of the proceedings before the Court not to deport the applicants to Iran for the duration of the proceedings before it (Rule 39 of the Rules of Court).

C. Relevant domestic law and international material relating to refugees "*sur place*"

1. Domestic law

17. The admission, residence and expulsion of aliens are regulated by the Aliens Act 2000 (*Vreemdelingenwet 2000*). Further rules are laid down in the Aliens Decree 2000 (*Vreemdelingenbesluit 2000*), the Regulation on Aliens 2000 (*Voorschrift Vreemdelingen 2000*) and the Aliens Act Implementation Guidelines 2000 (*Vreemdelingencirculaire 2000*).

18. Article 3.37b of the Regulation on Aliens 2000 provides as follows:

> "1. A well-founded fear of persecution within the meaning of the Refugee Convention or a real risk of serious harm can be based on events which have taken place since the alien left the country of origin.
>
> 2. A well-founded fear of persecution within the meaning of the Refugee Convention or a real risk of serious harm can be based on activities which have been engaged in by the alien since he left the country of origin, in particular where it is established that the activities relied on constitute the expression and continuation of convictions or orientations held by the alien in the country of origin."

19. Article C2/3.2 of the Aliens Act Implementation Guidelines 2000 reads, in so far as relevant:

> "The IND will grant the alien who complies with Article 3.37b of the Regulation on Aliens a temporary residence permit for the purpose of asylum. This alien will be designated as '*refugié sur place*'.
>
> Even if the activities which the alien has been engaged in after his departure from the country of origin do not follow on from the activities in which he had already been engaged in the country of origin prior to his departure, the IND can designate the alien as a '*refugié sur place*'. This may be the case when the alien complies with the following conditions:
>
> • the authorities in the country of origin are aware, or the alien has made a plausible case for believing that the authorities in the country of origin will become aware, of those activities; and
>
> • the activities entail a well-founded fear of persecution within the meaning of Article 1A of the Refugee Convention."

2. International material

20. The section entitled "Refugees 'sur place'" in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees provides, in so far as relevant, as follows:

> "94. The requirement that a person must be outside his country to be a refugee does not mean that he must necessarily have left that country illegally, or even that he must have left it on account of well-founded fear. ... A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee 'sur place'.
>
> 95. A person becomes a refugee 'sur place' due to circumstances arising in his country of origin during his absence. ...
>
> 96. A person may become a refugee 'sur place' as a result of his own actions, ... Whether such actions are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances. Regard should be had in particular to whether such actions may have come to the notice of the authorities of the person's country of origin and how they are likely to be viewed by those authorities."

COMPLAINT

21. The applicants complained that there were substantial grounds for believing that they would be subjected to treatment prohibited by Article 3 if they were expelled to Iran because of their conversion to Christianity. Even if – *quod non* – the Iranian authorities had not already been aware of their conversion, they would become aware of it upon the applicants' return as they would no longer observe Islamic rules and practices, but intended actively to continue practising their Christian faith, including their wish to persuade others of the correctness of that faith.

THE LAW

22. The applicants complained that their expulsion to Iran would be contrary to Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. General principles

23. The Court reiterates the general principles regarding the assessment of applications for asylum under Articles 2 and 3 of the Convention as

recently set out in the judgment in the case of *F.G. v. Sweden* ([GC], no. 43611/11, §§ 111-118, 23 March 2016, with further references). Most importantly, the machinery of complaint to the Court being subsidiary to national systems safeguarding human rights, the Court does not itself examine the actual asylum applications. Its main concern is whether effective guarantees exist that protect the applicant against *refoulement*, be it direct or indirect, to the country from which he or she has fled. Moreover, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts – as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned.

24. The judgment in *F.G. v. Sweden* also contains an overview of the State's procedural duties in the examination of applications for asylum (*F.G. v. Sweden*, cited above, §§ 119-127). Of particular relevance to the present case are the Court's following considerations:

> "123. In respect of *sur place* activities the Court has acknowledged that it is generally very difficult to assess whether a person is genuinely interested in the activity in question, be it a political cause or a religion, or whether the person has only become involved in it in order to create post-flight grounds (see, for example *A.A. v. Switzerland*, no. 58802/12, § 41, 7 January 2014). That reasoning is in line with the UNCHR Guidelines on International Protection regarding Religion-Based Refugee Claims of 28 April 2004, which state 'that particular credibility concerns tend to arise in relation to *sur place* claims and that a rigorous and in-depth examination of the circumstances and genuineness of the conversion will be necessary ... So-called "self-serving" activities do not create a well-founded fear of persecution on a Convention ground in the claimant's country of origin, if the opportunistic nature of such activities will be apparent to all, including the authorities there, and serious adverse consequences would not result if the person were returned' (see paragraph 52 above). See also the Court's finding in, for example, *Ali Muradi and Selma Alieva v. Sweden* ((dec.), no. 11243/13, §§ 44-45, 25 June 2013) to this effect."

B. Application of the general principles to the present case

25. The Court notes that the applicants based their request for asylum, firstly, on their assumption that after their departure the Iranian authorities had become aware of the fact that they had converted to Christianity while still in Iran. Secondly, they submitted that the intensification of their new faith, which had taken place in the Netherlands, would have adverse consequences for them if they were sent back to Iran. In effect, they argued that they had become refugees *sur place* owing both to events which had occurred in Iran during their absence and to their activities in the Netherlands (see paragraphs 17-20 above).

26. The Court next observes that the Dutch immigration authorities first examined the credibility of the applicants' statements about their alleged conversion to Christianity in Iran as well as the question of whether the applicants' activities in the Netherlands had been the result of a genuine conversion, which had attained a certain level of cogency, seriousness, cohesion and importance (see *F.G. v. Sweden*, cited above, § 144, with further references), before assessing whether the applicants would be at risk of treatment contrary to Article 3 of the Convention if returned to Iran.

27. The Court notes that in the proceedings before the domestic authorities the applicants were interviewed by the Immigration and Naturalisation Service and that a hearing took place before the Regional Court (see paragraphs 3 and 13 above). Their case was examined on the merits by both bodies. The applicants were assisted by counsel before both instances. The national authorities found that the applicants had made rather vague, contradictory and cursory statements about their alleged conversion and that the evidence submitted in relation to both the motivation for that conversion and the process leading up to it had provided too little evidence that a genuine conversion had taken place. While they acknowledged that the applicants had demonstrated a certain amount of knowledge of the Bible, they found that a number of elements undermined the credibility of their account, such as the short length time it had allegedly taken both applicants to convert and to proselytise E. and her husband. There was also a lack of detail from the applicants about the content of E.'s telephone call to warn them not to return to Iran – even though that had purportedly been the direct reason for their asylum application – and about the process in general of their alleged conversion.

28. The Court sees no grounds to depart from the conclusions drawn by the administrative and judicial authorities concerning the credibility of the applicants' alleged conversion, conclusions which were reached following a thorough examination of all the relevant and available information. It further cannot find that there are any indications that the proceedings before those authorities lacked effective guarantees to protect the applicants against *refoulement* or were otherwise flawed. It also considers that the applicants have not made any submissions about any circumstances, or provided any supporting documents to the Court to lead it to depart from the domestic authorities' conclusions.

29. In conclusion, the Court considers that the applicants have failed to substantiate the allegation that if they were returned to Iran they would face a real risk of being subjected to treatment contrary to Article 3 of the Convention.

30. It follows that the application is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

31. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 July 2016.

Stephen Phillips Registrar	Luis López Guerra President