



ADF INTERNATIONAL

ECOSOC Special Consultative Status (2010)

UNIVERSAL PERIODIC REVIEW – THIRD CYCLE

**Submission to the 37th Session of the Human Rights
Council's Universal Periodic Review Working Group**

July 2020

Geneva, Switzerland

AUSTRIA

Submission by:

ADF International
Rue du Pré-de-la-Bichette 1
1209 Geneva, Switzerland

Web: www.ADFinternational.org
Email: un@ADFinternational.org

Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Austria must afford protection to asylum seekers who converted to Christianity from persecution in their countries of origin.

(a) Freedom of Religion or Belief

3. The human right to freedom of religion or belief, as enshrined in Article 18 of the Universal Declaration of Human Rights, includes the freedom to change one’s religion or belief.¹ The Geneva Convention on the Status of Refugees identifies persecution on grounds of religion as a legitimate reason for being recognized as a refugee.² The Geneva Convention further prohibits the expulsion of refugees to a country where their life or liberty may be threatened.³
4. Since 2015, an increasing number of refugees, fleeing religious persecution in their countries of origin, have arrived in Austria. In 2017, Evangelical churches recorded 230 refugees from Muslim backgrounds joining their churches. In the Catholic Archdiocese of Vienna, out of 255 adults who were baptized into the faith, 150 were refugees or asylum seekers. Across the nation, this number amounted to close to 600 people.⁴
5. Austrian asylum procedures with regard to Christian converts have been highly criticized. Officials tend to disregard church certificates and confirmations, the questioning is often incompetent and aggressive, and the interpreters are not always familiar with religious vocabulary.⁵ While conducting an assessment, immigration officials do not consider information provided by bishops and the fact that a baptism involves church preparation and admission, thus denying the church competence in the sphere of religion. Testimonies by community members are not taken into account and even ridiculed.⁶ Church leaders and community members have pointed to the fact that they would soon notice a feigned interest in conversion, as the preparation for baptism can take - both in the Protestant and Catholic Churches - a full year.⁷

¹ Universal Declaration of Human Rights, 1948, Article 18.

² UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Article 1, available at: <https://www.refworld.org/docid/3be01b964.html>

³ Ibid, Article 33.

⁴ Julia Schrenk, ‘Moslems, die zu Christen werden’ *Kurier* (20 January 2018) <<https://kurier.at/chronik/oesterreich/moslems-die-zu-christen-werden/307.535.106>>.

⁵ Stephen Baier, ‘Konvertiten in doppelter Gefahr’ *Die Tagespost* (22 November 2019) <<https://www.die-tagespost.de/politik/aktuell/Konvertiten-in-doppelter-Gefahr;art315,203201>>.

⁶ Ibid.

⁷ Op. Cit. (n13).

6. After a questionable credibility assessment, unsuccessful asylum seekers are taken into detention centers pending deportation to countries where they will face persecution upon their return. Although Christians should not be compelled to hide their faith to avoid persecution, authorities advise unsuccessful asylum seekers to live out their Christian faith secretly, when deported to countries like Afghanistan.⁸ This constitutes a violation of freedom of religion and belief, as protected in Article 18 of the ICCPR, which includes “freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” Catholic and evangelical religious leaders continue to voice criticism, organize protests, and offer sanctuaries in response to such asylum policies.^{9 10}
7. To name one example, a discussion about the deportation of an Iranian refugee converted to Christianity has recently flared up in Vorarlberg. The authorities believed his conversion to be false, disregarding statements of a bishop who supported the asylum seeker through his religious conversion.¹¹
8. In November 2019, the case of Hossein K. caused a public outcry in Austria. Hossein K., an apprentice of a hospital in Schladming and an “exemplary refugee”, was sentenced to deportation to Afghanistan. The 20-year-old Hossein K. was said to be a particularly well-integrated, remarkably hard-working, employed apprentice - and he was preparing for his baptism.¹² Religious leaders voiced their support for Hossein K. stressing that Austria’s commitment to fight persecution of Christians is not compatible with deportation of asylum seekers to countries where they will be persecuted.¹³ Hossein K. was released following the protests.
9. Another Afghan refugee, Elias Shir Hasan Zafari, a converted Catholic residing in Austria for four years, was deported to Afghanistan in February 2020.¹⁴ However, his deportation following a conversion to Christianity poses a threat to the convert’s life. According to the World Persecution of Christians 2019 Index, Afghanistan is the second country in the world with the most extreme persecution of Christians, after North Korea.¹⁵ Article 2 of the Constitution of the Islamic Republic of Afghanistan explicitly states that Islam is the official state religion.¹⁶ In Afghanistan, conversion is considered apostasy with punishments ranging from lengthy imprisonment to death.

⁸ Op. Cit (n18).

⁹ ‘Schladming: Protest gegen drohende Abschiebung von Hossein K’ *Evangelische Kirche in Ostereich* (13 November 2019) <<https://evang.at/protest-gegen-drohende-abschiebung-von-hossein-k-pfarrgemeinde-in-grosser-sorge/>>.

¹⁰ Hasnain Kazim, ‘Österreich will Flüchtling aus Kirchenasyl abschieben’ (25 January 2019) <<https://www.spiegel.de/politik/ausland/oesterreich-will-fluechtling-aus-kirchenasyl-abschieben-a-1249924.html>>.

¹¹ ‘Bischof setzt sich für konvertierten Christen ein’ *Heute* (6 January 2020) <<https://www.heute.at/s/bischof-setzt-sich-fur-konvertierte-christen-ein-44790643>>.

¹² Op. Cit. (n18).

¹³ Katholische Kirche Erzdioezese Wien, ‘Asyl: Kirchen empört über Umgang mit afghanischen Konvertiten’ (11 December 2019) <<https://www.erzdioezese-wien.at/site/home/nachrichten/article/78268.html>>.

¹⁴ ‘Glettler: deportation of converts “blatant injustice”’ *Kath.Net* (8 February 2020) <<https://www.kath.net/news/70615>>.

¹⁵ ‘Index of persecution of Christians 2019’ (Statista, 2019) <<https://www.statista.com/statistics/271002/persecution-of-christians-worldwide/>>.

¹⁶ AFG. CONST. ART. II.

Widespread harassment and intimidation of religious minorities is rampant by the local population and government.¹⁷ Reports of detentions, abductions, and even deaths motivated by religious animus are numerous.¹⁸ Nevertheless, Afghan asylum seekers are deported from Austria on the grounds that their conversion to Christianity lacked credibility.¹⁹

10. The UNHCR Guidelines on International Protection No. 6²⁰ (“the Guidelines”) provide guidance with regard to procedures and criteria for determining refugee status in religion-based refugee claims. The principles underlined in the Guidelines are the need to be objective, to avoid general assumptions and arriving at conclusions based solely upon one’s own experiences, even when belonging to the same religion as the claimant.²¹ This guidance is not precisely followed by the Austrian authorities.
11. The European Convention on Human Rights does not make a reference to refugees; however, it protects the freedom of religion (Article 9) and establishes European human rights standards. It defines several rights and principles which are closely related to the right to seek asylum, for example, the right to life, the prohibition of torture and deriving from it – the principle of non-refoulement (Articles 2 and 3). By applying and interpreting articles 2 and 3 of the European Convention, the European Court of Human Rights (ECtHR) has become the “highest European court in refugee questions, without being entitled to grant asylum strictly speaking.”²²
12. One of the most important ECtHR cases regarding asylum on religious grounds is *F.G. v. Sweden*²³. The Grand Chamber judgment in *F.G. v. Sweden* concerns an Iranian national who applied for political asylum and converted to Christianity after his arrival in Sweden. His application for asylum was rejected by the Swedish authorities, which ordered his expulsion. A lower Chamber found that the man’s expulsion to Iran did not violate his rights under the Convention, as he could avoid any danger by keeping his faith a “private matter” and the Iranian authorities would not become aware of it.²⁴ This finding was overturned by the Grand Chamber. In its judgment, the Grand Chamber quoted the United Nations High Commissioner for Refugees (UNHCR) Guidelines No. 6 maintaining that “religious belief, identity or way of life is considered as so fundamental to human identity that one should not be compelled to hide, change or renounce it in order to avoid persecution.”²⁵

¹⁷ ‘Global Uptick in Government Restrictions on Religion in 2016 (Report, Pew Research Center, 21 June 2018) <<http://assets.pewresearch.org/wp-content/uploads/sites/11/2018/06/19164253/Restrictions-IXFULL-REPORT-WITH-APPENDIXES.pdf>>.

¹⁸ Ibid.

¹⁹ ‘Evangelische Kirche und Diakonie fordern Abschiebestopp nach Afghanistan - Besondere Gefährdung für Christen’, APA (12 November 2019) <https://www.ots.at/presseaussendung/OTS_20191112_OTS0095/evangelische-kirche-und-diakonie-fordern-abschiebestopp-nach-afghanistan-besondere-gefaehrdung-fuer-christen>.

²⁰ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, 28 April 2004, HCR/GIP/04/06 <<https://www.refworld.org/docid/4090f9794.html>>.

²¹ Ibid, para 27.

²² A. Nußberger, “Flüchtlingsschicksale zwischen Völkerrecht und Politik”, *NVwZ* 12/2016, p. 820.

²³ *F.G. v. Sweden*, Application no. 43611/11, Council of Europe: European Court of Human Rights (23 March 2016) <https://www.refworld.org/cases_ECHR_56fd485a4.html>.

²⁴ Ibid, para. 89.

²⁵ Ibid, para. 52.

13. In 2019, in another milestone judgment *A.A. v. Switzerland*,²⁶ the ECtHR ruled unanimously that Switzerland would violate Art. 3 of the European Convention by repatriating an Afghan refugee who had converted from Islam to Christianity. Switzerland had insufficiently examined the effects and dangers of the applicant's return to Afghanistan. In particular, the Swiss authorities have neglected to take into account the fact that Christians in Afghanistan are generally persecuted and that converts in particular are faced with the death penalty. The Court held that in the event of his return the applicant would be obliged to change his social conduct by confining it to a strictly private level.²⁷ He would have to live a life of deceit and could be forced to renounce contact with other Christians, which could amount to a form of "unbearable mental pressure", as well as violating his fundamental right to religious freedom in accordance with the Universal Declaration of Human Rights and with ICCPR Article 18.²⁸ The Court thus upheld the right of Christians to openly profess their faith.²⁹
14. Thus, according to international standards, a deportation of a convert to a country where he or she would face severe persecution would constitute a breach of obligations to protect individuals from torture according to the European Convention on Human Rights. Furthermore, according to the current ECtHR case law, Christians cannot be compelled by the authorities to live out their faith in secret.

(b) Recommendations

15. In light of the aforementioned, ADF International suggests the following recommendations be made to Austria:

Enhance the promotion and protection of the right to freedom of thought, conscience and religion, including the right to manifest such individually or in community with others in public or private, in worship, observance, practice and teaching, in line with all the provisions under article 18 of ICCPR;

- i) Protect those facing persecution due to their religious beliefs and refrain from deporting asylum seekers to countries where they would face torture, imprisonment, or death on account of their faith;
- ii) Ensure that the assessment criteria for asylum-seeking applications is objective, individual, impartial, and consistent, with hearings carried out in a manner of transparency.

²⁶ *A.A. v. Switzerland*, Application No. 32218/17, Council of Europe: European Court of Human Rights (5 November 2019) <<https://www.refworld.org/cases,ECHR,5dca98354.html>>.

²⁷ ECHR, *A. A. v. Switzerland*, n ° 32218/17, 5 November 2019, § 55

²⁸ 'Switzerland would breach the Convention by returning to Afghanistan an Afghan convert to Christianity' (Press Release, 2019) ECHR 379 <[https://hudoc.echr.coe.int/eng-press#%22itemid%22:\[%22003-6553314-8668063%22](https://hudoc.echr.coe.int/eng-press#%22itemid%22:[%22003-6553314-8668063%22)>.

²⁹ Op.Cit. (n42).