



# 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. 874/2018\*, \*\*

<i>Communication submitted by:</i>	A.J.E. (represented by counsel, John Persson)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	19 April 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 5 June 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	22 July 2021
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issue:</i>	Risk of torture upon return to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is A.J.E., a national of Afghanistan born in 1990. He claims that his deportation to Afghanistan by the State party would constitute a violation of his rights under article 3 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 8 April 1986. The complainant is represented by counsel.

1.2 On 5 June 2018, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the complainant while the complaint was being considered.

#### Factual background

2.1 The complainant was born a Muslim, and he sought asylum in Sweden in 2015. As of the second quarter of 2016, he had started studying the Bible with the Jehovah's Witnesses and attending meetings twice per week. He also had weekly personal Bible study with one of the members of the congregation. In March 2018, he was appointed an "unbaptized

\* 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.



publisher". That title is given to active members who go from door to door to preach the principles of the Jehovah's Witnesses.<sup>1</sup> In October 2018, the complainant was baptized.

2.2 In his first application for asylum, the complainant stated that he was of Hazara ethnicity and had been living in Herat before leaving Afghanistan. He claimed that he had left Afghanistan because of a threat to his life from private individuals. The Swedish Migration Agency found his claims to be vague and lacking in credibility.<sup>2</sup> The complainant also claimed that he would be at risk of persecution by the authorities and the Taliban, because of his conversion to Christianity in Sweden. The Agency found that the complainant had provided a vague account as to the reasons why he had decided to convert and found that his conversion was not a genuine conversion based on religious convictions. The Agency denied the complainant's application for asylum on 31 July 2017.

2.3 The complainant's appeal to the Migration Court was rejected on 5 December 2017. On 28 January 2018, the Migration Court of Appeal refused leave to appeal and the decision to expel the complainant became final and non-appealable.

2.4 On 23 February 2018, 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 Act, citing impediments to the enforcement of the expulsion order. In the application, the complainant provided further information on his conversion and the extent of his participation in the Jehovah's Witnesses congregation. He claimed that everyone in Afghanistan was aware of his conversion and that he had received a threatening letter from the Taliban. The Agency found that the claims related to the complainant's conversion had already been considered and could not be seen as new circumstances. It did however consider as new information the claim that knowledge had spread in Afghanistan about the complainant's conversion and the letter from Taliban. The Agency, however, found that the copy of the letter, and not the original, had been submitted and that, because images of documents could be easily manipulated, its probative value was low. The complainant did not provide any information about how the Taliban found out about his conversion. The application was rejected by the Migration on 20 March 2018.

2.5 The complainant appealed to the Migration Court presenting additional information about his having been approved as a preacher in the Jehovah's Witnesses community. He claimed that he was actively visiting people from door to door and preaching in public places. He claimed that knowledge of his preaching has spread among the Muslim community in Sweden, which had put him at risk. Such information could reach Afghanistan and expose him to persecution there. The author claims that he intended to continue his activities irrespective of where he was. He enclosed a letter from a member of his congregation who confirmed the sincerity of his beliefs. The Court considered the new information regarding his conversion to be a supplement to what had already been assessed in the asylum proceedings, which could therefore not be regarded as new circumstances that would have warranted a new assessment. On 6 April 2018, the Court upheld the decision of the Swedish Migration Agency of 31 July 2017, rejecting the complainant's appeal. The complainant's application for leave to appeal was rejected by the Migration Court of Appeal on 27 April 2018.

## **Complaint**

3.1 The complainant claims that his deportation to Afghanistan would expose him to a personal, real and foreseeable risk of torture, persecution or death because of his conversion

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<sup>1</sup> The complainant claims that the title "unbaptised publisher" is only given to active and strong believers. He has submitted with the communication a statement from his representative, who is his teacher in the congregation, stating that the complainant is completely honest, sincere and convinced in his Christian faith and beliefs.

<sup>2</sup> The complainant alleged that his sister and two persons of Pashto ethnicity were kidnapped by the Taliban. The complainant's sister was subsequently released, however, at the moment of release, the two other persons kidnapped by the Taliban were killed. The complainant claimed that he was at risk of being killed as an act of revenge by relatives of those persons.

to Christianity, taking into consideration the present situation of Christian minorities in Afghanistan. In support of his claims, he refers to country reports stating that religious minorities face discrimination and sometimes persecution in Afghanistan. He refers to reports by the Home Office of the United Kingdom of Great Britain and Northern Ireland, in which it is stated that: “Given the Afghan State’s position on apostasy, Christian converts will not be able to access sufficient protection anywhere in Afghanistan and internal relocation should not be relied upon. Christian converts should therefore be granted asylum unless, exceptionally, there is clear evidence why a particular individual would not be at risk.”<sup>3</sup> The complainant notes that he has converted, that he is an active publisher and that those facts are already public knowledge in the community where he lives. He preaches from door to door, including to fellow Afghans, which poses a risk to his safety, and the news about his conversion may already have reached Afghanistan.

3.2 The complainant notes that, as a Jehovah’s Witness, preaching or proselytizing is at the core of his Christian faith. He claims that, even if he were to exercise discretion when preaching, such an essential part of his faith would inevitably lead to his public identification as a Christian and increase his risk of facing persecution or ill-treatment. He notes that, according to a report by the Office of the United Nations High Commissioner for Refugees (UNHCR), public opinion is hostile towards individuals or organizations that proselytize.<sup>4</sup> He also notes that, according to UNHCR, persons accused of proselytizing have reportedly been arrested and detained.

3.3 The complainant submits that the State party has failed to consider his claims concerning proselytizing in substance. He claims that, in his application for asylum, he mentioned that he was going to church. The State considered that information to be insufficient. His public counsel did not investigate further as to what extent the complainant had converted. The outcome of the proceedings would have been different if the extent of his involvement with the congregation had been made clear at an early stage.

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

4.1 By note verbale of 26 April 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, because the complainant’s assertion that 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>5</sup>

4.2 On the basis of the jurisprudence of the Committee, the State party argues that, to determine whether the forced return of the complainant to Afghanistan would constitute a breach of article 3 of the Convention, the relevant considerations are the general human rights situation in Afghanistan and the personal, foreseeable and real risk of the complainant being subjected to torture, following his return there; 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>6</sup>

4.3 The State party 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, present, personal 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

<sup>3</sup> United Kingdom, Home Office, “Operational guidance note: Afghanistan”, June 2013.

<sup>4</sup> Office of the United Nations High Commissioner for Refugees, “Eligibility guidelines for assessing the international protection needs of asylum seekers from Afghanistan”, 17 December 2010.

<sup>5</sup> *H.I.A. v. Sweden*, (CAT/C/30/D/216/2002), para. 6.2.

<sup>6</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.

the risk does not have to meet the test of being highly probable, it must be personal and present.<sup>7</sup>

4.4 Regarding the general human rights situation in Afghanistan, the State party clarifies that the complainant has not invoked it as grounds for protection. The State party nevertheless asserts that the situation there has not been deemed such that there is a general need to protect all asylum seekers, although it does not underestimate the concerns that may legitimately be expressed with respect to the human rights situation in Afghanistan.<sup>8</sup> In its assessment, the Committee must focus on the foreseeable consequences of the complainant's expulsion to Afghanistan in the light of his personal circumstances, just as the Swedish migration authorities did in their assessments of the present case.

4.5 The State party submits that the national authorities are in a very good position to assess the information submitted by an asylum seeker and to appraise the credibility of his or her statements and claims. The present communication has been thoroughly examined by both the Swedish Migration Agency and the Migration Court.

4.6 The State party submits that the complainant has had ample opportunity 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 Migration Agency conducted an extensive asylum investigation with the complainant that lasted over three hours. On 16 March 2017, the Agency conducted a complementary asylum investigation with the complainant that lasted over two hours. Furthermore, the Court held an oral hearing with the complainant on 6 November 2017. The investigations and the hearing were conducted in the presence of the public counsel and interpreters, and the complainant confirmed that he understood the advice of counsel and interpretations. The minutes from the investigations were subsequently communicated to the public counsel. Through his public counsel, the complainant was 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 holds that it must be considered that the Swedish Migration Agency and the Migration Court have had sufficient information, together with the facts and documentation in the 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.

4.8 The State party submits that, during the initial asylum proceedings, the complainant stated that he was a Shiite Muslim but had left Islam after having taken an interest in Christianity. The complainant also stated that he thought that it was important to belong to a religion in order to be part of society. He claimed that he had started to visit Jehovah's Witnesses assembly halls in Sweden twice per week and stated that he liked that particular religious community, because they advocated for peace, calm, generosity and justice. However, he did not consider himself to be a Christian, since he had not yet been baptised.

4.9 The Swedish Migration Agency initially held that the complainant's approach of not following all Islamic traditions and not sharing the values of Islam could not in itself demonstrate that he had left Islam based on a genuine religious conviction. Despite repeated questions posed by the Agency during the investigations to clarify his stated reasons for leaving Islam, the complainant's account was vague, lacking in detail and not reliable. The Agency noted that the complainant had not presented reliable information showing that he had indeed participated in such religious activities as he had stated. Furthermore, it found the complainant's account of the elements of Christianity that had made him change his faith to be vague. The Agency held that participation in church activities and religious rituals could

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<sup>7</sup> *H.O. v. Sweden*, communication No. 178/2001, Views adopted on 13 November 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>8</sup> The State party cites numerous country information on Afghanistan by the European Asylum Support Office, the United Nations Assistance Mission in Afghanistan, the Department of State of the United States of America, the Home Office of the United Kingdom of Great Britain and Northern Ireland and the United States Commission on International Religious Freedom.

not, in itself, reliably demonstrate a genuine religious conviction. The complainant was also deemed to lack knowledge of Christianity, even though he claimed to have read a lot about the religion and participated actively in the congregation since the end of 2015. The complainant was therefore not considered to have shown that he had left Islam and converted to Christianity out of a genuine religious conviction.

4.10 On appeal, the Migration Court noted that the complainant did not present any written documents in support of his claims and relied on his oral account. The Court considered, in accordance with guiding judgment MIG 2011:29 of the Migration Court of Appeal, that, in an assessment of whether an alien has plausibly demonstrated that his or her conversion from one religion to another is real, in the sense that it is based on a genuine and personal religious conviction, an overall assessment must be made of the circumstances in which the conversion took place and of whether the alien could be expected to live as a convert upon returning to his or her country of origin. If the conversion occurred after the alien left his or her home country, extra attention should be given to the question of credibility.

4.11 The Migration Court did not question the complainant's assertion that he had undertaken activities in the religious community. However, it found it remarkable that, despite that, he was only able to give vague replies lacking in detail about his conversion or his thoughts about the two religions. He had not arranged to be baptised and therefore did not fully regard himself as a believer. The Court did not find the complainant's conversion to be based on genuine belief and careful consideration. In view of that, the Court did not find it plausible that the complaint would, upon returning to his country of origin, live in such a way that would expose him to persecution. The Court found that no one was aware of the complainant's interest in another religion in his country of origin. The Court therefore agreed with the findings of the Swedish Migration Agency that the complainant had failed to plausibly demonstrate that his cited conversion to Christianity and alleged renunciation of Islam were based on a genuine conviction.

4.12 After the decision to expel the complainant had become final and non-appealable, he filed an application to be granted a new examination of the issue of a residence permit and cited impediments to the enforcement of the expulsion order. He stated that everyone in Afghanistan had been told about his conversion. He claimed that a friend of his, who had returned to Sweden from Mazar-e Sharif, Afghanistan, had contacted him to tell him that the Taliban were aware of his conversion and were looking for him. The complainant stated that, given that information spread easily in Afghanistan, his family was now aware of his conversion. He submitted a copy of a written document which he claimed to have received from the Taliban.

4.13 The State party clarifies that a new examination requires that the alien could not previously have cited the circumstances in question or that the alien shows a valid excuse for not having done so in the context of the initial examination. The expression "new circumstances" means that it cannot only be a matter of modifications or additions to the circumstances originally cited. The expression "can be assumed to constitute a lasting impediment to enforcement" means that it cannot be a matter of a more or less remote possibility that the circumstances cited constitute an impediment to enforcement. It must be considered that there are specific impediments to enforcement in the individual case. The migration authorities can neither re-examine a decision issued by a higher authority nor examine the accuracy of assessments made by a higher authority. The authorities can only consider new circumstances that have emerged in the case.

4.14 The Swedish Migration Agency noted that the complainant's cited conversion had already been examined during the initial asylum proceedings. It was therefore not possible to examine it again. However, the Agency considered the alleged threats from the Taliban due to his conversion, as well as the documents submitted, to be new circumstances. As the only copies of the documents had been submitted, the Agency assessed their probative value as low, because images of documents can be easily manipulated. The Agency held that no information had been submitted to suggest how the Taliban had learned of the complainant's conversion. The Agency therefore found that the complainant's account could not be assumed to constitute a lasting impediment to the enforcement pursuant to chapter 12, sections 1 to 3, of the Aliens Act.

4.15 In his appeal, the complainant stated that he had participated regularly in Bible courses with Jehovah's Witnesses since the second quarter of 2016 and had now been approved as a preacher who actively visited people from door to door and preached in public places to inform them about Christian teachings. As a result, it was generally known in the community, and especially among fellow Afghans and other Muslims, that he had converted and was professing the Christian faith. He stated that he intended to continue to practise his religion and to participate in those activities irrespective of where he was. He transmitted a letter from a member of his congregation, who confirmed the complainant's sincerity and emphasised that Jehovah's Witnesses were not in the habit of assigning asylum seekers "Christian status" on humanitarian grounds, but set a high standard for people to qualify as active members and preachers.

4.16 The Migration Court noted that it had indeed emerged during the initial asylum proceedings that the complainant had been active and participated in religious activities, even though it was not established exactly what the activities were. The Court therefore considered that the cited impediments were modifications of, and supplements to, the complainant's previous statements about his religion and associated activities. The circumstances were therefore not new within the meaning of chapter 12, section 19, of the Aliens Act.

4.17 The Migration Court did consider as new evidence the complainant's claim that the Taliban was aware of his conversion and that he had received threats because of it. However, the Court shared the Swedish Migration Agency's assessment that the written document submitted was of low probative value. Moreover, the complainant's account in that regard was considered to be vague and lacking in detail. There was, for example, no explanation of how the Taliban had learned of the complainant's conversion. The cited information was therefore not sufficiently reliable to reach the standard of proof such that it could be assumed to constitute a risk of serious abuse of the kind referred to in chapter 12, sections 1 to 3, of the Aliens Act. The Court held that the new circumstances could not constitute a lasting impediment to enforcement within the meaning of chapter 12, section 19, of the Act.

4.18 The State party stresses that, considering that converting from one religion to another entails a great impact on a person's way of living, and considering the dangerous consequences that follow a conversion from Islam to Christianity in Afghanistan, the Swedish Migration Agency and the Migration Court concluded that the complainant's conversion did not appear to be based on a genuine and personal conviction. The complainant's account, as presented orally before the Agency and the Court, of the reasons for his conversion and what it meant to him personally was considered vague and lacking in substance. Furthermore, he was deemed to lack knowledge of the Christian religion, even though he claimed to have studied it for a long period of time. Against that background, the national migration authorities maintained that it had not been plausibly demonstrated that the complainant had reached a genuine and in-depth understanding of the Christian faith. He had therefore not plausibly demonstrated that he intended to live as a convert or proselytize upon his return to Afghanistan and thereby face a foreseeable, personal and real risk of being subjected to treatment in breach of the Convention.

4.19 The Government contends that nothing has emerged to indicate that the complainant has been ascribed a Christian belief in Afghanistan, 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 returned to Afghanistan.

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

5.1 On 11 September 2019, the complainant submitted his comments on the State party's observations on admissibility and the merits. He claims that his statements as they emerge from the State party's own submissions, while brief, are credible and representative of the beliefs of the Jehovah's Witnesses. He points out that the assessment upon which the State party has continuously relied was made when he had not yet provided documentary support. He claims that the State party lacks sufficient understanding of the steps involved in becoming a baptized member of the Jehovah's Witnesses. He notes that the State party attaches no weight to the fact that the complainant is engaged in proselytizing activities. The

complainant provides a letter of attestation from his congregation in support of his sincere belief and active religious practice.

5.2 The complainant notes that the State party repeatedly describes his account as vague and lacking in detail, without providing details as to what type of questions the complainant has failed to answer or what information he has failed to provide. The State party contends that the complainant has been unable to elaborate on the reasons for his conversion, but his statements, reflected in the Swedish Migration Agency's decision of 31 July 2017, although brief, grasp the essence of his convictions and are consistent with the Jehovah's Witnesses' beliefs.<sup>9</sup>

5.3 The complainant submits that, even though the State party eventually ceased questioning his participation in Jehovah's Witnesses' activities in general, his initial failure to provide documentary support has influenced the State party's assessment of his account as "vague". When he submitted supporting documents at a later stage, the Migration Court refused to consider them and rejected his appeal for re-examination.

5.4 The State party refers to the fact that the complainant was not baptised as evidence against his genuine conversion. In reality, Jehovah's Witnesses have strict requirements as to whom they baptise, and baptism is preceded by a period of rigorous studying. It is not uncommon to study the Bible for one or two years before qualifying for the status of unbaptized preacher. Several months more can pass before the person is baptised. The individual cannot arrange for the baptism. The State party showed a lack of knowledge about the specific procedures that Jehovah's Witnesses follow. The domestic authorities' assessment was therefore clearly arbitrary and amounted to a denial of justice.<sup>10</sup> In the Migration Court, the complainant confirmed that his conversion was in progress. He was baptised in October 2018.

5.5 The complainant submits that the State party attached little importance to his "participation in church activities" and did not distinguish proselytizing from any other activities. The fact that he is actively proselytizing from door to door was disregarded as being a mere modification of what had been stated previously and, as such, not meriting a re-examination. That ignorance with regard to the nature of the complainant's religious activities raises questions about the State party's claim that both the Swedish Migration Agency and the Migration Court had conducted thorough examinations of the complainant's case.

5.6 The complainant contends that proselytizing is a highly visible activity, which, in a unique way, poses a personal, foreseeable and real risk to the complainant. For the past 18 months, since March 2018, the complainant has spent many hours each month in such proselytizing work, together with his fellow Jehovah's Witnesses.

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

6.1 On 23 December 2019, the State party submitted additional observations indicating that the complainant's comments did not contain any new information and maintaining the position that it had expressed in its original observations of 26 April 2018.

6.2 The State party takes note of the complainant's claim that a thorough assessment of his alleged conversion to Christianity was not made. In that regard, the State party holds that the domestic authorities have thoroughly examined the complainant's allegations and evidence regarding his alleged conversion, as well as the general situation of converts in Afghanistan. However, the authorities concluded that the complainant lacked credibility regarding the genuineness of his alleged conversion, and they held that there was no evidence

<sup>9</sup> The statements referred to by the complainant include the following: "Violence and immoral valuations of people are the main reasons for your negative view of Islam."; "You have said that you have visited Jehovah's Witnesses in Sweden and that you have taken part in activities in that faith community. The biggest difference compared with Islam is that Christianity has a different view of morals and violence."; "You have said that you like Jehovah's Witnesses because that faith community advocates peace, calm, generosity and justice."

<sup>10</sup> See *G.K. v. Switzerland*, (CAT/C/30/D/219/2002).

that such a conversion would have come to the attention of the Afghan authorities. The complainant has failed to submit convincing arguments to show that the assessments of the domestic authorities of the facts and evidence, during both the ordinary proceedings and the subsequent application for a re-examination, were arbitrary. Furthermore, his claims that his alleged conversion in Sweden would have come to the attention of anyone in Afghanistan is speculative, given that it is not based on reliable or verifiable facts.

6.3 The State party maintains its position that there is no reason to conclude that the domestic rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. The State party also maintains that the complainant'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 foreseeable, real and personal. Consequently, an enforcement of the expulsion order would not, under the present circumstances, constitute a violation of Sweden's obligations under article 3 of the Convention.

### **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 will 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 those grounds. Accordingly, it considers that it is not precluded under article 22 (5) (b) of the Convention from examining the present communication.

7.3 The Committee 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 that, for the purposes of admissibility, the complainant has 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 complaint 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>11</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 a 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>12</sup>

8.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, 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 a State to which he or she is facing deportation, either as an individual or as a member of a group that 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>13</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 the complainant's family members; (c) arrest or detention without guarantee of a fair treatment and trial; (d) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; and (e) religious affiliation.<sup>14</sup>

8.5 The Committee recalls that the burden of proof is upon the complainant, who must present an arguable case, namely, submit arguments showing that the danger of being subjected to torture is foreseeable, present, personal 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 up to the State party concerned to investigate the allegations and verify the information on which the complaint is based.<sup>15</sup> The Committee also 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 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>16</sup>

8.6 In assessing the risk of torture in the present case, the Committee takes note of the complainant's allegations that, as a Christian convert and an active proselytizer of Christianity, he risks being subjected to torture and possible death by the Afghan authorities and the Taliban if returned to Afghanistan. The Committee also takes note of the complainant's argument that the Swedish authorities' assessment of his claims was arbitrary and deficient and that the State party had failed to assess in substance his proselytizing activities.

8.7 The Committee takes note of the State party's argument that the complainant had ample opportunity 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 authorities regarding his alleged grounds for asylum protection as a Christian convert. It also takes note of 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 and that he could not be expected to continue his Christian activities upon return to Afghanistan. The Committee further takes note of the State party's observations that the complainant's claims about the threat received in relation to his conversion from the Taliban have been assessed and found not to be credible by the domestic authorities. The Committee notes that the explanation by the State party that the matter of

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<sup>11</sup> See, inter alia, *X v. Switzerland* (CAT/C/53/D/470/2011).

<sup>12</sup> See, inter alia, *S.K. and others v. Sweden* (CAT/C/54/D/550/2013), para. 7.3.

<sup>13</sup> Committee's General comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 11.

<sup>14</sup> *Ibid.*, para. 45.

<sup>15</sup> *Ibid.*, para. 38.

<sup>16</sup> *Ibid.*, para. 50.

proselytizing by the complainant has not been considered separately, because it was a supplement of the previously considered claim of conversion.

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, present, personal and real risk of torture. Although the Committee is not in a position to assess the genuineness of the complainant's conversion, it emphasises that, in its 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 submitted by the parties, the Committee observes that the parties do not contest the fact that the complainant was given a number of opportunities in the asylum proceedings to explain and clarify, both orally and in writing, the relevant facts and circumstances in support of his claims. The Committee notes that each oral hearing took place over the course of several hours in the presence of a public counsel and an interpreter and that the complainant had the possibility to submit written comments on the findings of the migration authorities through his public counsel. In that regard, the Committee notes that the complainant, who allegedly had participated in the activities of the Jehovah's Witnesses community since 2015 and had started studying Bible, including through private teaching and attending church twice per week in the third quarter of 2016, was found not to be a genuine convert by the Migration Court in its decision delivered in December 2017. The State party therefore did not consider as substantiated the complainant's claim that he would continue to act as a practicing Christian if returned to Afghanistan. The Committee notes that, only three months later, in March 2018, the complainant became a preacher and presented that fact as a new claim against his expulsion.

8.10 The Committee observes that the complainant claims to have been proselytizing for 18 months, at the time of submission of his comments to the observations of the State party. He claimed that he was preaching publicly and going from door to door, including among the Muslim community, which exposed him to the risk of persecution and the risk that information about his Christian activities could spread to his home country. The Committee notes that, despite that general allegation, the complainant has not presented information on any specific threat that he might have been exposed to during that period. He limited himself to the statement that his conversion was genuine, that he was actively proselytizing and that the domestic authorities had erroneously considered the claim as a supplement to the already assessed claim of conversion and did not evaluate it on its own. In the circumstances of the present case, the Committee considers that, once the domestic authorities, after a due assessment of his claims, found the complainant's conversion not to be genuine, a further claim ensuing from such conversion, should not be reasonably expected to lead to a new evaluation and new findings, especially given the brief period that had passed between the initial assessment and the request for a new assessment.

8.11 In the light of the foregoing, the Committee considers that the complainant has not adduced sufficient grounds for it to conclude that he runs a real, foreseeable, personal and present 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. The Committee therefore 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 against Torture, 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.