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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3070/2017*, **, ***

Communication submitted by:	Q.A. (represented by counsel, Rebecka Hermansson and David Karlsson)
Alleged victim:	The author
State party:	Sweden
Date of communication:	11 December 2017 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 15 December 2017 (not issued in document form)
Date of adoption of Views:	30 October 2019
Subject matter:	Deportation to Afghanistan; torture and other inhuman and degrading treatment
Procedural issue:	Level of substantiation of claims
Substantive issues:	Right to life; risk of torture and other cruel, inhuman or degrading treatment or punishment upon return to country of origin; prohibition of refoulement
Articles of the Covenant:	6, 7 and 18
Article of the Optional Protocol:	2

1.1 The author of the communication is Q.A., a national of Afghanistan and an ethnic Hazara, born around 1997.[1] He claims that his deportation to Afghanistan by the State party would violate his rights under articles 6, 7 and 18 of the Covenant. The Optional Protocol entered into force for Sweden on 23 March 1976. The author is represented by counsel.

* Adopted by the Committee at its 127th session (14 October–8 November 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, Bamariam Koita, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi. In accordance with rule 108 of the Committee's rules of procedure, Ilze Brands Kehris did not participate in the examination of the communication.

*** A joint opinion by Committee members Christof Heyns, Photini Pazartzis and José Manuel Santos Pais (dissenting) is annexed to the present Views.

[1] No identity document with the date of birth of the author was provided to the Committee.

1.2 On 12 December 2017, pursuant to rule 92 of its rules of procedure (now rule 94),[2] the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from deporting the author to Afghanistan while his case was under consideration by the Committee.

Factual background

2.1 The author was 5 years of age when he fled from Afghanistan to the Islamic Republic of Iran with his family in 2003 or 2004, because of the conflict between forces of the United States of America and the Taliban.[3] The author, his mother and his siblings fled the Islamic Republic of Iran in 2015, because his father was forced to leave to fight in the Syrian Arab Republic. The author became separated from his other family members in Turkey.[4] He mentions that he came to Sweden at the age of 17, in September 2015.

2.2 The author is an atheist. He grew up as a Shi'a Muslim, but, after he came to Sweden, he stopped practising the religion. The author asserts that, during his journey to Sweden, he witnessed people suffering and dying, which made him doubt the existence of God. He came to think that his religious dogmas were not trustworthy – and even harmful – because of the wars and conflicts in Muslim countries and between different sects of Islam, including the persecution of religious minority groups. He was also frustrated by the fact that people killed themselves in the name of religion and Islam. While living in Europe, his doubts were further nurtured by his experience of a new way of life and the conversations he had with other people in Sweden. He no longer shows any interest in religion and takes part in many activities that are considered to be forbidden in Islam, including drinking alcohol and smoking. The author's rejection of Islam is widely known among his friends, teachers and acquaintances. It even spread in news articles and social media.[5] Although he made a few visits to Christian gatherings in Sweden, he thought that the Christian faith was not for him and came to the conclusion that he belonged to no religion, given that all religions were more or less the same.[6]

2.3 On 30 September 2015, the author applied for asylum in Sweden. The Migration Board of Sweden rejected his application and in its decision of 5 July 2016 ordered his expulsion to Afghanistan.[7] The author appealed the decision to the Migration Court, which rejected the appeal on 27 February 2017. On 18 April 2017, the Migration Court of Appeal refused leave to appeal, and the decision to expel the author to Afghanistan became final and non-appealable.

2.4 On 12 June 2017, the author was registered by the Migration Board as having absconded.[8] On 16 June, the Migration Board therefore decided to refer the case to the police for enforcement of the expulsion order. The author was subsequently found by the police in connection with the investigation of a minor theft. On 7 July, the police took the author into custody to enforce the expulsion order, given that there was reason to assume

[2] This is the rule under the Committee's former rules of procedure (CCPR/C/3/Rev.10). The equivalent provision under the current rules of procedure (CCPR/C/3/Rev.11) is rule 94.

[3] The author also alleges that his father was threatened by the Taliban and by the district governor, who wanted his land. Although he claims that he lived in the Islamic Republic of Iran after he fled from Afghanistan, it seems that he is neither an Iranian citizen nor is he entitled to live there.

[4] The author alleges that his family travelled on a different boat. The boat sank, and they drowned at sea.

[5] A copy of the Swedish news story featuring the author is on file with the Committee.

[6] The author asserts that he believes the best religion is "humanism" and that he wants to change his name because of its reference to Arab culture and Islam.

[7] The Migration Agency found that the author's account of the threats against his father were vague in nature and lacking in detail, after the examination of his asylum application and interviews conducted with the author. In their view, the author was not able to explain why the threats against his father would have a bearing on the author, in particular after such a long time. The author was not able to give a detailed account of the people who wished to harm him or why he risked being subjected to harm upon his return.

[8] This is because the author failed to attend a meeting with the Migration Agency, and it was impossible to contact him, given that he had left his last known address without leaving a forwarding address.

that he would go into hiding.[9] He appealed the detention decision to the Migration Court of Appeal, which rejected the appeal on 19 July, because there were still grounds for detention.[10]

2.5 On 20 August 2017, the author applied for a temporary residence permit under chapter 12, section 18, of the Aliens Act and re-examination of his asylum claim under chapter 12, section 19, thereof, in the light of "new circumstances", citing impediments to the enforcement of the expulsion order.[11] The author alleged that his mental and physical health had worsened[12] and that he had no religious affiliation, network or support in Afghanistan, in addition to his belonging to the Hazara ethnic minority group, which is subject to discrimination and violence in Afghanistan. He also submitted that the security situation in Afghanistan was seriously worsening.

2.6 In its decision of 21 August 2017, the Migration Board decided not to grant the author a residence permit under chapter 12, section 18, of the Aliens Act and also decided not to re-examine the issue of a residence permit under chapter 12, section 19, thereof.[13] The Migration Board considered that there were no new circumstances which might be presumed to constitute such permanent impediments to enforcement as referred to in chapter 12 of the Aliens Act. The decision was concluded without a hearing of the author in person on the matter of his religious beliefs.

2.7 On 22 August 2017, the author appealed the decision to the Migration Court, emphasizing that he was an atheist. He claimed that he came to believe in no religion, as the result of a gradual process while he lived in Sweden, and that a return to Afghanistan would

[9] The author did not wish to cooperate with facilitating a return to his country of origin.

[10] The author notes that, during his custody in the deportation centre, the staff feared that he would commit suicide, given that he had previously attempted to do so. According to the State party, on 7 and 8 July 2017, a "suicide screening" of the author took place, followed by a dialogue regarding the need for extra supervision on 23 July. The author alleges that, although he was put in a solitary cell in the beginning of the term of custody, he was placed with other deportees after the meeting with a psychologist and prescribed medicine.

[11] Chapter 12, sections 18 and 19, of the Aliens Act, which entered into force on 31 March 2006. According to the Act, even when an expulsion order becomes final, if there are "new circumstances" that can be assumed to constitute an impediment to enforcement under chapter 12, sections 1, 2 or 3, of the Act, the Migration Agency may grant a temporary residence permit and order a stay of enforcement (chap. 12, sect. 18, of the Act). In addition, the matter of a residence permit may be re-examined at the enforcement stage if an alien submits "new circumstances" that can be assumed to constitute a lasting impediment to enforcement, as referred to in chapter 12, sections 1, 2 or 3, of the Aliens Act, namely, that there is a risk of the death penalty, torture or persecution (chap. 12, sect. 19, of the Aliens Act). A re-examination requires that the alien could not previously have cited those circumstances or that the alien shows a valid excuse for not having done so (chap. 12, sect. 19, of the Aliens Act).

[12] In his request to stay the enforcement of the order, the author alleged that he had difficulty sleeping and resting and was suffering from severe anxiety and depression. He received prescription medicine for treating depression on several occasions. He also alleges that he has problems with his liver but does not specify the nature or seriousness of those problems.

[13] The Migration Agency found that the author's mental health and psychological diagnosis was not serious to a level to constitute the impediment of the enforcement of the expulsion order. The Agency noted that there was nothing to indicate that his suicidal ideation was based on severe mental ill-health, given that no medical certificates concerning his mental health had been submitted. It noted that the author's suicidal ideation appeared rather to be an expression of disappointment or desperation in connection with the enforcement of the expulsion order, therefore it could not constitute grounds for granting him a residence permit. As for the author's ethnicity, religious affiliation and lack of a network in Afghanistan, the Agency found that those elements had been examined by the migration authorities and were not new circumstances constituting an impediment to enforcement within the meaning of chapter 12, sections 1, 2 or 3, of the Aliens Act. The Agency also noted that the general security situation in Afghanistan had not changed since the expulsion order had become final and non-appealable in such a way that anyone who was expelled to the country would risk being subjected to indiscriminate violence or that the security situation in itself constituted an impediment to enforcement under chapter 12, sections 1, 2 or 3, of the Aliens Act.

place him in mortal danger. In support of his claim, the author submitted testimonials from a board member of Humanists Stockholm and a founder of the Ex-Muslims of Sweden.[14]

2.8 On 29 September 2017, the Migration Court rejected the author's appeal, after examining whether the conditions to grant the author a re-examination under chapter 12, section 19, of the Aliens Act had been fulfilled, without a trial or a hearing. As for the security situation in Afghanistan and the author's belonging to the Hazara ethnic group, the Court noted that, in the decision resulting in the author's final and non-appealable expulsion order, it had previously concluded that the author's grounds for protection should not be based on the situation in only a specific part of Afghanistan and that his belonging to the Hazara ethnic group alone could not be considered to mean that he risked persecution in any area in Afghanistan. The Court noted that his claims regarding the prevailing security situation in the country would in part constitute new circumstances relative to the previous examination. However, it concluded that the general situation in Afghanistan as a whole, and the situation of the Hazara, did not in themselves constitute grounds for a residence permit.

2.9 The Court noted that the fact that the author was an atheist was a new claim and that, according to available country information, if a person plausibly demonstrated that he or she had left Islam, the person would normally be deemed to be in need of protection. It considered that the decisive factor was whether the author's standpoint was based on genuine conviction. The Court noted that the reasoning that the author had presented concerning his rejection of Islam was general in nature and did not express a deeper personal conviction. The letters furnished in support of the author's claims were in large part based on his own claims. In addition, the Court found it strange that, even given the fact that the author's attitude to religion had changed gradually since he arrived in Europe, those circumstances were only presented after the expulsion order had become final and non-appealable.[15] In the light of those findings, the Court considered that the author's assertion that he genuinely held the views of an atheist was not sufficiently reliable to meet the standard of proof. Against that background,[16] the Court considered that the claim that the author was an atheist did not constitute new circumstances that could be assumed to constitute a lasting impediment to enforcement within the meaning of chapter 12, sections 1, 2 or 3, of the Aliens Act. The Court therefore found that there was no basis for granting a re-examination of the author's application under the Aliens Act.

2.10 The author appealed the decision to the Migration Court of Appeal, which refused leave to appeal on 21 November 2017.

2.11 In the interim, in a letter dated 18 October 2017, the author wrote to the Embassy of Afghanistan to Sweden, in Stockholm, explaining his situation, namely, that he had left Islam and feared for his safety, to see if they would help him. He received no reply from the Embassy.[17]

2.12 The author appeared in many Swedish national, local and online media for renouncing Islam. According to one article, the State party tried to deport the author without success, due to a massive protest by several hundred protestors outside of the deportation centre in Märsta, Sweden.

[14] The copies of the letter from the board member of Humanists Stockholm, dated 9 September 2017, and the letter from a founder of Ex-Muslims of Sweden, dated 15 September 2017, are on file with the Committee.

[15] The Court also noted that the author, during the asylum investigation, did not mention anything about his doubts as to his Muslim faith. According to the author, it is because he did not know the great significance of his beliefs as being grounds for protection and, at the time of the initial application for residence permit, his thoughts were not clear and he was still in a process of questioning and exploring.

[16] The Court did not take into consideration the deterioration of the author's mental and physical health status, because it considered that those matters were not directly linked to the need for protection with respect to the country of origin and therefore fell outside the scope of its examination.

[17] The author claims that he is afraid that information has fallen into the wrong hands and that he is at risk of reprisals at the airport in Kabul, given that the information might end up in the hands of government officials in Afghanistan.

The complaint

3.1 The author submits that his deportation to Afghanistan would constitute a violation of articles 6 and 7 of the Covenant.[18] He alleges that there is a real and substantial risk that he would be subjected to irreparable harm or even death if forcibly returned to Afghanistan, given that he left Islam and would be seen as an apostate in Afghanistan, which is punishable by death according to Afghan law.[19] The author claims that, in Afghanistan, characterized by a strong Islamic regime, reflection on or criticism of Islam is not tolerated. Islamic beliefs and practices are utterly pervasive throughout Afghanistan, and strict punishments under sharia law for apostasy are part of State law. People who leave Islam are also at great risk of persecution, threats, violence and torture.[20]

3.2 The author claims that it is very difficult for ex-Muslims to hide their lack of faith within conservative Muslim communities, given that the practice of that faith involves visible rituals, such as praying and fasting, and abstaining from practices that are forbidden in Islam. That would lead to the author either being forced to practise the religion in order to pretend to be a Muslim, which he has said he would not do,[21] or suffering the consequences of being regarded as an apostate, which would provoke strong reactions from the conservative Muslim communities and authorities, which would very likely threaten his life.

3.3 Furthermore, the author claims that, upon return to Afghanistan, young adults who have lived outside of Afghanistan would face the risk of cruel, inhumane or otherwise degrading treatment as defined in international standards.[22] The author, who grew up in the Islamic Republic of Iran after he left Afghanistan when he was a small child, has no network in Afghanistan nor knowledge of the country. He speaks mainly Persian, which means that he would be regarded as an outcast in Afghan society.[23] In addition, he is also an ethnic Hazara and has been "Westernized" in Sweden. If returned to Afghanistan, therefore, he would be in a vulnerable position, with a high risk of persecution, threats, violence and torture, as well as face discrimination, such as the impossibility of obtaining a job and lack of access to acceptable housing, social services or health care.

3.4 The author alleges that his case was not taken seriously by the Swedish migration authorities, which rejected his asylum application and appeal without a hearing on his atheism. The author alleges that his case should have been decided only with oral hearings, given that the asylum claims of converts to Christianity have been reconsidered in many cases with hearings, and there is no difference between atheists and Christian converts with regard to the danger they may face in Afghanistan. There is no equivalent certificate for an atheist as there is for a Christian convert, so the testimonies he submitted from

[18] Although the author also alleges the risk of violation of his rights under article 18 of the Covenant, it is not clear from the author's submission on what grounds that assertion is made.

[19] The author refers to the 2011 Report on International Religious Freedom of the United States Department of State, in which the it is indicated that conversion from Islam was considered apostasy and was punishable by death under some interpretations of Islamic law in the country. The Criminal Code did not define apostasy as a crime, and the Constitution forbade punishment of any crime not defined in the Criminal Code, however, the Penal Code stated that egregious crimes, such as apostasy, should be punished in line with Hanafi religious jurisprudence. The author notes that that situation is compounded by the interpretation of a clause in article 3 of the Constitution of Afghanistan, which stipulates that no law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan, which has been interpreted and applied as establishing a restrictive interpretation of Islamic law as the law of the land and prioritizing that interpretation over human rights guarantees, which has resulted in abuses (United States Commission on International Religious Freedom, Annual Report 2013).

[20] Afghanistan is ranked as the world's third most dangerous country for Christians on the Open Doors World Watch List 2017. The author believes that atheists are at the same level of risk in a country where 99 per cent of the population are Muslims and sharia law applies.

[21] The author claims that it would defeat the very right that the Covenant protects, if he was forced to hide his non-belief in a religion by living discreetly.

[22] The author refers to the guidelines of the Office of the United Nations High Commissioner for Refugees (UNHCR), judgments in England, the European Convention on Human Rights and information on Afghanistan from different European countries.

[23] The author notes that he can speak Dari but with a strong Iranian accent.

representatives of two organizations are the best alternative he could provide to certify that he does not follow any religion.

State party's observations on admissibility and the merits

4.1 In a note verbale of 10 September 2018, the State party submitted its observations on admissibility and the merits of the communication.

4.2 With regard to the admissibility of the communication, the State party submits that the communication is not sufficiently substantiated and manifestly unfounded and therefore should be declared inadmissible pursuant to article 3 of the Optional Protocol and rule 96 (b) of the Committee's rules of procedure (now rule 99 (b)).

4.3 The State party contends that, with regard to the author's claim of a violation of article 18 of the Covenant, unlike articles 6 and 7, article 18 does not have extraterritorial application.[24] The State party therefore submits that that part of the communication should be declared inadmissible *ratione materiae*, pursuant to article 3 of the Optional Protocol and rule 96 (d) of the Committee's rules of procedure (now rule 99 (d)).

4.4 With regard to the alleged violation of articles 6 and 7 of the Covenant, the State party notes that, when determining whether the expulsion of the author to Afghanistan constitutes a breach of articles 6 or 7 of the Covenant, the following considerations are relevant: (a) the general human rights situation in Afghanistan; and (b) in particular, the personal, foreseeable and real risk of breach of article 6 or 7 of the Covenant that the author would be subjected to following his return to Afghanistan.[25] The State party also notes that considerable weight should be given to the assessment conducted by the State party, given that it is generally for the domestic authorities to directly review or evaluate facts and evidence in order to determine whether a real risk of irreparable harm exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.[26]

4.5 As for the general human rights situation in Afghanistan, the State party notes that Afghanistan is a party to the Covenant, as well as to the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment.[27] The State party also

[24] *J.D. v. Denmark* (CCPR/C/118/D/2204/2012), para. 10.7.

[25] The State party submits that the Committee's jurisprudence indicates a high threshold for substantial grounds for establishing that a real risk of irreparable harm exists. Therefore, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin. *X v. Norway* (CCPR/C/115/D/2474/2014), para. 7.3. The State party also claims that the burden of proof rests with the author, who is required to establish that a real risk of treatment contrary to articles 6 or 7 would be a foreseeable consequence of his expulsion. *Hamida v. Canada* (CCPR/C/98/D/1544/2007), para. 8.7; *A.H.S. v. Denmark* (CCPR/C/119/D/2473/2014), para. 7.5; *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), paras. 6.8 and 6.14; *Dauphin v. Canada* (CCPR/C/96/D/1792/2008), para. 7.4; and *A.P.J. v. Denmark* (CCPR/C/119/D/2253/2013), para. 9.6.

[26] The State party emphasizes that that approach is based on the acceptance by the Committee of the comparative advantage that domestic authorities have in making factual findings due to their direct access to oral testimonies and other materials presented in legal proceedings at the national level. The State party alleges that it is also based on the view that the Committee is not a court of fourth instance that should re-evaluate facts and evidence de novo, referring to the dissenting opinions in *Shakeel v. Canada* (CCPR/C/108/D/1881/2009).

[27] The State party also refers to a number of documents of the United Nations, international organizations, Governments and civil society organizations with regard to the human rights situation in Afghanistan, including the following: United Nations Assistance Mission in Afghanistan, "Midyear update on the protection of civilians in armed conflict: 1 January to 30 June 2018", 15 July 2018; report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security (A/72/888–S/2018/539); European Asylum Support Office, "Country guidance: Afghanistan – guidance note and common analysis", 21 June 2018, "Country of origin information report: Afghanistan security situation", 22 December 2017, and the update thereto, 30 May 2018, and "Country of origin information report: Afghanistan individuals targeted by armed actors in the conflict", 12 December 2017; Human Rights Watch, "World Report 2018: Afghanistan", 18 January 2018; Migration Agency of Sweden, Lifos. Center för landinformation och landanalys inom migrationsområdet, Temarapport: Afghanistan – Kristna, apostater och ateister (thematic report on

notes that, whereas it does not underestimate the concerns with respect to the current human rights and security situation in Afghanistan, a general situation does not in itself suffice to establish that the author's expulsion would contravene articles 6 or 7 of the Covenant. The assessment before the Committee must therefore focus on the foreseeable consequences to the author of his expulsion to Afghanistan in the light of his personal circumstances.

4.6 The State party submits that the author has failed to substantiate his claim that he would run the personal and real risk of being subjected to treatment in violation of articles 6 or 7 of the Covenant if returned to Afghanistan. The State party notes the fact that several provisions in the Aliens Act reflect the same principles as those set out in articles 6 (1) and 7 of the Covenant. The Swedish migration authorities therefore apply the same kind of test when considering an application for asylum under the Aliens Act as the Committee applies when examining a complaint under the Covenant.

4.7 The State party contends that sufficient due process was guaranteed in assessing the author's application for asylum. The State party notes that, given that the author initially claimed that he was a minor of 17 years of age,[28] the Migration Board appointed a special representative for the author and notified the social service for child protection in October 2015. A public counsel was also appointed for him in November 2015. The Migration Board conducted several interviews with the author in the presence of the public counsel and interpreters, who the author confirmed understood his language well. Therefore, the author had several opportunities to explain the relevant facts and circumstances in support of his claim and to argue his case, orally as well as in writing, before the Migration Board and, in writing, before the Migration Court.

4.8 Against that backdrop, the State party holds that it must be considered that the Migration Board and the Migration Court had sufficient information, together with the facts and evidence with regard to the present case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the author's need for protection in Sweden. In view of the fact that the Migration Board and the migration courts are specialized bodies, with particular expertise in the field of asylum law and practice, the State party contends that there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or that it amounted to a denial of justice. Accordingly, the State party holds that considerable weight must be attached to the opinions of the Swedish migration authorities.

4.9 With regard to the author's claims that he risks persecution owing to the fact that he belongs to the Hazara ethnic group, the State party claims that the domestic authorities noted that, from the relevant country of origin information, it followed that the Hazara in Afghanistan were particularly subjected to discrimination and occasionally subjected to targeted attacks. However, the domestic authorities found that the general situation of the Hazara in Afghanistan did not in itself suffice to establish a need for international protection.

4.10 Concerning the claims that the author would be at risk of persecution upon his return to Afghanistan, given that he has disregarded Islam, the State party concedes that, from the relevant country of origin information about Afghanistan, it follows that there is support for the assessment that individuals who return to Afghanistan after having renounced their Muslim beliefs or converted during an asylum process run a real risk of persecution and punishment under the law. It also accepts that mere accusations of apostasy can provoke violence and that people who lack a social network are particularly vulnerable without support. However, the State party notes that there is a possibility for apostates to repent and to return to the Muslim faith. In addition, an asylum seeker has the burden of proof to plausibly demonstrate that a claimed renunciation of Islam is based on a genuine personal conviction. There is therefore no support for the conclusion that a mere claim of

Christians, apostates and atheists in Afghanistan), 21 December 2017; and United States Department of State, "2016 report on international religious freedom: Afghanistan", 31 August 2017.

[28] Subsequently, the Agency's assessment of the author's oral account of his cited age, with the lack of identity documents, lead the Agency to conclude that he had not plausibly demonstrated that he was a minor.

renunciation of Islam suffices to conclude that there is a real risk of persecution of an individual that would warrant international protection.

4.11 In that connection, the State party reiterates that, when assessing whether the author's renunciation of Islam was based on a genuine personal conviction, the Migration Court found that the author's reasoning in that regard was general and did not express any deeper personal reflection.[29] In addition, the Migration Court questioned why the author presented that information only after the expulsion order had become final and non-appealable. The State party emphasizes that, considering that the author seems to have been aware of the consequences of a denunciation of Islam upon return to Afghanistan, the fact that he did not mention that until he was encountered by the Swedish police and after he was put in detention to enforce the expulsion order to Afghanistan – about two years after he claimed to have changed his attitude towards Islam – raises doubts as to the veracity of those claims questions. The State party notes that the Migration Court took into account in its assessment the risk of the author being imputed to be an atheist when he was returned to Afghanistan.

4.12 With regard to the news articles that the author submitted before the domestic migration authorities, the State party notes that, in fact, it is not clear from any of the articles that the author has rejected Islam. The author's name appears in articles that mainly concern a sit-down protest against expulsions to Afghanistan. In that respect, it should be noted that, during the domestic proceedings, the author did not substantiate his cited identity and did not plausibly demonstrate that those articles had come to the attention of the Afghan public or the Afghan authorities in such a way that he would be associated with them upon his return to Afghanistan.

4.13 Furthermore, the State party notes that the letter that the author submitted to the Embassy of Afghanistan was dated 18 October 2017. The State party highlights the fact that, even though the letter was dated before the Migration Court of Appeal decided not to grant him leave to appeal on 21 November 2017, it was not submitted to that court for examination, nor was it submitted to any other migration authority for assessment as to whether the new circumstances that had emerged in the case would constitute a lasting impediment to enforcement of the removal order under chapter 12, section 19, of the Aliens Act.

4.14 Regarding the author's state of health, the State party shares the domestic migration authorities' conclusion that the author cannot be deemed to have substantiated the claim that his health problems are severe enough to conclude that a transfer to Afghanistan would raise an issue under the Covenant.

4.15 The State party holds that the author's account and the facts relied on by him in the complaint are insufficient to conclude that the alleged risk of ill-treatment upon his return to Afghanistan meets the requirements of being a foreseeable, real and personal risk. Consequently, enforcement of the expulsion order would not, under the present circumstances, constitute a violation of the obligations of Sweden under articles 6 or 7 of the Covenant.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 21 January 2019, the author submitted his comments on the State party's observations on admissibility and the merits of the communication.

5.2 With regard to admissibility, the author concedes that article 18 does not have extraterritorial applicability but maintains his claims regarding articles 6 and 7 of the Covenant.

5.3 Regarding the State party's submission that the communication is inadmissible due to insufficient substantiation, the author contends that it is the State party who failed to investigate the author's claim and to make a proper risk assessment. The author reiterates that the standard of proof required in the Aliens Act in relation to impediments to

[29] The State party claims that the assessment is in line with the UNHCR handbook and guidelines and jurisprudence from the Migration Court of Appeal of Sweden.

enforcement is “a fair reason to assume”. By that measure, the author has attained a basic level of substantiation. Given the fact that the author’s atheism would be considered new circumstances that may be presumed to constitute a permanent impediment to enforcement as referred to in the Aliens Act, it is unclear how the State party can defend the actions of, or rather the failure to act by, the domestic migration authorities.

5.4 The author underlines that a large part of the State party’s observations is standardized general comments that repeat the domestic legal framework or the assessment of the migration authorities and that the core issues are not sufficiently addressed. The author claims that it is not sufficient from a human rights perspective that the Aliens Act reflects the same principles as those set out in articles 6 and 7 of the Covenant and reiterates that its implementation is important. The author alleges that it is not true that the Swedish Migration authorities apply the same test in consideration of an application for asylum as the Committee applies when examining a communication under the Optional Protocol, given that they have disregarded the UNHCR guidelines. The author concludes that the State party only makes general comments regarding the provisions in the law but does not detail whether or how the conclusions drawn by the authorities were reasonable.

5.5 The author reiterates that the conclusions drawn by the migration authorities were subjective and arbitrary, with the wrong standard of proof and method applied. The author notes that, although the interviews of the author were held in 2015 and 2016, which the State party observed to ensure that the migration authorities had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the author’s grounds for protection, the claim concerning the author’s apostasy was made in 2017, and there was no oral interview held to assess that new claim. With regard to the burden of proof to demonstrate that the author would face a risk of persecution due to religious beliefs, the author alleges that, whereas he concedes that he has the burden of proof, it must be set in relationship to the investigative responsibilities of the authorities and their positive international human rights obligations. The author underlines that the burden of proof is a shared responsibility and that the applicant must be given an opportunity to orally substantiate his or her claims that the renunciation of Islam is based on genuine personal conviction.[30]

5.6 The author refutes the Migration Board decision of 21 August 2017, which the State party made a reference to, in which the Board indicated that the author’s religious affiliation had been examined before and therefore did not constitute a new claim. Because the author had not raised the claim that he was atheist in the assessment by the Board until then, the author argues that it is unfair that his claim of being an atheist was not considered in the assessment as a new claim that would constitute a lasting impediment to enforcement of the removal order under the Aliens Act.

5.7 The author contends that the State party’s assertions that his claim of being an atheist came too late in the process and that he had not demonstrated that he had a valid reason for not citing those circumstances until then are admissions that those claims were not duly considered. The author argues that the assessment was very subjective and placed too much weight on procedural matters in a way that the reasons for asylum became less relevant, which is against the Committee’s jurisprudence and the State party’s obligations under international law and standards.[31]

5.8 The author submits that it is misleading – and crucially disregards the risks faced by the author – for the State party to claim that the news articles concerning the author were mainly about protests against his expulsion and that the author did not plausibly demonstrate that the articles would come to the attention of the Afghan public and authorities. The author notes that there are articles concerning his atheism that include his picture, which are accessible by the public even through a simple web search, through

[30] The author refers to the Swedish migration authorities’ guidelines, in which it is suggested that written evidence is not sufficient to make an assessment of the genuineness of faith and that oral examination is crucial for the assessment thereof. The author also refers to the UNHCR guideline, that a careful investigation of the circumstances and the genuineness of the conversion be requested.

[31] See *X v. Sweden* (CCPR/C/103/D/1833/2008); the UNHCR guidelines; and European Court of Human Rights, *F.G. v. Sweden* (application No. 43611/11), judgment of 23 March 2016.

which the people and authorities in Afghanistan can identify the author. The author reiterates that the information about his being an atheist has spread among the Afghan people through social media.

5.9 With regard to the State party's claim that the letter to the Embassy of Afghanistan was never brought before the authorities for an assessment, the author alleges that it is not possible under Swedish law to turn to any other migration authority to submit new information while an appeal to the Migration Court of Appeal is pending. Moreover, the author asserts that, even if the letter was submitted to the Migration Court of Appeal, that Court would not consider additional information on the personal matter unless it was of such character that would set a precedent in migration law, according to the previous cases of rejection by the Court. An individual matter such as a letter would therefore have made no difference in the outcome of the Court's decision to reject the appeal. The author alleges that it would not have been seen as new circumstances, given the stance taken by the State party.

5.10 As for the age of the author, he argues that even adult atheists are at risk of harm in Afghanistan, especially those lacking the protection of a network or family. The author's age is therefore irrelevant in the assessment of the risk that he may face if returned to Afghanistan.

State party's additional observations

6.1 On 5 April 2019, in its additional observations, the State party reiterated its arguments and factual grounds raised in its previous observations. It emphasizes that the "new circumstances" for reconsidering the asylum claim under the Aliens Act refer to more than a matter of modifications or additions to the circumstances originally cited and that the circumstances cited should constitute impediments to enforcement with a risk of the death penalty, torture or persecution.

6.2 Regarding the method of assessment when religion is cited as grounds for asylum, the State party alleges that the Migration Board's legal position paper, referred to by the author to allege the requirement of oral investigation, contains general recommendations on the application of laws and regulations within the Board's mandate. The State party notes that the procedures on impediments to enforcement are normally conducted in writing and that an oral hearing only takes place if the author has substantiated that there are new circumstances that can be assumed to constitute a lasting impediment to enforcement and that a new examination of the matter of a residence permit should be made.[32]

6.3 Furthermore, the State party notes that, given that the author has stated that he had already started to question his faith during his journey to Sweden, there should have been grounds for him to cite that claim during the ordinary proceedings conducted before his expulsion order became final and non-appealable.

6.4 In that connection, the State party claims that the author's allegation that he holds a genuine standpoint as an atheist is not sufficiently reliable to meet the standard of proof which "can be assumed to constitute" a risk of serious abuse, as found in the Migration Court, in accordance with international assessment standards.[33] The author's claim that he

[32] The State party reiterates that the author has the burden of proof to show that such lasting impediments to enforcement exist.

[33] The State party notes the judgment in a guiding case before the Migration Court of Appeal (MIG 2011:29), in which it stated that any assessment of the need for asylum on the grounds of religion must be made in accordance with the UNHCR handbook and guidelines. In the same judgment, the Court noted the importance of examining credibility when conversion was cited after an expulsion order became final and non-appealable. As for the author's argument that the State party failed to follow the Committee's Views adopted in the case of *X v. Sweden*, in which the Committee observed that the State party had mainly focused on inconsistencies in the account of specific supporting facts and that insufficient weight had been given to the risk he might face in Afghanistan, the State party reiterates that, in the present case, there was no basis for granting a re-examination in the matter of a residence permit, due to the reasons stated above. In that regard, the State party also notes that the present case differs from *F.G. v. Sweden* before the European Court of Human Rights, in which the

was an atheist therefore did not constitute new circumstances that could be assumed to constitute a lasting impediment to enforcement within the meaning of chapter 12, sections 1, 2 or 3, of the Aliens Act or to constitute grounds for a re-examination of the matter of a residence permit. In addition, the State party reiterates that the Migration Court found that the author had not demonstrated that he had a valid reason for not citing those circumstances until then. The State party argues that, contrary to what the author claims, he did receive a full assessment of his claims for asylum, with a thorough examination at both the Migration Board and the Migration Court of Sweden.

6.5 The State party refers to the legal position paper regarding country of origin information on Afghanistan issued by the Migration Board of Sweden on 24 January 2019. In the paper, the Board admitted that a deterioration of the security situation could constitute new circumstances under chapter 12, section 19, of the Aliens Act that could be assumed to constitute a lasting impediment to enforcement of an expulsion order within the meaning of chapter 12, sections 1, 2 or 3, of the Aliens Act, thereby justifying a new examination of the matter of a residence permit. However, the State party alleges that the security situation varies greatly both within and among the provinces of Afghanistan and that an individual assessment of an author's vulnerability and personal circumstances must be made. In that context, the State party alleges that the above-mentioned information is a general recommendation on the application of laws and regulations within the Board's mandate, developed for the purpose of achieving a uniform application by the Board of the applicable laws.

6.6 In the light of the preceding arguments, the State party maintains its position that there is no reason to conclude that the rulings by the domestic authorities were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice in finding that the author's account of his atheism, as presented during the national asylum proceedings, was insufficient to lead the domestic authorities to conclude that the alleged risk of ill-treatment upon his return to Afghanistan met the requirements of being foreseeable, real and personal.[34]

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

7. On 25 September 2019, the author submitted a reply to the State party's additional observations, reiterating his previous comments.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee must, in accordance with rule 97 of its rules of procedure, decide whether it is admissible under the Optional Protocol to the Covenant.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in that connection, the Committee considers that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

8.4 The Committee notes that the author invokes article 18 of the Covenant without advancing any arguments specified to support that claim. Therefore, the Committee considers that that part of the communication is insufficiently substantiated for the purposes

applicant's conversion in the reopening proceedings was not considered new circumstances that could justify a re-examination of his case due to its genuineness (*F.G. v. Sweden*, para. 155).

[34] In that regard, the Government again reiterates that the Committee is not a court of fourth instance that should re-evaluate facts and evidence de novo (see the dissenting opinions in *Shakeel v. Canada*).

of admissibility. Accordingly, it declares that part of the communication inadmissible under article 2 of the Optional Protocol.[35]

8.5 The Committee notes the State party's challenge to admissibility on the grounds that the author's claim under articles 6 and 7 of the Covenant is unsubstantiated. However, the Committee considers that, for the purposes of admissibility, the author has provided sufficient information in support of the claim that his forcible return to Afghanistan would result in a risk of treatment contrary to articles 6 and 7 of the Covenant. Therefore, the Committee declares the communication admissible, insofar as it raises issues under articles 6 and 7, and proceeds to its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that returning him to Afghanistan would expose him to a real risk of irreparable harm, in violation of articles 6 and 7 of the Covenant. He alleged that, if returned to Afghanistan, he would face potentially life threatening persecution due to his particular vulnerability related to his apostasy, which has been publicized through social media, his deteriorating mental and physical condition, which includes suicidal ideation, his belonging to the Hazara ethnic minority group and his lack of knowledge of Afghanistan and its language, circumstances that are aggravated by the fact that he has no family or network in Afghanistan, where the security situation has seriously deteriorated.

9.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it referred to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there were substantial grounds for believing that there was a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.[36] The Committee has also indicated that the risk must be personal[37] and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.[38] All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.[39] The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists,[40] unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.[41]

9.4 In the present case, the Committee notes that, in its decision rendered in August 2017, the Migration Board found that the author had failed to substantiate his claim that he would be at risk of persecution by the Afghan authorities and rejected his claim of atheism as constituting new circumstances to impede the enforcement of the expulsion order. The Committee also notes that the Migration Court considered the author's claim of his fear of persecution as an atheist but found that he had failed to substantiate that his convictions as an atheist were genuine, despite the existence of letters of support, emphasizing that the author could not explain sufficiently why he had not submitted that claim at an earlier stage of the asylum application process. In that connection, the Committee notes the author's view that the assessment of his claim regarding his atheism was unfair and arbitrary, given

[35] The Committee also notes that the author did not maintain his claim with regard to article 18 and conceded the State party's claim of inadmissibility *ratione materiae.*

[36] Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

[37] *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3; *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2; and *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2.

[38] *X v. Sweden*, para. 5.18.

[39] Ibid. See also *X v. Denmark*, para. 9.2.

[40] *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4; and *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

[41] For example, *K v. Denmark*, para. 7.4.

that the authorities did not seriously assess the author's beliefs, allowed him no hearing on that point and dismissed the fact that the author's conversion from Islam to atheism happened gradually after he came to Sweden.

9.5 The Committee considers that, when an asylum seeker submits that he or she has become an atheist after his or her initial asylum request has been dismissed, it may be reasonable for an in-depth examination of the circumstances of the conversion to be carried out by the authorities.[42] However, regardless of the sincerity of the conversion, the test remains whether there are substantial grounds for believing that such a conversion may have serious adverse consequences in the country of origin such as to create a real risk of irreparable harm as contemplated by articles 6 and 7 of the Covenant. Therefore, even when it is found that the reported conversion is not sincere, the authorities should proceed to assess whether, in the circumstances of the case, the behaviour and activities of the asylum seeker in connection with his or her conversion or convictions, could have serious adverse consequences in the country of origin so as to put him or her at risk of irreparable harm.[43]

9.6 In the present case, the Committee observes that the State party has not contested that individuals who return to Afghanistan after having renounced their Muslim beliefs or converted during an asylum process face a real risk of persecution and punishment, including the death penalty, under the Afghan legal system and that the security situation in Afghanistan has seriously deteriorated.[44] In addition, the State party has contested neither the fact that members of the Hazara ethnic group in Afghanistan are subjected to discrimination and occasionally subjected to targeted attacks nor that persons who have no network in or knowledge of the country would be in a vulnerable position. The Committee notes that the author in the present case falls within all of those categories. In addition, the Committee notes that the author has mental health issues, with suicidal ideation, which led him to attempt to commit suicide during the course of the asylum proceedings, and it is highly likely that they will put him in a further vulnerable situation if he is returned to Afghanistan. Considering the aforementioned facts with the fact that the author's name is widely known by his friends, acquaintances and the general public through the media and social media and that a letter revealing the author's atheism and identity was sent to the Embassy of Afghanistan to Sweden, it is highly possible that his identity and apostasy will come to the attention of the Afghan people and authorities. The Committee concludes that, owing to the author's intersecting forms of vulnerability, combined with the multiple risk-enhancing factors, he would face serious adverse consequences in the country of origin which would put him at risk of irreparable harm. The Committee notes that the migration authorities nonetheless assessed each of the grounds for protection that the author alleged separately and did not assess the fact that the combined grounds aggravated the risk faced by the author, even though he was facing intersecting forms of vulnerability, which led them to conclude that the author had failed to establish sufficient grounds to substantiate that he would face irreparable harm if returned to Afghanistan.

9.7 In that connection, the Committee recalls that States parties should give sufficient weight to the real and personal risk that a person might face if deported and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author, with intersecting forms of vulnerability, would face in Afghanistan. The Committee reiterates that the risk that the author would face if returned to Afghanistan is exacerbated by the fact that he has no family or relatives in that country, which he has not

[42] UNHCR, "Guidelines on international protection: religion-based refugee claims under article 1 (a) (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees", para. 34.

[43] *S.A.H. v. Denmark* (CCPR/C/121/D/2419/2014), para. 11.8. See also European Court of Human Rights, *F.G. v. Sweden*, para. 156.

[44] See also European Asylum Support Office, "Country of origin information report: Afghanistan security situation", June 2019. The Committee also notes that, in its 2018 Annual Report, the United States Commission on International Religious Freedom reiterated that conversion from Islam to another religion was considered apostasy, which was punishable by death, imprisonment or confiscation of property, according to the Sunni Islam Hanafi school of jurisprudence, and that there had been no reports of government prosecutions for blasphemy or apostasy during the year, but converts from Islam to other religions had reported that they continued to fear punishment from the Government and reprisals from family and society.

visited since he left at a very young age, and that he does not speak fluently either the official or the widely spoken languages of the country. The Committee notes in particular that the Migration Board did not assess the author's behaviour and activities in connection with his atheist convictions. The Committee also notes that, when informed about new grounds for asylum based on the author's conversion, the Migration Court could have remitted the case to the Migration Board for reconsideration, which would have allowed those new grounds to be assessed at the two degrees of jurisdiction that are standard in asylum matters, and that the issue could have been analysed in detail, as a whole with the other risk factors, and the decision based on oral interviews covering all of those factors.

9.8 In view of the above, the Committee considers that the State party failed to adequately assess the author's real, personal and foreseeable risk of returning to Afghanistan as a perceived apostate with myriad risk-enhancing factors. Accordingly, the Committee considers that the State party failed to give due consideration to the consequences of the author's personal situation in his country of origin and concludes that his removal to Afghanistan by the State party would constitute a violation of articles 6 and 7 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to Afghanistan would, if implemented, be a violation by the State party of his rights under articles 6 and 7 of the Covenant.

11. In accordance with article 2 (1) of the Covenant, in which it is established that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the author's case taking into account the State party's obligations under the Covenant and the present Views of the Committee. The State party is also requested to refrain from expelling the author while his request for asylum is being reconsidered.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests he State party to publish the present Views.

Annex

Joint opinion of Committee members Christof Heyns, Photini Pazartzis and José Manuel Santos Pais (dissenting)

1. We respectfully disagree with the majority's finding, in the present communication, of violations of articles 6 and 7 of the Covenant.

2. The legal standards applicable to removal from a country are stated clearly and helpfully by the majority in paragraph 9.3. The question is whether the facts of the communication meet that standard. We think not.

3. Central to the finding of violations by the Committee is the fact that the Migration Court did not refer the case back to the Migration Board for oral evidence, on the basis of the claim by the author that he had become an atheist (paras. 9.4–9.7), even though he did not make that claim during the initial oral assessment. This is how we understand the background.

4. According to the author, he began to have doubts about Islam while on his way to Europe, and they grew after he arrived in Sweden in 2015. His case was heard by the Migration Board between 2015 and 2016. He had legal representation (public counsel) in the period leading up to the process (para. 4.7). The available oral and other evidence concerning the reasons why he would be at risk if deported were examined and found not to have been substantiated (para. 4.7 and footnote 5). His application for asylum was therefore rejected. At that point he did not raise his religious doubts, which had been years in the making, and therefore no oral evidence was heard about them.

5. Subsequently, several other processes took place. On 20 August 2017, the author applied for a temporary residence permit, claiming that his mental and physical health had deteriorated. He then introduced for the first time the claim that he had become an atheist. The Migration Board considered his case again. His new claims about his deteriorating health were investigated and rejected by the Migration Board, but oral evidence was not taken in respect of his claims with regard to religion. On appeal, the Migration Court considered the written evidence presented about his religious views but regarded the claims as too general and noted that even the letters of support that the author had submitted were based largely on his own accounts of his views. The Court questioned why he had not raised his growing doubts during the initial hearing, but only after the expulsion order had become final and non-appealable. It therefore held the author's claim about his change of religion not to be sufficiently reliable to serve as a basis for granting a re-examination of his application (para. 2.9).

6. In our view, there does not appear to be a good reason to override those findings, reached by what appears to be a thoroughly conducted domestic process.

7. It should be noted that, in a particularly bizarre twist, as the author was waiting for the outcome of his final appeal, he wrote to the Embassy of Afghanistan to Sweden to announce that he had become an atheist – the very State that he claimed would persecute him for those views if they became apparent when he is returned (para. 2.11). The majority fails to confront that issue and merely states that such a letter "was sent" to the Embassy (para. 9.6).

8. The majority correctly states that, irrespective of whether he had been truthful about his reported conversion, the author should not be deported if he faced a real and personal risk of irreparable harm as contemplated by articles 6 and 7 if sent to his country of origin (para. 9.5). However, it is far from clear that such a risk exists. The sole source cited by the majority in support of the contention that the renunciation of the Muslim faith by the author may result in the death penalty being imposed on him in Afghanistan is a report of the Department of State of the United States of America, in which it is mentioned that, according to the Sunni Islam Hanafi school of jurisprudence, prevalent in parts of Afghanistan, conversion "to another religion" (atheism is not mentioned) is perceived as

apostasy and may in some cases carry the death penalty or imprisonment (footnote 45). Other readily available sources, according to which the possibility of the imposition of the death penalty for apostasy is mostly used to frighten high-profile offenders and which indicate there is no record of executions for apostasy in Afghanistan, even under the Taliban regime, are not addressed.[1]

9. Even if the death penalty for apostasy may in extreme cases still be imposed in Afghanistan, we question how real the risk is that the author specifically would be exposed to it. Although the author had legal representation before the Committee, no attempt was made to explain to the Committee to what extent the author, who left Afghanistan when he was 5 years of age and is a member of the Hazara ethnic group, might be at particular risk on those grounds and to allow the State to respond to those claims.

10. The foregoing does not appear to even come close to meeting the legal standard referenced by the majority, at least as far as the possible punishment for apostasy is concerned.

11. It should be highlighted that the Migration Court did not ignore the author's religious claims. The Court considered the written submissions on that point in some detail, although it eventually concluded that such a claim, being general and not expressing any deeper personal reflection, did not warrant a reopening of the oral proceedings (para. 4.11). Surely, the decision whether such additional oral hearings are due in a particular case should be regarded as part of the domestic procedures, which are to be left intact, unless there is good reason to reject them.

12. In paragraph 9.6 of the Views, the majority explains their view of why the domestic procedures should be rejected, placing strong emphasis on the fact that "the migration authorities … assessed each of the grounds for protection that the author alleged separately and did not assess the fact that the combined grounds aggravated the risk faced by the author, even though he was facing intersecting forms of vulnerability". His claims of mental health issues are presented as an example of grounds that were not considered collectively with the others. It is not clear however why the migration authorities should have considered the collective impact of grounds, the factual basis of which they have rejected through a thorough process or those that were raised only at a late stage in an unpersuasive manner. The author did not complain about the lack of such a collective assessment, and so the State did not have an opportunity to respond to the complaint.

13. In our view, the claims of violations under articles 6 and 7 should have been found inadmissible because of non-substantiation.

[1] See http://dpw.law.cornell.edu/country-search-post.cfm?country=Afghanistan.