



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

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## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 908/2019\*, \*\*

<i>Communication submitted by:</i>	A.B. (represented by counsel, N.R. and A.R.)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	4 January 2019 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 18 February 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	21 July 2021
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Procedural issue:</i>	Admissibility – manifestly ill-founded
<i>Substantive issues:</i>	Non-refoulement; torture
<i>Article of the Convention:</i>	3

1.1 The complainant is A.B., a national of Afghanistan. His asylum application has been rejected by Sweden and he risks being deported to Afghanistan. He claims that his removal to Afghanistan would constitute a violation by the State party of his rights under article 3 of the Convention. The complainant is represented by counsel.

1.2 The communication was registered on 18 February 2020 and the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to grant interim measures.

#### Factual background

2.1 The complainant is of Hazara ethnicity. He was born a Shia Muslim in Ghazni Province, Afghanistan. When he was 13 years old, the Taliban came to his town and started asking the villagers for weapons and money. In order to escape the threat represented by the presence of the Taliban, the complainant fled with his family to Herat Province. There, many Hazara people, including his brother, were executed by a group that had come from the Islamic Republic of Iran and was persecuting Hazaras. The complainant indicated that, later, this group was joined by the Taliban, which continued to harass and torture Hazaras. While he was in Herat Province, the complainant worked as a carpenter. After troops of the United

\* Adopted by the Committee at its seventy-first session (12–30 July 2021).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Erdoğan İşcan, Liu Huawen, Ilvija Pūce, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.



States of America removed the Taliban from power, the family went back to Ghazni Province, where the complainant helped his family carry out agricultural work.

2.2 In early 2015, while he was taking his father to hospital, the complainant was targeted by the Taliban, which was still active in harassing, kidnapping and executing people around his hometown, as they were aware that he was anti-Taliban.<sup>1</sup> The complainant and his family had then to flee to Kabul, where they stayed for a few months. After the Taliban tortured his aunt to death and kidnapped his friend in an attempt to find and catch him, the complainant decided to leave the country. He came to Sweden in November 2015 through the Islamic Republic of Iran, Turkey and Greece, with the help of smugglers, while his family returned home from Kabul.

2.3 On 15 November 2015, the complainant applied for asylum on the grounds of being at risk of being subjected to torture and inhuman and degrading treatment in Afghanistan, because of his past conflict with the Taliban and his Hazara origin. Meanwhile, in September 2016, the complainant began Swedish language classes organized jointly by an adult education centre and a local Christian church, where he also became involved in church activities and took a basic course on Christianity. On 2 February 2017, the Swedish Migration Agency conducted an oral hearing as part of its investigation of the complainant's asylum claim, but he did not talk about his conversion process at that time. On 31 March 2017, the Agency rejected the complainant's asylum claim, finding that he had not proved that he would face a personal risk if he were returned to Afghanistan, beyond a general risk as a Shiite Hazara. The Agency noted that he might face a risk of persecution from the Taliban in Ghazni, however he had an internal relocation alternative available to him by returning to relatively safe places such as Kabul and Herat, where he and his family had lived before and he had some social connections, thus the complainant's conflict with the Taliban was not sufficient to grant asylum.

2.4 On 27 April 2017, the complainant appealed to the Migration Court in an attempt to secure his asylum. On 4 May 2017 the complainant was baptized and on 10 May 2017 his conversion was first brought up as a ground for protection in a complementary appeal to the Migration Court. The complainant claims that he will be exposed to a serious risk of persecution if he is returned to Afghanistan, including from his family and relatives, as he converted to Christianity.<sup>2</sup> On 25 January 2018, the Migration Court held an oral hearing in his case. On 14 February 2018, the Migration Court of Appeal rejected his appeal as it found that the complainant had not proved that his conversion was genuine and based on personal conviction. The Migration Court also found that there was no evidence to support his contention that information regarding his conversion had reached his family in Afghanistan. On 12 March 2018, the Migration Court of Appeal refused him leave to appeal and the decision to expel him became final and non-appealable.

2.5 Subsequently, the complainant submitted an application to the Swedish Migration Agency for a residence permit pursuant to chapter 12, section 18 of the Aliens Act, or a re-examination of the issue of a residence permit pursuant to chapter 12, section 19 of the Aliens Act, citing impediments to the enforcement of the expulsion order. The Agency found that the claims relating to the complainant's conversion had already been considered and could not be seen as new circumstances. On 11 October 2018, the Agency decided not to grant the complainant a residence permit or a new examination of the issue. This decision was appealed to the Migration Court, which rejected the appeal on 1 November 2018. A request was made for leave to appeal the Migration Court's judgment to the Migration Court of Appeal, but the latter court, on 14 November 2018, decided not to grant the complainant such leave.

## **Complaint**

3.1 The complainant claims that his deportation to Afghanistan would amount to a violation of article 3 of the Convention, as he will be at risk of persecution as a Christian convert, in a country where individuals leaving the Islamic faith face the risk of inhuman and

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<sup>1</sup> The reason is not clear from the complaint.

<sup>2</sup> In support of his newly acquired faith, the complainant submitted photographs, a baptism certificate, and written testimonials from various people who claimed to know the complainant and to have knowledge of his faith.

degrading treatment, and torture, including the death penalty.<sup>3</sup> The complainant notes that Islamic law and doctrine is dominant in the Afghan judicial system, where apostasy – renouncing Islam in favour of other religions or atheism – is often seen as a *hudud* crime, which are the most serious crimes according to Islamic law and punishable by death.<sup>4</sup> He also asserts that converts can be threatened or even killed by their families and other individuals who see conversion as shameful in society. Converts and individuals leaving Islam face major risks, while the Afghan authorities lack resources to protect them.<sup>5</sup> He refers to the fact that acts of violence by neighbours and friends against Christian converts are common in Afghanistan, often forcing converts to leave the country.<sup>6</sup> He contends that his conversion is known among his friends, family and relatives in Afghanistan, as he has been an active Christian and openly shared his faith with Afghan friends, in churches and on social media.

3.2 The complainant also claims that he has not been given a proper and adequate examination of his asylum case regarding his conversion from Islam to Christianity. He argues that it is a procedural deficiency that his claim of conversion as a protection ground for asylum was examined in substance in only one legal instance, as the Migration Court decided not to refer the case back to the Swedish Migration Agency for further examination and the Supreme Court did not allow leave to appeal. Although the complainant filed for suspension of the decision of the Migration Court, the complainant's conversion to Christianity was not taken into consideration, as it was not considered and examined as a new circumstance revealed after the Migration Court's decision.

3.3 The complainant also alleges systemic deficiencies in the assessment of conversion in the asylum application process in Sweden, depending disproportionately on the ability of the asylum seeker concerned to express himself or herself verbally.<sup>7</sup> In the complainant's case, the examination is highly dependent on the one oral hearing in the Migration Court; other evidence, including certificates by church leaders, was not properly weighed in the assessment.<sup>8</sup> The complainant also claims that the Swedish authorities failed to understand the threats posed by social media, through which his conversion will be known by people in Afghanistan, which would make it more dangerous for him to return there.

3.4 The complainant states that he exhausted all domestic remedies. The communication has also not been submitted to any other international complaint mechanism.

### **State party's observations on admissibility and the merits**

4.1 On 12 July 2019, the State party submitted its observations on the admissibility and the merits of the communication. It submits that the communication should be declared inadmissible for failure to substantiate the claims, pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure, as the complainant's assertion that

<sup>3</sup> The complainant alleges that country information shows a risk of serious persecution against Christian converts in Afghanistan. He also invokes the European Court of Human Rights cases *F.G. v. Sweden* (application No. 43611/11), *Germany v. Y* (case C-71/11) and *Germany v. Z* (case C-99/11), in which the Court found that the right to manifest one's faith openly must be taken into consideration when there is a risk of torture or the death penalty. In addition, the European Court of Justice has established that past persecution or threat of persecution is a serious indication of well-founded fear.

<sup>4</sup> Swedish Migration Board, country-of-origin information on Afghanistan.

<sup>5</sup> He refers to a report by the organization Open Doors, which states that Afghanistan is ranked as the second most dangerous country in the world for Christian converts, who are considered psychologically and mentally weak, and that those who refuse to return to Islam have been put in mental institutions in some cases.

<sup>6</sup> Swedish Migration Board, country-of-origin information on Afghanistan.

<sup>7</sup> The complainant submits that there are a number of systematic deficiencies in the examination of converts by Swedish authorities, which have been strongly criticized as being unfair and arbitrary by, among others, the Swedish Council of Christians, which represents almost all denominations of the Christian Church in Sweden.

<sup>8</sup> The complainant submits the certificate by religious leaders to attest to his genuine conversion and faith in Christianity. The complainant alleges that the examination is against the Office of the United Nations High Commissioner for Refugees (UNHCR) guidelines. See UNHCR, "Guidelines on international protection: religion-based refugee claims under article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees" (HCR/GIP/04/06), para. 27.

he is at risk of being treated in a manner that would amount to a breach of article 3 of the Convention if returned to Afghanistan fails to rise to the minimum level of substantiation required for the purpose of admissibility.<sup>9</sup>

4.2 Based on the jurisprudence of the Committee, the State party argues that, in order to determine whether the forcible return of the complainant to Afghanistan would constitute a breach of article 3 of the Convention, the following considerations are relevant: (a) the general human rights situation in Afghanistan; and (b) the personal, foreseeable and real risk of the complainant being subjected to torture following his return there – as the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture upon his or her return to that country.<sup>10</sup>

4.3 The State party also submits that the burden of proof in cases such as the present one rests with the complainant, who must present an arguable case establishing that he runs a foreseeable, personal, present and real risk of being subjected to torture. In addition, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable, it must be personal and present.<sup>11</sup>

4.4 Regarding the general human rights situation in Afghanistan, the State party asserts that the situation there has not been deemed such that there is a general need to protect all asylum seekers, though it does not underestimate the concerns that may legitimately be expressed with respect to the human rights situation in Afghanistan.<sup>12</sup> The assessment before the Committee must focus on the foreseeable consequences of the complainant's expulsion to Afghanistan in the light of his personal circumstances, just like the Swedish migration authorities' assessments in the present case.

4.5 In regard to the risk of the complainant being subjected to treatment in breach of article 3 of the Convention, the State party argues, first of all, that the Aliens Act and its application reflect the principle of article 3 of the Convention and that the domestic authorities are in a good position to assess the information submitted by an asylum seeker and to appraise the credibility of his or her statements and claims. In this regard, the State party underlines that in the present case, both the Swedish Migration Agency and the Migration Court have conducted thorough examinations of the complainant's case.

4.6 The State party submits that the complainant has had ample 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 Swedish Migration Agency and before the Migration Court. On 2 February 2017, the Agency held an extensive asylum investigation with the complainant, which lasted for more than three hours. Furthermore, upon appeal, the Migration Court held an oral hearing with the complainant. The investigations and the hearing were conducted in the presence of the complainant's public counsel, and interpreters, to whom the complainant confirmed that he understood well. The minutes from the investigations were thereafter communicated to the public counsel. Through his public counsel, the complainant has been invited to scrutinize and submit written observations on the minutes from the interviews conducted, and to make written submissions and appeals.

4.7 The State party thus holds that it must be considered that the Swedish Migration Agency and the Migration Court have had sufficient information and documentation in the

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<sup>9</sup> *H.I.A. v. Sweden* (CAT/C/30/D/216/2002), para. 6.2.

<sup>10</sup> *E.J.V.M. v. Sweden* (CAT/C/31/D/213/2002), para. 8.3; and, for a more recent reference, *A.B. v. Sweden* (CAT/C/54/D/539/2013), para. 7.3.

<sup>11</sup> Committee against Torture, *H.O. v. Sweden*, communication No. 178/2001, para. 13; *A.R. v. Netherlands* (CAT/C/31/D/203/2002), para. 7.3; *Kalonzo v. Canada* (CAT/C/48/D/343/2008), para. 9.3; and *X v. Denmark* (CAT/C/53/D/458/2011), para. 9.3.

<sup>12</sup> The State party cites numerous sources of country information of Afghanistan, including the European Asylum Support Office, the United Nations Assistance Mission in Afghanistan, the United States Department of State, the Home Office of the United Kingdom of Great Britain and Northern Ireland and the Commission on International Religious Freedom.

case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the complainant's need for protection in Sweden.<sup>13</sup>

4.8 Regarding the claims of the complainant before the domestic authorities, the State party submits that during the initial asylum proceedings, the complainant stated that a forcible return to Afghanistan would put him at risk of being killed by the Taliban or because he was a Hazara. The State party submits that the domestic migration authorities based their assessment of his stated need for protection on his oral account, as well as on the evidence adduced by him, thus the Swedish Migration Agency and the Migration Court thoroughly examined the facts of the complainant's case by considering whether his claims were coherent and detailed and whether they contradicted generally known facts or available country-of-origin information. The domestic migration authorities considered that the complainant had plausibly demonstrated that there was a threat against him from the Taliban in Ghazni Province. However, the Agency held that it was both reasonable and relevant for the complainant to flee internally to Herat Province, since there was nothing to indicate that the Taliban would look for him there. On appeal, the Migration Court also held that the complainant had not plausibly demonstrated that there was a threat against him from the Taliban in Herat or Kabul or because he was a Hazara. The State party argues that it finds no reason to diverge from domestic authorities' assessment in this regard.

4.9 Regarding the complainant's claim about the risk to him because of his conversion to Christianity, the State party does not question that he has been baptized and has been part of a Christian congregation in Sweden. However, it found, in common with the domestic migration authorities, that the complainant's written evidence could not be considered sufficient to plausibly demonstrate that his professed Christian faith, and, consequently, his stated religious activities, have been based on genuine and personal religious convictions.<sup>14</sup>

4.10 The State party also notes that the author did not cite his alleged interest or faith in Christianity as a ground for protection in the early stage of examination of his asylum claim. The complainant did not mention his conversion until 27 April 2017, in connection with his appeal, and his alleged baptism took place only a week later, on 4 May 2017. The State party notes that during the asylum investigation on 7 February 2017, that is, barely three months earlier, the complainant stated that his religious affiliation was Shia Muslim.<sup>15</sup> Furthermore, at that point there was no mention of any interest by the complainant in the Christian religion, and when asked, the complainant confirmed that he had cited all grounds for protection, although during the Migration Court's oral hearing the complainant claimed that he had felt drawn to Christianity as soon as he had arrived in Sweden in 2016, and had started to participate in church activity in the same year. Against this background, the Migration Court considered it remarkable that he had not cited his interest in Christianity as a ground for

<sup>13</sup> In this connection, the State party recalls the Committee's Views, in which it has been confirmed that the Committee is not an appellate, quasi-judicial or administrative body and that considerable weight will be given to findings of facts made by organs of the State party concerned (see, for example, *N.Z.S. v. Sweden* (CAT/C/37/D/277/2005), para. 8.6; *N.S. v. Switzerland* (CAT/C/44/D/356/2008), para. 7.3; and *S.K. et al. v. Sweden* (CAT/C/54/D/550/2013), para. 7.4). Moreover, the State party invokes the Committee's jurisprudence that held that it is for the courts of States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice (see, for example, *G.K. v. Switzerland* (CAT/C/30/D/219/2002), para. 6.12).

<sup>14</sup> The Migration Court's assessment in this regard is in line with a guiding judgment from the Migration Court of Appeal (MIG 2011:29), which holds that general statements about a person being a Christian cannot be afforded any decisive probative value, and an overall assessment is therefore made of the circumstances in which the complainant's stated conversion took place and of whether he or she could be expected to live as a convert upon return to Afghanistan. The State party also submits that the assessment by the migration authorities was in accordance with the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* and the same organization's guidelines on international protection regarding religion-based refugee claims.

<sup>15</sup> The timing given here is slightly different than in the complainant's allegation that his conversion was first brought up as a ground for protection in a complementary appeal to the Migration Court on 10 May 2017.

international protection until his appeal in April 2017. Thus, the State party considers that if the complainant's interest in Christianity had begun as early as 2016, it would be reasonable to assume that he should have mentioned this already during his asylum investigation in February 2017.

4.11 Furthermore, the Migration Court considered the complainant's account of the reasons for his alleged conversion and what Christianity meant to him personally to be both general and vague. In an overall assessment, the Court concluded that the complainant had not plausibly demonstrated that he had converted to Christianity out of personal and genuine religious convictions or that there was a threat against him from his family or the rest of Afghan society because of this. Nor had he plausibly demonstrated that the Afghan authorities or anyone else in Afghanistan had become aware that he had attended church in Sweden, and thus that Christian convictions were ascribed to him.

4.12 In regard to the complainant's allegation of deficiency in the examination of his conversion in the Migration Court, the State party notes that the complainant's allegations in this respect were not raised in his appeal to the Migration Court of Appeal. Nor did the complainant's public counsel have any objections to the Migration Court's handling of the case when the oral hearing was held, or demand that the case be remanded to the Swedish Migration Agency. The Migration Court of Appeal, therefore, did not have the opportunity to take these specific allegations into consideration when determining the question of leave to appeal. In this context, the State party further notes that the complainant appears to be trying to use the Committee as an appeal court in order to have the credibility of his claims reassessed. The State party reiterates 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 amounted to a denial of justice.

4.13 The State party also notes that, with regard to applications for a residence permit or a new examination pursuant to chapter 12, sections 18 and 19, of the Aliens Act, the matter can only be examined if the alien concerned submits evidence of new circumstances that can be assumed to constitute a lasting impediment to the enforcement referred to in chapter 12, sections 1, 2 or 3, of the Aliens Act – that is, there is a risk of the death penalty, torture or persecution (chap. 12, sect. 19, para. 1, point 1, of the Aliens Act). Moreover, a new examination requires that the alien was not previously able to cite the new circumstances, or that the alien show a valid excuse for not having done so (chap. 12, sect. 19, para. 1, point 2, of the Aliens Act). In the present case, the Swedish Migration Agency noted that the complainant's alleged conversion had already been examined during the ordinary asylum proceedings. The information provided in the application for a new examination was therefore considered to be additions to the information he had already provided about his conversion. Furthermore, the Agency noted that the documents submitted by the complainant to substantiate the alleged threat in Afghanistan had limited probative value, since their authenticity could not be verified and they were easy to forge. The Migration Court subsequently made the same assessment as the Agency, and upheld its decision to reject the complainant's appeal.

4.14 Against this background, the State party reiterates that it shares the assessment made by the domestic authorities that, due to credibility deficiencies in his account, the complainant has failed to plausibly demonstrate that his stated conversion to Christianity is based on genuine personal religious convictions or that, upon return to his country of origin, he intends to practise Christianity and therefore faces a foreseeable, personal and real risk of being subjected to treatment in breach of the Convention. Furthermore, the State party holds that nothing has emerged to indicate that Christian beliefs are ascribed to the complainant which would constitute substantial grounds for believing that he would be subjected to a real risk of treatment contrary to article 3 of the Convention if he were returned to Afghanistan. In summary, the State party holds that the complainant's account and the facts relied upon 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 foreseeable, real and personal. Consequently, enforcement of the expulsion order would not, under the present circumstances, constitute a violation of the obligations of Sweden under article 3 of the Convention.

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

5.1 On 7 January 2020, the complainant submitted his comments on the State party's observations.

5.2 In regard to the admissibility of the case, the complainant asserts that his communication is not manifestly unfounded and that the minimum level of substantiation required for the purpose of admissibility has been met since he gives sufficient information about being at risk of being treated in a manner that would be in breach of article 3 of the Convention if returned to Afghanistan as a Christian convert. The complainant reiterates that in Afghanistan, where 0.3 per cent of the population are of a religion other than Islam,<sup>16</sup> Christians have to hide their beliefs owing to fear of reprisals and persecution and are not able to freely live out or manifest their religious faith.<sup>17</sup> The complainant also reiterates that under the Afghan judicial system, the Constitution stipulates that no law shall be contrary to Islamic law, and any Christian convert is liable to be punished by death as an apostate. He also emphasizes that there is a high probability that the apostate's own family, or other civilians, may take the case into their own hands, as conversion often means shame for the whole family or community.<sup>18</sup>

5.3 Regarding the merit of the present case, the complainant reiterates that he is facing a personal, foreseeable and real risk of being subjected to treatment in breach of article 3 of the Convention. The complainant alleges that he has accounted for his genuine conversion and belief by means of numerous testimonies from pastors and church leaders, as well as with his baptism certificate which is not questioned by the State party.

5.4 The complainant reiterates that the State party's allegation that his conversion was not out of genuine conviction is based on an arbitrary assessment in flawed domestic proceedings. The complainant asserts that decisions by the migration authorities are not based on a complete and full assessment of the facts, but on individual, sometimes politically determined, preferences of officers and lay judges who do not have expertise in religious matters.<sup>19</sup> The complainant argues that it is not in accordance with the principle of non-refoulement to return converts to Afghanistan, no matter how deep or not their convictions are. On the other hand, he also alleges that the depth of a person's convictions is difficult to assess within a two- to three-hour interview, and that the national authorities require a disproportionately high level of knowledge about theological issues, without consideration of the complainant's age, cultural, educational and religious educational background, and verbal communication skills, or of the duration of the conversion process.<sup>20</sup>

5.5 The complainant also reiterates that the examination by the migration authorities predominantly depends on the complainant's ability to express himself or herself verbally, and that, in his own case, it did not take into consideration written evidence supporting his oral statement, especially certificates from experienced and theologically educated church leaders. The complainant also states that he was not questioned regarding the everyday practice of his Christian faith and how he could, if returned, continue to practise it in

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<sup>16</sup> Commission on International Religious Freedom, Annual Report 2017: Afghanistan.

<sup>17</sup> The complainant reiterates the risks faced by Christians in Afghanistan, referring to the reports already cited in his initial submission. He adds that two Afghan Christians who had risked the death penalty for apostasy had been released in 2010 and 2011 due to international attention and pressure, according to a 2017 report of the Swedish Migration Agency. The complainant again refers to the jurisprudence of the European Court of Human Rights in *F.G. v. Sweden* (application No. 43611/11), in which it was found that it was impossible for the applicant, a Christian convert, to manifest his faith openly in the Islamic Republic of Iran and that his expulsion to the Islamic Republic of Iran would entail a violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

<sup>18</sup> *Ibid.*

<sup>19</sup> Referring to the recent parliamentary debate, the complainant argues that the migration authorities lack the relevant expertise and knowledge to assess the genuineness of the convictions of a Christian convert.

<sup>20</sup> The author reiterates that this is against the UNHCR guidelines on international protection regarding religion-based refugee claims.

Afghanistan.<sup>21</sup> Thus, the complainant alleges that the State party has not considered serious consequences that he will face as an apostate in Afghanistan.

5.6 In this connection, the complainant disagrees with the allegation by the State party that he was given ample opportunities to explain the relevant facts and circumstances in support of his claim, both orally and in writing, and that the migration authorities were given sufficient information and were therefore able to carry out a well-informed, transparent and proportionate examination with regard to his situation.

5.7 Furthermore, the complainant argues that it is wrong or contrary to recent domestic case law that the State party should question the genuineness of the complainant's faith on the basis of the timing of the conversion. The complainant, referring to recent case law of the Migration Court of Appeal, argues that there is generally no reason to question an individual for not conveying an interest in the Christian faith earlier during asylum-seeking proceedings, as the timing of conversion is difficult to pinpoint.<sup>22</sup>

5.8 Regarding the State party's allegation that the complainant did not bring up the argument of procedural or systemic deficiencies in domestic proceedings, the complainant argues that this was because those points have since been raised and thoroughly examined in the media, and by attorneys, church representatives and others, after the domestic proceedings were over.

5.9 In summary, the complainant maintains that the complaint should be declared admissible and that the communication reveals a violation of the Convention as is stated in the complaint.

#### **State party's additional observations**

6.1 On 26 May 2020, the State party submitted additional observations in which it stated that the complainant's comments did not contain any new information, and maintained the position that it had expressed in its original observations of 12 July 2019.

6.2 The State party notes that according to information received from the Swedish Police Authority, the decision to expel the complainant to Afghanistan was enforced on 6 May 2019.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

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

7.2 The Committee recalls that in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint unless it has ascertained that all available domestic remedies have been exhausted. The Committee notes that, in the present case, the State party has not challenged the admissibility of the communication on this ground. Accordingly, the Committee considers that it is not precluded under article 22 (5) (b) of the Convention from examining the present communication.

7.3 The Committee further notes that the State party has contested the admissibility of the communication on the grounds that the complainant's claims are insufficiently substantiated. In the light of the information on file and the arguments presented by the parties, the Committee considers, however, that for the purposes of admissibility, the complainant has

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<sup>21</sup> The complainant refers to the European Court of Human Rights case of *A.A. v Switzerland* (application No. 32218/17), in which the Court considered that the return of the applicant to Afghanistan would entail a violation of article 3 of the European Convention on Human Rights, and ruled that the Swiss court had not carried out a sufficient assessment of the risks that the applicant would personally face as a Christian convert if returned to Afghanistan.

<sup>22</sup> Migration Court of Appeal case MIG 2019:25.

sufficiently substantiated his claims, which raise substantive issues under article 3 of the Convention.

7.4 In the light of the above and given that the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

*Consideration of the merits*

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

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

8.3 The Committee must assess whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment upon removal to Afghanistan. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of return. The Committee recalls that the aim of the assessment is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture or other ill-treatment in the country to which he or she would be returned.<sup>23</sup> It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.<sup>24</sup>

8.4 The Committee recalls its general comment No. 4 (2017), according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in the State to which he or she is facing deportation, either as an individual or as a member of a group which may be at risk of being tortured in the State of destination. The Committee recalls that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".<sup>25</sup> Indications of personal risk may include, but are not limited to: (a) the complainant's ethnic background; (b) political affiliation or political activities of the complainant or his or her family members; (c) arrest or detention without guarantee of fair treatment and trial; (d) incommunicado detention or other forms of arbitrary and illegal detention in the country of origin; and (e) religious affiliation.<sup>26</sup>

8.5 The Committee also recalls that the burden of proof lies on the complainant, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, personal, present and real. However, when the complainant is in a situation where he or she cannot elaborate on his or her case, for instance when the complainant has demonstrated that he or she has no possibility of obtaining documentation relating to his or her allegation of torture, or is deprived of his or her liberty, the burden of proof is reversed and it is for the State party concerned to investigate the allegations and verify the information on which the complaint is based.<sup>27</sup> The Committee further recalls that it gives considerable weight to findings of fact made by organs of the State party concerned, however it is not bound by such findings and will make a free assessment

<sup>23</sup> See, inter alia, *X v. Switzerland* (CAT/C/53/D/470/2011).

<sup>24</sup> See, inter alia, *S.K. et al. v. Sweden*, para. 7.3.

<sup>25</sup> See the Committee's general comment No. 4 (2017), para. 11.

<sup>26</sup> *Ibid.*, para. 45.

<sup>27</sup> *Ibid.*, para. 38.

of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.<sup>28</sup>

8.6 In assessing the risk of torture in the present case, the Committee notes the complainant's allegations that as a Christian convert, he risks being subjected to torture and possibly to death by Afghan authorities, the Taliban, and private persons including his family and relatives, if returned to Afghanistan, where conversion is considered as apostasy in Islamic law and shameful in society. The Committee also notes the complainant's argument that the Swedish authorities' assessment of his claims was arbitrary and deficient and that the State party failed to assess in substance the fact that his Christian faith was based on genuine conviction, and the threats made against the complainant on social media. The Committee also notes the complainant's assertion that his claim of conversion as a protection ground for asylum was only examined by the Migration Court.

8.7 The Committee notes the State party's argument that the complainant had ample opportunities to explain to the migration authorities the relevant facts and circumstances in support of his claim and to argue his case, orally and in writing, regarding his conversion and the risks he would face in Afghanistan as a Christian convert. It also notes the State party's argument that the domestic authorities questioned the sincerity of the complainant's conversion after a thorough investigation of his claims and came to the conclusion that his conversion was not genuine. The domestic authorities considered that the complainant's account of the reasons for his conversion and what Christianity meant to him personally were general and vague and noted that the complainant did not cite his alleged interest in Christianity as a ground for protection in the early stage of the proceedings. The Committee also notes the State party's observations that the complainant's claims about the threats received in relation to his conversion have been assessed and found by the domestic authorities not to be credible.

8.8 While recognizing the concerns that may legitimately be expressed with respect to the current human rights situation in Afghanistan with regard to Christian converts, the Committee recalls that the occurrence of human rights violations in the country of origin is not sufficient in itself to conclude that a complainant runs a foreseeable, personal, present and real risk of torture. While the Committee is not in a position to assess the genuineness of the complainant's conversion, it emphasizes that, in their assessment of the complainant's asylum application, the State party's authorities should adequately assess the possible risk of ill-treatment of a Christian convert as a perceived apostate upon return to Afghanistan.

8.9 In the light of all the information made available to it by the parties, the Committee observes that the parties do not contest the fact that the complainant was given several opportunities in the asylum proceedings to explain and clarify, both orally and in writing, the relevant facts and circumstances in support of his claims that he had converted to Christianity out of personal and genuine religious convictions. The Committee notes that an oral hearing in the Migration Court took place for several hours in the presence of a public counsel and an interpreter and that the complainant had the possibility of submitting written comments on the findings of the migration authorities, including complaints regarding any procedural issues, through his public counsel. In this connection, the Committee notes that although the complainant alleges that his claim of conversion as a ground of protection was only examined by one instance, he did not put forth that claim at the initial stage of examination by the Swedish Migration Agency, nor did he raise any complaints regarding procedural issues before the Migration Court, despite having the opportunity to do so. Furthermore, the complainant fails to provide reasonable or convincing accounts of the reason why he did not or could not do so. In the circumstances of the present case and from the information before it, the Committee cannot conclude that there have been any serious errors in the procedure for examination by the Migration Court of the complainant's claims of conversion as a ground of protection.

8.10 The Committee also observes the complainant's claim about the threats he received on social media, which may serve to spread information about his Christian activities to his

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<sup>28</sup> *Ibid.*, para. 50.

home country and expose him to the risk of persecution if returned.<sup>29</sup> However, the Committee also notes that the State party, following the examination by the Migration Court, claims that the complainant did not plausibly demonstrate either that he had been subjected to threats from his family or the rest of the Afghan society, or that the Afghan authorities or anyone else in Afghanistan had become aware that he was a Christian convert. The Committee notes that the complainant has not presented any concrete information to rebut the State party's arguments, beyond his general remarks. He only indicates that he has been involved in Christian activities based on his genuine conviction and that he openly shared his faith, which is insufficient for the Committee to conclude that there is a foreseeable, personal, present and real risk of torture and ill-treatment.

8.11 In the light of the above, the Committee considers that the complainant has not adduced sufficient grounds for it to conclude that he runs a foreseeable, personal, present and real risk of being subjected to torture upon return to Afghanistan. Furthermore, the complainant has not demonstrated that the State party's authorities failed to conduct a proper investigation into his allegations within the domestic proceedings. Consequently, the Committee considers that the evidence on file does not enable it to conclude that the return of the complainant to Afghanistan would constitute a violation of article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Afghanistan by the State party would not constitute a violation of article 3 of the Convention.

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<sup>29</sup> The complainant, in early proceedings for asylum, referred to threats from the Taliban, on account of his past conflict with the Taliban and his ethnic origin, however for the purposes of the present complaint, he only asserts the threats due to his religious conversion. Thus, the Committee only makes an observation on the threats against the complainant as a Christian convert.