



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. 1047/2021* **

<i>Communication submitted by:</i>	N.R. (represented by counsel, Rebecca Ahlstrand, Scandinavian Human Rights Lawyers)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	21 December 2020 (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 4 January 2021 (not issued in document form)
<i>Date of adoption of decision:</i>	22 November 2023
<i>Subject matter:</i>	Risk to life and of torture or cruel, inhuman or degrading treatment or punishment in case of deportation to Afghanistan (non-refoulement)
<i>Procedural issue:</i>	Admissibility – non-substantiation of claims
<i>Substantive issues:</i>	Right to life; torture and other cruel, inhuman or degrading treatment or punishment
<i>Articles of the Convention:</i>	3 and 16

1.1 The complainant is N.R.,¹ a national of Afghanistan born on 7 August 2000. He applied for asylum in Sweden in 2015 on the grounds of fears of the Taliban and, subsequently, his conversion to Christianity; however, his application was rejected.² He claims that his forcible removal to Afghanistan would amount to a violation by Sweden of article 3 of the Convention, as he fears a risk to his life and of torture and cruel or inhuman treatment if deported to Afghanistan. To avoid irreparable harm, the complainant urged the Committee to issue interim measures to halt his deportation to Afghanistan while his communication was being considered by the Committee.³ The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 26 June 1987. The complainant is represented by counsel.

* Adopted by the Committee at its seventy-eighth session (30 October–24 November 2023).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

¹ The complainant requested anonymity.

² The complainant claims that he was diagnosed with post-traumatic stress disorder following his rape by members of the Taliban in Afghanistan, and that he converted from Islam to Christianity.

³ The expulsion order has been enforceable since 1 July 2020.



1.2 On 4 January 2021, 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.⁴

Facts as submitted by the complainant

2.1 The complainant is a national of Afghanistan, of Hazara ethnicity, born in Jaghatu in Ghazni province, Afghanistan.

2.2 Having suffered persecution, harassment and rape as a child by members of the Taliban because of his ethnicity, he decided to leave his country and arrived in Sweden in 2015, on an unspecified date.

2.3 On 16 December 2015, the complainant applied for asylum, invoking the risk of being exposed to torture and inhuman or degrading treatment if removed to Afghanistan. The complainant submits that one day after school in his hometown, when he was 13 years old, he was stopped by some men, who asked if he was the son of H.R. (the complainant's father). When he confirmed this, the men blindfolded him, tied his hands and took him to a house in which there were other members of the Taliban. The men held him captive for three days, taking turns raping him under threat of shooting him with a Kalashnikov rifle, before releasing him. The members of the Taliban told him that this was a warning. A few weeks later, his father disappeared, and the complainant's mother and uncle decided that the complainant should flee the country, in particular after a man came to his home asking for him. His family feared that, like his father, he could be kidnapped.

2.4 The Swedish Migration Agency found that the complainant had given credible information concerning the kidnapping and abuse, including the rape that he had been subjected to as a child. However, since he was not able to prove that it was specifically members of the Taliban who had kidnapped him, he was not granted protection in Sweden. After the kidnapping and abuse of the complainant, his father had disappeared and the complainant had been sought by unknown individuals. The complainant submits that he was traumatized by these events and has been diagnosed with post-traumatic stress disorder. He experiences shame and the fear that he would have to return to his hometown and that the event would be known to neighbours, causing stigma and social isolation and putting him at risk of violence amounting to torture. The complainant submits that a psychologist/psychotherapist has assessed that there was a risk of further traumatization if he were to be deported to Afghanistan. The complainant's mental health is an important factor in the overall assessment of the risks relating to his expulsion.

2.5 On 7 August 2018, the Migration Agency rejected the complainant's asylum application and decided to expel him. In March 2019, the complainant was baptized as Christian.⁵ Following his conversion, he requested a new examination of his asylum grounds in the light of the new circumstances. When he appealed to the Migration Court in Malmö, he explained that he had converted to Christianity. The Migration Court rejected the appeal on 26 May 2020 and decided that the complainant's expulsion should be enforced. On 11 June 2020, the complainant submitted an appeal to the Migration Court of Appeal, which decided on 1 July 2020 not to grant the complainant leave to appeal. The decision to expel the complainant became enforceable as at 1 July 2020.

2.6 Along with the decision of the Migration Court, the President of the Court submitted a dissenting opinion in which he stated that the complainant had been able to explain what appealed to him in Christianity in a nuanced way. He had been able to discuss the teachings of Islam and Christianity regarding sin and the forgiveness of sins in relation to the abuse

⁴ The complainant currently resides in Sweden. On 4 January 2021, the Migration Agency stayed the enforcement of the complainant's expulsion order until further notice.

⁵ The complainant mentions that he came to know Christians at his accommodation in 2016 and experienced them as genuine people who lived according to their faith. In August 2017, the complainant learned about the Philadelphia Church in Örebro and started attending language classes and tutoring sessions. As his interest in Christianity grew, he was invited to the church and started to attend Bible studies in the fall of 2017 once a week. Following this spiritual experience, he eventually decided that he wanted to live a Christian life and to be baptized.

that he had been subjected to in his home country and the internal conflict he felt because of this. The President of the Court also considered that the complainant had shown good knowledge of Christianity, including its theology and holidays. The evidence submitted and the testimony of a church leader during the hearing supported the complainant's claim of genuine conversion. Thus, the President of the Court, who was the only legally trained member of the Court who examined the case, found that the complainant was genuine in his Christian conviction, that he intended to live as a Christian convert upon his return to Afghanistan and that, therefore, he would suffer persecution upon his return.

2.7 Despite those arguments, the Migration Court assessed that the time between the complainant's first visit to the Pentecostal church in Jönköping in the fall of 2018 and his baptism in March 2019 had been too short for the complainant to have genuinely converted. According to the Court, the short time interval indicated that there had been no spiritual or mental process that had led to the conversion. The complainant questions whether the Court arrived at these conclusions on the basis of objective considerations.⁶ The complainant submits that his interest in other religions arose when he studied religion in school. He had already started to attend Bible studies and church services in the fall of 2018. Thus, his interest in Christianity had grown over a period of at least six months. There had therefore been enough time for a mental and spiritual process, which had resulted in the formal conversion of the complainant through baptism in March 2019.

2.8 The complainant was ordered to leave Sweden within four weeks from the date on which the decision of the Migration Agency became enforceable, on 1 July 2020. He was ordered by the Migration Agency to obtain temporary travel documents from the Embassy of Afghanistan in Stockholm no later than 28 August 2020. Considering the risks and previous serious violations of his rights, the complainant has remained in Sweden, at immediate risk of deportation by the police. On 27 October 2020, the Migration Agency decided to issue a re-entry ban against the complainant.

2.9 The complainant claims that he has exhausted all available domestic remedies and that the same matter has not been or is not pending under any other mechanism of international investigation or settlement.

Complaint

3.1 The complainant claims to face a risk of torture and the death penalty if deported to Afghanistan, in violation of his rights under articles 2 and 3 of the Convention, since he was abused by members of the Taliban in the past, his family has been persecuted and he has converted to Christianity. As regards his allegations of past abuse as a child by members of the Taliban, he claims that the national asylum authorities have not thoroughly investigated the risks of a possible recurrence of persecution against him, if returned. He further submits that his conversion, in combination with the security situation in Afghanistan, the personal risk to him in a Taliban-ruled area due to his Hazara ethnicity and origin and threats against him by family members due to his conversion, constitute a substantial risk to his life and health if he is removed to Afghanistan.

3.2 The complainant also submits that, in accordance with country of origin information, internal relocation is not an option, considering the extreme risk of religion-based persecution across the whole country. He adds that the fact that a presiding judge of the Migration Court produced a dissenting opinion, namely, that the complainant had been able to reason about several core principles of Christianity, makes it clear that his conversion was genuine.

3.3 The complainant further submits that, since the Migration Court did not refer his case to the Migration Agency, he had no real and effective legal means to appeal the assessment of the risks associated with his Christian convictions. Thus, there are major procedural deficiencies in his case, as well as in other conversion cases in general, within the Swedish legal system.

⁶ Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, paras. 71–73.

3.4 The complainant also asserts that his conversion was examined during the oral hearing in the Migration Court. The hearing lasted, in total, for about two hours and 45 minutes, including initial presentations and the pleadings by the parties towards the end. During this time, he was also examined regarding the other grounds of his asylum request, relating to the abuse he had suffered in Afghanistan. Due to interpretation, the time for questioning was cut in half. He submits that he was given between 30 and 40 minutes to speak in total on all his asylum grounds. Thus, he claims that the oral hearing was evidently not sufficient to thoroughly examine an individual's deep religious thoughts and beliefs. This contention also appears in the public counsel's appeal to the Migration Court of Appeal, in which the public counsel states that the complainant said during the oral hearing in the Migration Court that he had more to say about his Christian faith but that, due to a lack of time, he was not given sufficient opportunity to speak about it.

3.5 In support of his arguments, the complainant refers to the case of *Q.A. v. Sweden*,⁷ in which the Human Rights Committee found that the Swedish migration authorities had assessed the grounds for protection separately, not jointly, and that the combined grounds aggravated the risk for the author and created multiple vulnerability profiles. The Committee found that Sweden had failed to take into due consideration the consequences of the author's personal situation in his country of origin and concluded that his removal to Afghanistan would constitute a violation of articles 6 and 7 of the Covenant.

3.6 The complainant considers that it would not be possible to hide his Christian faith in Afghanistan. He has the right to religious freedom and to practise his religion openly, alone or in community with others. In fact, international law prohibits State authorities from expecting religious practitioners to hide their beliefs. The judgments of the European Court of Human Rights in the cases of *F.G. v. Sweden*⁸ and *A.A. v. Switzerland*⁹ make it very clear that one should not be obliged to hide one's faith or practise it "discreetly".

3.7 The complainant submits that the authorities have an obligation to investigate, even when finding that a conversion is not sincere, if there are risks associated with the complainant's activities and behaviour. However, the Swedish authorities have not fully investigated the risk associated with the complainant's apostasy.¹⁰ In that context, the complainant submits that his conversion is known among his friends, one of whom lives in Kabul, and that he took part in online church activities during the coronavirus disease (COVID-19) pandemic. Furthermore, the complainant was a leader at a Christian-themed sports event in August 2020, and a photo from the event was published on the All Star Mission's Instagram account. The apostasy would be difficult or impossible to hide when the complainant refused to attend the mosque or participate in the Islamic prayers and fasting. In addition, his grandfather would not accept that one of his grandchildren was not taking part in Islamic practices.

3.8 Finally, the complainant refers to the general human rights situation in Afghanistan. In 2020, the World Watch List of the Open Doors organization ranked Afghanistan the second worst out of the 50 countries in which the persecution of Christians is most extreme.¹¹ Less than 0.3 per cent of the population confess to holding a different belief than Islam in Afghanistan.¹² The Christian minority consists mostly of individual Afghans who have converted to Christianity.¹³ Christians in Afghanistan stay hidden because of a fear of

⁷ Human Rights Committee, *Q.A. v. Sweden* (CCPR/C/127/D/3070/2017), paras. 9.6 and 9.8.

⁸ European Court of Human Rights, *F.G. v. Sweden*, Application No. 43611/11, Judgment, 23 March 2016.

⁹ European Court of Human Rights, *A.A. v. Switzerland*, Application No. 32218/17, Judgment, 5 November 2019.

¹⁰ See Human Rights Committee, *Q.A. v. Sweden*.

¹¹ Open Doors, World Watch List 2020 Advocacy Report, available at <https://webuat.opendoorsuk.org/persecution/wwl20-advocacy-report>.

¹² United States Commission on International Religious Freedom, 2017 Annual Report (Washington, D.C., United States Commission on International Religious Freedom, 2017), pp. 120–123.

¹³ Swedish Migration Agency, Center for Country Information and Country Analysis in the Field of Migration, "Afghanistan: Kristna, apostater och ateister" (Afghanistan: Christians, apostates and atheists) Thematic Report (version 1.0), 21 December 2017, p. 6.

reprisals. Their church is clandestine and they meet at home in very small groups.¹⁴ Apostasy is often punished with death after the court has given the defendant a period of time for reflection.¹⁵ Apostates risk being denounced by their families. It is even possible for the person considered to be an apostate to be murdered without the case being investigated or judged by a court.¹⁶ Several sources point out that the main threat to an “infidel” is not primarily the Afghan authorities but the family of the person concerned or other individuals in the community.¹⁷

State party’s observations on admissibility and the merits

4.1 On 6 September 2021, the State party submitted its observations on admissibility and the merits, recalling the main facts of the case and the complainant’s claims before the Committee. The State party argues that the communication should be declared inadmissible as manifestly unfounded. As to the merits, it asserts that the present communication reveals no violation of the Convention.

4.2 The State party notes that the complainant’s case was assessed under the 2005 Swedish Aliens Act, which entered into force on 31 March 2006, and the Act temporarily restricting the possibility of obtaining residence permits in Sweden, which entered into force on 20 July 2016.

4.3 As to the facts of the case, the State party refers to the translated summaries of the facts in the Swedish Migration Agency’s decision of 7 August 2018 and the Migration Court’s judgment of 26 May 2020.¹⁸ According to the reasoning of the national authorities, the complainant has not shown that he would personally face a real risk of being subjected to the kind of treatment upon his return to Afghanistan that would make his expulsion from Sweden amount to a violation of article 3 of the Convention. Therefore, he can be expelled to Afghanistan.

4.4 The complainant applied for asylum in Sweden on 16 December 2015. The Migration Agency rejected his application and decided, on 7 August 2018, to expel him to Afghanistan. The decision was appealed to the Migration Court of Appeal, which rejected the appeal on 26 May 2020. On 1 July 2020, the Migration Court of Appeal refused leave to appeal and the decision to expel the complainant became final and non-appealable. The Committee’s attention is drawn to the fact that the decision to expel the complainant will become statute-barred on 1 July 2024.

4.5 The State party informed the Committee of a recent general decision by the Migration Agency that affects the present case. Due to the prevailing security situation in Afghanistan, the Migration Agency decided on 16 July 2021 to suspend all enforcement of deportation orders to Afghanistan. It means that no one under a deportation order to Afghanistan will be returned to the country, in accordance with the principle of non-refoulement, until further notice.¹⁹

4.6 As concerns admissibility, the State party does not contest the fact that all available domestic remedies have been exhausted in the present case. In addition, the State party is not aware of the present matter having been or being examined under another procedure of international investigation or settlement.

¹⁴ Ibid.

¹⁵ Ibid., p. 9.

¹⁶ Ibid., p. 17.

¹⁷ Ibid., p. 18.

¹⁸ The decision and judgment were provided.

¹⁹ In a position paper, dated 16 July 2021, the Migration Agency noted that the security situation in Afghanistan was very worrying and also difficult to assess because of a widespread lack of reporting. The Agency held that the rapid increase in territorial control in the country by the Taliban subsequent to 1 May 2021 could lead to profound and long-lasting changes in the country’s political, military and humanitarian conditions. Furthermore, the Agency deemed that it was not possible to assess with certainty how the conflict would develop. Against this backdrop, the Agency concluded that it would closely follow the developments in Afghanistan and await further country of origin information before a new assessment was made.

4.7 On the merits, the complainant claims that the enforcement of the expulsion order against him and his removal to Afghanistan would violate articles 3 and 16 of the Convention, as upon his return he risks being subjected to torture and other cruel, inhuman or degrading treatment or punishment.

4.8 The fact that the Migration Agency has suspended all enforcement of deportation orders to Afghanistan shows that the Swedish authorities closely follow the developments in countries of origin to avoid treatment in violation of the State party's obligations under human rights law. In view of the above, the complainant has the right to remain in Sweden until further notice. However, no new national process has been initiated so far on the issue of residence permits that would apply to the complainant's case and the Migration Agency has introduced a decision-making halt in cases relating to Afghanistan. The State party will inform the Committee of any developments in this regard. Accordingly, the State party limits its observations to the assessments made during the domestic proceedings and whether the rulings were arbitrary or amounted to a denial of justice.

4.9 As regards the assessments made by the national asylum authorities, the Migration Agency held an introductory interview with the complainant on 16 December 2015, the day that he applied for asylum. On 2 October 2017 an asylum investigation, which lasted for over three hours, was held with the complainant. A complementary investigation, lasting over one hour, was held on 16 November 2017. During the interview and the investigations, an interpreter was present whom the complainant confirmed he understood. The investigations were furthermore held in the presence of the complainant's public counsel to whom the minutes from the interview and the investigations were communicated. Upon the complainant's appeal to the Migration Court, the Court held an oral hearing with the complainant for over two hours, in the presence of his public counsel and an interpreter. During the oral hearing, a witness was heard upon the request of the complainant. Through his public counsel, the complainant was invited during the domestic proceedings to review and submit written observations on the minutes from the asylum investigations and to provide written submissions and appeals to supplement the oral investigations. The complainant had sufficient opportunity to explain the relevant facts and circumstances in support of his original asylum claim and to argue his case, orally and in writing. The State party holds that the Migration Agency and the Migration Court have had sufficient information, including facts and documentation, to ensure the production of a well-informed, transparent and reasonable risk assessment concerning the complainant's claim for international protection.

4.10 Before the Committee, the complainant claims that he was not given a thorough investigation of his cited conversion, as the Migration Court did not refer the case back to the Migration Agency. He further claims that the appeal of the Migration Court's judgment as concerns his cited conversion did not constitute a real and effective legal remedy since the Migration Court of Appeal grants leave to appeal only in cases in which there is a need for legal guidance. It is a well-established principle in domestic case law that aliens have the right to have all the circumstances invoked in support of their application for a residence permit, which are assessed during the same proceedings regardless of the grounds on which a right to such a permit is claimed, before a final and non-appealable decision is issued.

4.11 In the circumstances of the complainant's case, where new grounds for protection are cited in connection with the appeal of the Migration Agency's decision, the Migration Court of Appeal has stated that the Migration Court has a responsibility to ensure that the new grounds are sufficiently investigated before it rules on the question of a residence permit. The Migration Court has undertaken relevant investigations, including by holding an oral hearing where the complainant was given the opportunity to talk about his claimed conversion and, on the basis of his request, by hearing a witness on this matter. As regards the cited conversion, the Migration Agency held, in a submission to the Migration Court, that the complainant could not be considered to have plausibly demonstrated that he had converted on account of a genuine Christian conviction and thus that he intended to live as a Christian convert if returned to Afghanistan. The Migration Court came to the same conclusion in its judgment. The Court also noted that there were no indications that the complainant's conversion had become known to anyone in Afghanistan.

4.12 In his complaint before the Committee, the complainant refers to the Views of the Human Rights Committee in *Q.A. v. Sweden*. The similarities between the two complaints

are that the claims concerning conversion were made after the Migration Agency's decision on expulsion and that the complaint to the Committee raised objections regarding procedural deficiencies during the domestic proceedings as regards those claims. In *Q.A. v. Sweden*, the Committee, inter alia, held that when an asylum-seeker submits that he or she has become an atheist after his or her initial asylum request has been rejected, it may be reasonable for an in-depth examination of the circumstances of the conversion to be carried out by the authorities. However, regardless of the sincerity of the conversion, the test remains as to whether there are substantial grounds for believing that such a conversion could 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 the reported conversion is deemed 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, putting him or her at risk of irreparable harm.²⁰ The Committee concluded that, owing to the complainant'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 accordingly found that the State party had failed to adequately assess the real, personal and foreseeable risk to the complainant of returning to Afghanistan as a perceived apostate with myriad risk-enhancing factors.

4.13 The complainant in the present case, unlike the complainant in the case of *Q.A. v. Sweden*, was heard concerning the circumstances of the cited conversion during the national asylum proceedings. The Migration Court further assessed whether there were substantial grounds for believing that the complainant's cited conversion and activities within the church would have serious adverse consequences in his country of origin such as to create a real risk of irreparable harm as contemplated by article 3. With regard to risk-enhancing factors, the State party notes that the complainant in *Q.A. v. Sweden* was an individual who had no network in Afghanistan or knowledge of the country. He did not speak fluently either the official or the widely spoken languages of the country. In addition, he had mental health issues, with suicidal ideation, which led him to attempt to commit suicide during the asylum proceedings. The State party notes that the risk-enhancing factors differ between *Q.A. v. Sweden* and the present case.

4.14 In the present case, the domestic migration authorities also found that the complainant had not plausibly demonstrated that he would be in need of international protection on account of the cited sexual assaults he had been subjected to as a child in Afghanistan. In this regard, the complainant claims that the migration authorities did not investigate those risks in a satisfactory manner and refers to a judgment by the European Court of Human Rights in the case of *R.C. v. Sweden*.²¹ That case concerns the expulsion to the Islamic Republic of Iran of a man who claimed to have been subjected to torture while detained in an Iranian prison in 2001, following which he left the country illegally. In support of that claim, the applicant had submitted a medical certificate to the national authorities that, according to the Court, gave a strong indication that the applicant's scars and injuries potentially had been caused by ill-treatment or torture. In the case of *R.C. v. Sweden*, the Court held that the applicant had made a prima facie case as to the origin of his injuries and had discharged the burden of proving that he had been subjected to torture. It had consequently been for the Migration Agency to dispel any doubts that might have persisted as to the source of the applicant's injuries. The Court concluded that the authorities had had a duty to ascertain all the facts, particularly in circumstances where there was a strong indication that an applicant's injuries might have been caused by torture.²²

4.15 The State party holds that the present case is clearly distinguishable from that of *R.C. v. Sweden*, noting that neither the Migration Agency nor the Migration Court found that the complainant had made a prima facie case as to the underlying threat to him and thus the origin of the abuse that he suffered. In contrast, the domestic authorities concluded that the cited

²⁰ Human Rights Committee, *Q.A. v. Sweden*, para. 9.5.

²¹ European Court of Human Rights, *R.C. v. Sweden*, Application No. 41827/07, Judgment, 9 March 2010.

²² *Ibid.*, para. 53.

underlying threat to the complainant was based on secondary information whose accuracy, due to its nature, could not be verified. This information was also considered scant and very vague. The domestic authorities must hence be considered to have fulfilled their duty to ascertain all the relevant facts in this regard.

4.16 The complainant has attached to his complaint to the Committee a certificate by a psychologist/psychotherapist. The State party notes that, as the complainant states, the certificate, dated 5 December 2020, constitutes new evidence that was not invoked during the domestic proceedings. As mentioned above, the State party limits its observations to the assessments made during the national asylum proceedings and whether the rulings were arbitrary or amounted to a denial of justice. However, the State party emphasizes that one of the main considerations in the enforcement of an expulsion order in cases in which the returnee suffers from ill-health is to see that his or her state of health will not deteriorate as a consequence of such enforcement. In the light of the above, the State party holds that there is no support for the assertion that the domestic rulings in the complainant's case were arbitrary or amounted to a denial of justice.

4.17 The State party reiterates that, due to the prevailing security situation in Afghanistan, the Migration Agency has suspended all enforcement of deportation orders to Afghanistan until further notice. Consequently, the complainant is not at risk of expulsion. The State party would inform the Committee regarding any developments concerning the domestic migration authorities' assessment of the human rights and security situation in Afghanistan, with implications for the complainant and invites the Committee to await the ongoing re-evaluation of the situation. The State party concludes that the complainant's case does not reveal any violation of the Convention.

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

5.1 On 5 January 2022, the complainant submitted comments on the State party's observations on admissibility and the merits.

5.2 The complainant holds that, contrary to the State party's observations, the communication is admissible under article 22 (2), as his assertions achieve the minimum level of substantiation required for purposes of admissibility. He notes that the State party does not contest the complainant's claim that the same matter has not been and is not being examined under another procedure of international investigation or settlement, and that domestic remedies have been exhausted in the present case.

5.3 The complainant contests the State party's assertion that he is not at risk of being treated in a manner that would amount to a violation of article 3 of the Convention if returned to Afghanistan and that his claims fail to rise to the minimum level of substantiation for purposes of admissibility. Attention is drawn to the fact that, as former Muslim who has converted to Christianity, he will face serious consequences as an apostate in Afghanistan.²³ In addition, the complainant lacks an adequate social network in Afghanistan and would be seen as an apostate by his family, his compatriots and the authorities. He was previously subjected to persecution in Afghanistan, which has not been questioned by the State party's asylum authorities. The complainant would be a target for all kinds of exploitation, violence and abuse. Given his distressing situation, the Committee should take all circumstances and risk-enhancing factors into consideration when making an overall assessment of the complainant's need for protection. The complainant has sufficiently asserted the fact that he is at risk of being treated in a manner that would amount to a violation of article 3 of the Convention if returned to Afghanistan, considering both the general situation for converts in his home country and the complainant's individual situation.

5.4 Concerning the merits, the complainant maintains that the communication reveals a violation of article 3 of the Convention, as stated in the complaint and the following comments. The State party, by not granting him asylum due to his need for protection, has violated the Convention. Since the complainant has converted from Islam to Christianity,

²³ In Afghanistan, less than 0.3 per cent of the population confess to holding a different belief than Islam.

there is a substantial risk that he would be subjected to persecution if he were to be returned to Afghanistan. The complainant adds that there were several deficiencies in the domestic proceedings.

5.5 The complainant is aware that the Committee is not an appellate, quasi-judicial or administrative body and that the Committee attributes considerable weight to the assessments made by the authorities. However, he argues that the Committee is not bound by such findings²⁴ and that it has the power to freely assess the facts on the basis of the full set of circumstances in every case.²⁵ In this case, the facts and evidence have not been adequately assessed by the national authorities, which is why the asylum procedure amounts to a denial of justice.

5.6 The complainant does not contest that the domestic migration authorities are in a good position to assess information submitted by an asylum-seeker and to appraise the credibility of his or her statements and claims. As regards the State party's explanation of its current policies concerning citizens of Afghanistan, it is correct that, due to the security situation, the enforcement of deportations to Afghanistan is suspended. While the complainant trusts that his deportation will not be enforced for the time being, he points to the final decision from the migration authorities concerning his deportation. He requests the Committee to thoroughly examine the State party's decision on his expulsion.

5.7 As regards his conversion, the complainant contests the misleading statement from the State party that the migration authorities conducted thorough examinations of the complainant's case. The complainant's conversion to Christianity has not been given a sufficient and in-depth investigation, and the decision has de facto not been appealable since the case was not remanded to the Migration Agency, leaving the complainant with no real and effective remedy. The complainant, as a former Muslim who has converted to Christianity, will face serious consequences as an apostate in Afghanistan. As concerns the length of the asylum interviews, as pointed out in the initial complaint, the complainant argues that, at the time that they were conducted, he had not yet converted to Christianity. He also notes that less than half of the interview time was de facto used by the applicant due to time spent on interpretation and obligatory information from the case officer.

5.8 As regards the State party's contention that the Migration Court held an oral hearing of over two hours with the complainant in the presence of his public counsel and an interpreter and that a witness was heard, upon the request of the complainant, during an oral hearing, the complainant finds this misleading. Due to formal information before the Court and the need for interpretation, less than an hour is typically left to hear the complainant and a witness. Approximately half of this time is used by the Migration Agency to pose questions. However, the Agency's questioning is rarely held as an open and objective investigation and the Migration Agency acts as counterparty and normally uses the time to find errors and weaknesses in the complainant's story and statements. Against this background, in the case of the complainant, there was little time for him to describe his inner thoughts and beliefs in relation to his conversion, which is required according to national case law. The lack of referral to the Migration Agency was a serious procedural deficiency and gave the complainant no chance to clarify the reasons for his conversion and what his newly found faith meant to him. When new grounds for protection are cited in connection with an appeal of the Migration Agency's decision, it is possible for the Migration Court to refer the case back to the Agency. The referral is regularly done in cases similar to that of the complainant. In his case, the Migration Court's negative decision, which was based predominantly on the perceived credibility of the complainant's statements and found no need to refer the case, appears arbitrary. The complainant emphasizes that, when the Migration Court's investigative measures cannot be considered sufficient, it should be the Court's obligation to refer the case to the Migration Agency for further investigation.

5.9 Furthermore, the complainant rebuts the State party's claim that the "Migration Agency held, in a submission to the Migration Court, that the complainant could not be considered to have plausibly demonstrated that he had converted on account of a genuine

²⁴ *G.K. v. Switzerland* (CAT/C/30/D/219/2002), para. 6.12.

²⁵ *X v. Switzerland* (CAT/C/53/D/470/2011), para. 7.3.

Christian conviction and thus that he intended to live as a Christian convert upon a return to Afghanistan". The Migration Agency never heard the complainant's conversion story orally, as this was heard only in the Migration Court. Against this background and considering that an oral hearing is essential for the investigation of an individual's genuine conversion, it was not possible for the Agency to make such a claim. The claim hence shows that the Agency had a preconceived position before the court hearing was even held, as written submissions are normally made before the oral hearing. This fact shows even more clearly in that no open investigation was held in the Court and the Migration Agency acted only as a counterparty, lacking objectivity.

5.10 Moreover, the State party has asserted that the complainant's case could be distinguished from the Human Rights Committee's decision in *Q.A. v. Sweden*.²⁶ The complainant has, however, never claimed that the cases are identical. The cases have similarities, as also noted by the State party. The Human Rights Committee concluded that, owing to the complainant'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. Similarly, the complainant has a multifaceted vulnerability profile. He was subjected to abuse in his home country and has suffered both mental and physical illness. The State party has failed to adequately assess and take these factors into account. The complainant also notes that the Committee recently adopted a decision in the similar case of *A.A. v. Sweden*.²⁷ The Committee, in a similar way, found that the Swedish asylum authorities had failed to sufficiently assess the different risk-enhancing factors and supporting evidence of the complainant. It had also failed to make an individualized assessment of such factors as the young age and mental health of the complainant.

5.11 Regarding the acts of torture suffered previously by the complainant, he stated to the Migration Court that he had been exposed to the *bacha bazi* custom in Afghanistan and also to torture. Despite this, the Migration Court did not request any torture investigation or refer the case back to the Migration Agency for further investigation. The State party holds that the present case is clearly distinguishable from *R.C. v. Sweden* and notes that neither the Migration Agency nor the Migration Court found that the complainant had made a prima facie case as to the underlying threat to him and the origin of the abuse that he suffered. However, the European Court of Human Rights states that, owing to the special situation in which asylum-seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof.²⁸ The European Court holds that, in principle, the complainant has to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to article 3 of the Convention. Some uncertain aspects do not undermine the overall credibility of the story. Where such evidence is adduced, it is for the State party to dispel any doubts about it.²⁹

5.12 In the present case, the complainant has provided a certificate from a psychologist/psychotherapist stating that he suffers from post-traumatic stress disorder due to the abuse he suffered during his childhood. Both the Migration Agency and the Migration Court found that the complainant had provided reliable information regarding his captivity and abuse. As explained in the initial complaint, the migration authorities required that the complainant provide evidence that the abuse was perpetrated by members of the Taliban, which is obviously impossible for the complainant to provide. He explained that he could tell that the abusers were members of the Taliban by their clothes and appearance and the fact that they were members of the Taliban would have been evident to anyone living in Afghanistan. Considering that the complainant's story was found reliable in relation to the abuse, he should have been granted the benefit of the doubt. The complainant notes that the State party has not made any clear statement in this regard. Moreover, it is also evident from the country of origin information on Afghanistan presented in the complaint that grave human

²⁶ Human Rights Committee, *Q.A. v. Sweden*, para. 9.7.

²⁷ *A.A. v. Sweden* (CAT/C/72/D/918/2019).

²⁸ European Court of Human Rights, *R.C. v. Sweden*, para. 50.

²⁹ *Ibid.*, paras. 50 and 52.

rights abuses and torture by members of the Taliban are commonly reported. Contrary to what the State party holds in the present case, the evidence is therefore to be considered as substantial grounds for believing that the complainant would run a real risk of being exposed to treatment contrary to article 3, in line with the European Court's assessment in *R.C. v Sweden*. The fact that the Migration Court found some aspects to be uncertain cannot undermine the overall credibility of his story. The fact that the complainant has given reliable information concerning abuse and related mental health problems is also a risk-enhancing factor that the authorities have failed to sufficiently take into account.

5.13 The State party has claimed that the certificate from a psychologist/psychotherapist, dated 5 December 2020, constitutes new evidence that was not invoked during the domestic proceedings and, as such, should not be taken into account. However, as explained in the complaint, all domestic remedies concerning this certificate have been exhausted as there is no possibility for the complainant to receive a new examination on the merits on the basis of the certificate. As the Committee is aware, the State party's authorities would dismiss the certificate as a modification and addition to the previous applications. Against this background, the Committee should take the complainant's stated health problems and corroborating evidence, such as the certificate, into account.

5.14 Furthermore, the aim of article 3 (2) of the Convention is to ascertain the fact that the complainant would personally run a foreseeable and real risk of being subjected to torture in Afghanistan. This criterion is fulfilled in the present case. The complainant has submitted a considerable amount of corroborating evidence in support of his claims. That evidence, which has not been examined by the State party's authorities, includes several testimonies as to the complainant's faith from pastors, church leaders and Christian friends; baptism certificates; and photos of the complainant participating in church activities.

5.15 As regards the general decision on the suspension of removals to Afghanistan by the Migration Agency due to the prevailing security situation in the country, the complainant notes that the decision could be lifted at any time and his expulsion carried out. He also agrees with the State party's request that the Committee consider the present communication before the decision to expel the complainant becomes statute-barred on 1 July 2024.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) of the Convention.

6.3 The Committee notes the State party's argument that the communication is inadmissible due to a lack of sufficient substantiation. The Committee considers, however, that the arguments put forward by the complainant have been sufficiently substantiated, in particular the allegation that he is at risk of being treated in a manner that would amount to a violation of article 3 of the Convention, if returned to Afghanistan, considering both the general situation for converts in his country of origin and the individual situation of the complainant, who suffered captivity and abuse in the past. As regards the complainant's allegations under article 16, the Committee considers that those assertions do not raise separate issues from the claims raised under article 3 of the Convention; therefore, the claims under article 16 will not be considered separately. The Committee declares the claims under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 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.

7.2 In the present case, the issue before the Committee is whether the forcible removal 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.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return 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. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. 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.

7.4 The Committee recalls its general comment No. 4 (2017), according to which the Committee will assess substantial grounds and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of his or her deportation. 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) sentence in absentia; and (e) previous torture.³⁰ With respect to the merits of a communication submitted under article 22 of the Convention, the burden of proof is upon the author of the communication, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real.³¹ 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, as it can 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.³²

7.5 In that context, the Committee notes that the complainant had not yet converted to Christianity and the issue of the complainant's conversion was therefore not assessed by the Swedish Migration Agency when it examined complainant's asylum application or when it rendered its decision on the complainant's case on 7 August 2018, and it thus constituted new grounds for his asylum claim when he appealed to the Migration Court. The State party has acknowledged that, in a situation where new grounds for protection are cited in connection with an appeal of a decision by the Migration Agency, the Migration Court of Appeal has stated that the Migration Court has a responsibility to ensure that the new grounds are sufficiently investigated before ruling on the question of a residence permit. The Committee takes note of the view of the State party that the review conducted by the Migration Court was sufficient. The Committee observes, however, that the Migration Court could have but did not remit the case to the Migration Agency for reconsideration, and recalls that doing so would have allowed the matter, including any questions regarding the credibility of the complainant's claim of conversion, to be analysed in detail, as a whole with other risk factors,

³⁰ General comment No. 4 (2017), para. 45.

³¹ *Ibid.*, para. 38.

³² *Ibid.*, para. 50.

and a decision to be reached on the basis of oral interviews in which the complainant's credibility and other factors could have been objectively assessed.³³ The Committee further observes that, in the course of its consideration of the matter, the Migration Court accepted and appears to have acted upon the basis of a submission from the Migration Agency, which represented that the complainant's conversion had not been genuine, notwithstanding that the issue of the genuineness of the conversion had not been examined as part of the proceedings before the Migration Agency and thus could not have been examined by the Migration Agency in advance. In this connection, the Committee takes note of concerns expressed by the complainant about the role of the Migration Agency in proceedings before the Migration Court, where it acts as an interested party, rather than as an assessor of credibility and finder of fact. The Committee also takes note of the dissenting opinion of the presiding judge in the case, who found "no reason to question the genuineness" of the complainant's account of his conversion.

7.6 The Committee also considers that the risks faced by the complainant were also insufficiently assessed in connection with his claims relating to his contention that he had been subjected to torture when he was abducted and raped by members of the Taliban and that he faced a substantial risk of being similarly abused if forced to return to Afghanistan. The Committee notes that both the Migration Agency and the Migration Court agreed that the complainant had provided a reliable account of his ordeal of being repeatedly raped and tortured as a child in Afghanistan, but were not satisfied that he had established that it was members of the Taliban who had perpetrated the abuses, notwithstanding his descriptions of the way the perpetrators were dressed and their appearance, which the complainant notes would be well-known to any person in Afghanistan, and the overall context of general country information regarding widespread reports of human rights abuses and torture perpetrated by members of the Taliban. The Committee considers that, in view of the totality of the credibility of the account that the complainant has put forward, including the fact that the State party has acknowledged the credibility of the complainant's account and also including the documentation from the psychologist/psychotherapist concluding that the complainant suffers from post-traumatic stress disorder due to the abuse that he suffered during his childhood, it would be unreasonable to expect the complainant to be required to produce documentary evidence, beyond his testimony, that established the identity of the perpetrators as members of the Taliban.³⁴ In addition, the Committee notes that the mere fact, even if true, that persons other than members of the Taliban had kidnapped and raped the complainant when he was a child, would not resolve questions relating to the risk of the re-traumatization of the complainant if he were forced to return to Afghanistan.

7.7 The Committee considers that, whether or not the conclusion of the Swedish authorities was warranted when they originally considered the claim of the complainant, the risk profile for a person such as the complainant, including with regard to his ethnic identity, the risks associated with the allegations of his past abuse by members of the Taliban and his conversion to Christianity, and the overall human rights situation in the country have fundamentally changed in view of the vastly different circumstances now prevailing in connection with the change of government in Afghanistan. The State party acknowledges this by virtue of its representation to the Committee that the Migration Agency decided, on 16 July 2021, to suspend all enforcement of deportations to Afghanistan because of the worrying situation and the difficulty of assessing it, noting that the State party would inform the Committee regarding any developments relating to that suspension.

7.8 In the light of this fundamental change of circumstances, the Committee considers that it would be inconsistent with the obligations of the State party under article 3 of the Convention if it were now to remove the complainant to Afghanistan on the strength of its assessment of the situation in Afghanistan as it existed at the time of the decisions of the Migration Agency and the Migration Court. The Committee observes that if, at some future point in time, the State party seeks to move forward with the removal of the complainant to Afghanistan, it would need to make a decision on the basis of an individualized assessment

³³ Human Rights Committee, *Q.A. v. Sweden*, para. 9.7.

³⁴ General comment No. 4 (2017), para. 38; and European Court of Human Rights, *R.C. v. Sweden*, paras. 50–52.

of the risks facing the complainant in the light of the circumstances as they then exist before expelling him to Afghanistan.

8. In the light of the foregoing, and recognizing that it is not clear whether there is a present risk of expulsion of the complainant by the State party, the Committee, acting under article 22 (7) of the Convention, concludes that it would be inconsistent with the obligations of the State party under article 3 of the Convention³⁵ if it proceeded to expel the complainant on the basis of the decisions by its asylum authorities with regard to the risk factors in Afghanistan as those risk factors existed at the time that those decisions were taken.

9. The Committee, recalling the State party's obligations under article 3 of the Convention, invites the State party to review the complainant's asylum application, taking into account the new circumstances that have emerged following the takeover of Afghanistan by the Taliban in 2021 and in the light of the State party's obligations under the Convention and the present decision.³⁶

10. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days of the date of transmittal of the present decision, of the steps it has taken to respond to the above observations.

³⁵ *A.A. v. Sweden* (CAT/C/72/D/918/2019), para. 10.

³⁶ *Ibid.* para. 11.