Advance unedited version

Distr.: General
27 July 2023

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1016/2020*, **

Communication submitted by:	O.R. (represented by counsel, Rebecca Ahlstrand, Scandinavian Human Rights Lawyers)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	24 June 2020 (initial submission)
Document references:	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 24 July 2020 (not issued in document form)
Date of adoption of decision:	27 July 2023
Subject matter:	Risk to life and of torture or cruel, inhuman or degrading treatment or punishment in case of deportation to Afghanistan (non-refoulement)
Procedural issue:	Admissibility - non-substantiation of claims
Substantive issues:	Torture and other cruel, inhuman or degrading treatment or punishment
Article of the Convention:	3

1.1 The complainant is O.R.[1], a national of Afghanistan born on 10 November 1999. The complainant applied for asylum in Sweden on the grounds of fears of the Taliban and, subsequently, his conversion to Christianity; however, his application was rejected. He claims that his forcible removal to Afghanistan would amount to a violation by Sweden of article 3 of the Convention as he fears to face a risk of the death penalty, ill-treatment or torture if removed. 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

* Adopted by the Committee at its 77th session (10-28 July 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 Puce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

[1] The complainant requested anonymity.

Committee.[2] 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.

1.2 On 24 July 2020, in application of rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to request the State party to refrain from returning the complainant to Afghanistan while his complaint was under consideration by the Committee.[3] On 24 March 2021, the State party requested the Committee to immediately lift the interim measures. On 13 July 2021, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to deny the State party's request to lift interim measures.

Facts as submitted by the complainant

2.1 The complainant is an Afghani national of Hazara ethnicity. He is single and has no children.

2.2 The complainant fled from Afghanistan through Iran to Sweden and applied for asylum on 1 December 2015. In his original asylum application, the complainant submitted that he had been subjected to death threats from the Taliban after the killing of his brother and that he was forced to escape from Afghanistan.[4]

2.3 The complainant converted from Islam to Christianity while he had an asylum application pending (*sur place* asylum grounds). Because of his conversion, the complainant fears additional risks as he would be considered an apostate within the Muslim community and can be subjected to the death penalty, torture or inhumane or degrading treatment, if deported to Afghanistan.

2.4 On 10 November 2017, the Swedish Migration Agency denied his asylum application and decided to expel the complainant to Afghanistan. The decision of the Migration Agency was upheld by the Migration Court on 28 August 2019. On 15 October 2019, the Migration Court of Appeal decided not to grant the complainant leave to appeal, and the decision to expel the complainant became enforceable.

2.5 On 27 November 2019, the Migration Agency denied the complainant's application for protection because of the impediments to enforcement of the decision of 10 November 2017 due to new circumstances. In his application for protection, the complainant stated that he had come in contact with Christians and a church in 2017 when he sought asylum in Sweden, had converted to Christianity and was baptized on 7 January 2018 in the Pentecostal Church of Skövde. He was threatened and harassed after an image of him being baptised was spread on social media. He posted two pictures on Facebook of him with a silver cross around his neck and a text indicating that he is a Christian Hazara and that this was not a crime. There were thousands of comments from Muslims, both in Sweden and Afghanistan, including death threats against the complainant. It has become known in Afghanistan that he has converted, and he could be recognized in Afghanistan through the widely spread pictures of him in church. He has been practising Christianity for over two years and would clearly be ascribed such a faith by Muslims within the Afghan community. The Migration Agency stated that the documents it reviewed did not plausibly demonstrate that the complainant would be ascribed a Christian religious affiliation if returned to Afghanistan. However, the Migration Court reached a different conclusion on 30 January 2020, saying that, based on what is known about the situation of Christian converts in Afghanistan, the complainant had in fact plausibly demonstrated that he converted to Christianity

[2] The expulsion order has been enforceable since 15 October 2019.

[3] The complainant currently resides in Sweden. The Migration Agency stayed the enforcement of the complainant's expulsion order until further notice.

[4] The complainant's brother was a police officer who was kidnapped by the Taliban together with their father. The complainant's father managed to escape, but his brother was killed. The same evening that the complainant's father returned, the family left Afghanistan and fled to Iran. During the trip from Iran to Turkey, the complainant lost his family. The documents on file do not contain the proof of the killing of the complainant's brother by the Taliban. The complainant explains that he was 12-13 years old at that time, did not witness the event himself, and is therefore unable to account for all the details or the specific reason for the death of his brother.

out of genuine religious conviction, and that his account can be assumed to constitute a lasting impediment to enforcement, but that the complainant had failed to present an excuse for not mentioning his interest in the Christian faith earlier in his asylum process. On 12 March 2020, the Migration Court of Appeal decided not to grant the complainant leave to appeal. The decision of the Migration Agency of 27 November 2019 entered into force on the same date. The complainant also notes that later developments of the case-law by the Migration Court of Appeal would have led to other conclusions, and that he has further deepened his faith and religious beliefs since the judgment of the Migration Court of 30 January 2020.

2.6 General country information clearly supports that there is an immediate danger both of torture and of inhuman and degrading treatment in Afghanistan for individuals who convert from Islam. In addition, UNHCR has reported that there are specific risks for returnees from Europe that can be attributed to their stay in Europe or other non-Muslim countries as such. The authorities and security forces see them as traitors for leaving their home country and for considering them as apostates or converts. The Taliban movement also perceives the returnees as apostates and traitors.[5]

2.7 The complainant further submits that, according to a report on the asylum processes of religious converts in Sweden (published in March 2019), there are systematic deficiencies in the Migration Agency's handling of conversion cases.[6] The analysis highlights that the Migration Agency's decisions are often in conflict with applicable law, international law and fundamental human rights. Furthermore, according to the Migration Agency's Annual Report (published on 17 December 2019), the examination of Christian converts by Swedish authorities had often been inadequate as it seems that the outcome of the cases may depend on where in Sweden the case had been handled.

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

Complaint

3.1 The complainant claims that his forcible removal to Afghanistan would amount to a violation by Sweden of article 3 of the Convention as his family, of Hazara ethnicity, was previously targeted by the Taliban. Since he converted to Christianity when in Sweden, he fears additional risks of being subjected to death penalty, torture and other forms of ill-treatment if deported.

3.2 The complainant submits that the country information clearly supports his allegation that converted individuals face risks of torture and other forms of inhuman and degrading treatment in Afghanistan.[7]

3.3 He further argues that he has been practicing Christianity for over two years now and he has the right to continue to manifest his Christian faith openly, which is not possible in Afghanistan. He submits that converted individuals face risks of ill-treatment not only by the authorities, but the family of an "apostate" or other members of the Muslim community.[8] The

[5] The Swedish Migration Agency, Landinformation: Säkerhetsläget i Afghanistan.

[6] Available in Swedish: https://manniskorattsjuristerna.se/wp-content/uploads/2019/03/konvertitutredningen.pdf.

[7] The Afghan government is widely reported to be a major abuser of human rights, with a consistent pattern of gross, flagrant and mass human rights violations. The complainant refers to the report by the organization Open Doors, that considers Afghanistan as country where Christians face extreme persecution. Converts are considered to be psychologically and mentally weak, and those who refuse to return to Islam have in some cases been admitted to mental institutions.

[8] The file contains the screen images of the personal threats against the complainant, published on social network.

authorities, however, cannot control the whole territory of Afghanistan and it is therefore impossible to provide protection for all those in need.[9]

3.4 The complainant submits that he has been unlawfully denied the required examination of his conversion claim on the merits and his fear of religion-based persecution. This amounts to a serious violation of the principle of non-refoulement, article 3 of the Convention as well as the Swedish law and the recent case-law of the Migration Court of Appeal. However, the migration authorities have rejected his application for a new examination on the merits. He refers to other domestic cases where the fact that the complainants failed to raise their conversion claims any earlier in the proceedings could not be assessed to the detriment of the persons concerned. He asserts that he did not initially realize the importance of revealing his conversion before the Migration Agency, and after the delivery of the first instance decision, it had been time-consuming for him to find another lawyer who could represent his interest in the subsequent proceedings.

3.5 The complainant concludes that, in the light of the general human rights situation in Afghanistan, the complainant's personal situation as an active Christian, and the threats against him, there are substantial grounds for believing that he would risk being subjected to torture if he were returned to his country of origin.

State party's observations on the admissibility and the merits

4.1 On 24 March 2021, the State party submitted its observations on the admissibility and the merits, recalling the main facts of the case and the complainant's allegations before the Committee.

4.2 The State party argues that the communication should be declared inadmissible as manifestly unfounded. As to the merits, the present communication reveals no violation of the Convention.

4.3 As regards the Swedish legislation concerned, 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 to Obtain Residence Permits in Sweden, which entered into force on 20 July 2016.

4.4 Regarding the facts of the case, the State party refers to the translated summaries of the facts in the Swedish Migration Agency's decisions of 10 November 2017 and 27 November 2019, and the Migration Court's judgments of 28 August 2019 and 30 January 2020.[10] 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 to amount to a violation of article 3 of the Convention. Therefore, he can be expelled to Afghanistan.

4.5 The complainant applied for asylum in Sweden on 1 December 2015. The Migration Agency rejected his application and decided on 10 November 2017 to expel him to Afghanistan. The decision was appealed to the Migration Court, which on 28 August 2019 rejected the appeal. On 15 October 2019, the Migration Court of Appeal refused leave to appeal and the decision to expel the complainant became final and non-appealable.

4.6 The complainant subsequently applied for protection due to impediments to enforcement of the expulsion order. On 27 November 2019, the Migration Agency decided not to grant a residence permit or a new examination of the question of a residence permit pursuant to the Aliens Act. The decision was appealed. On 30 January 2020, the Migration Court rejected the appeal. On 12 March 2020, the Migration Court of Appeal refused leave to appeal, and the decision 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 15 October 2023.

[9] The Swedish Migration Agency, Temarapport: Afghanistan – Kristna, apostater och ateister, 2017-12-21, p. 17 (available in Swedish).

[10] The decisions and judgments were attached.

4.7 As regards the admissibility, the Government does not contest the fact that all available domestic remedies have been exhausted in the present case. However, 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. The communication should therefore be considered as manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention.[11]

4.8 On the merits, the complainant claims that his removal to Afghanistan would violate article 3 of the Convention mainly since he has converted to Christianity in Sweden, and because of his conversion he risks being subjected to inhumane and degrading treatment, torture and death penalty in Afghanistan. As the State party understands his complaint, the complainant does not raise any of the issues that were raised during the initial national asylum proceedings.

4.9 When determining whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture, if removed to Afghanistan, the Committee has emphasized that the aim of such a determination is to establish whether the individual concerned would personally be at a foreseeable and real risk of being subjected to torture in the country to which they were returned.[12] The burden of proof in cases such as the present one rests with the complainant, who must present an arguable case establishing that they run 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 the risk does not have to meet the test of being highly probable.[13]

4.10 As the general human rights situation in Afghanistan is concerned, Afghanistan is a party to the Convention, as well as to the International Covenant on Civil and Political Rights. In addition, Afghanistan has accepted the individual complaints procedure under the Convention. The updated country information on the situation of human rights are therefore available to the Committees. In addition, a reference is made to the UN Assistance Mission in Afghanistan (UNAMA), *Afghanistan - Protection of Civilians in Armed Conflict: Annual Report 2020*, 23 February 2021; [14] European Asylum Support Office (EASO), *Afghanistan: Criminal law, customary justice and informal dispute resolution*, 22 July 2020; [15] UN Secretary-General (UNSG), *The situation in Afghanistan and its implications for international peace and security: Report of the Secretary-General*, 12 March 2021;[16] US Department of State, *2019 Report on International Religious Freedom: Afghanistan*, 10 June 2020;[17] The Norwegian Country of Origin Information Centre, Landinfo, *Temanotat Afghanistan: Situasjonen for kristne konvertitter*, 9 October 2020;[18] and European Asylum Support Office (EASO), *Afghanistan: Security Situation*, 28 September 2020.

4.11 While not underestimating the concerns that may legitimately be expressed regarding the human rights situation in Afghanistan, the situation there does not in itself suffice to establish that the complainant's expulsion would be contrary to article 3 of the Convention. The assessment before the Committee must thus focus on the foreseeable consequences of the complainant's expulsion to Afghanistan in the light of his personal circumstances, just like the Swedish migration authorities' assessments in the present case. Several provisions in the Swedish Aliens Act reflect the same principles as those laid down in article 3 of the Convention. The similar test as the one that the Committee applies has been employed in the present case by the Swedish

[11] *H.I.A. v. Sweden* (CAT/C/30/D/216/2002), para. 6.2.

[12] *E.J.V.M. v. Sweden* (CAT/C/31/D/213/2002), para. 8.3; and *A.B. v. Sweden* (CAT/C/54/D/539/2013), para. 7.3.

[13] *H.O. v. Sweden* (CAT/C/27/D/178/2001), para. 13; *X. v. Denmark* (CAT/C/53/D/458/2011), para. 9.3; and *T.M. v. Sweden* (CAT/C/68/D/860/2018), para. 12.13.

[14] https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_report_2020.pdf

[15] https://euaa.europa.eu/news-events/easo-publishes-new-coi-report-afghanistan-criminal-law-customary-justice-and-informal

[16] https://unama.unmissions.org/sites/default/files/sg_report_on_afghanistan_march_2021.pdf

[17] https://www.state.gov/reports/2019-report-on-international-religious-freedom/afghanistan/

[18] https://lifos.migrationsverket.se/dokument?documentSummaryId=44891

asylum authorities in accordance with Chapter 4, Sections 1, 2 and 2a and Chapter 12, Section 1 – 3 of the Aliens Act.

4.12 On 7 December 2015, the Migration Agency held an interview with the complainant following the registration of his application for asylum, for unaccompanied children without legal guardians. The introductory interview was conducted with the assistance of an interpreter in Dari, a language that the complainant understood. On 28 February 2016, a public counsel was assigned to the complainant. On 14 June 2017, an extensive asylum interview of more than three hours took place in the presence of his public counsel, an interpreter, and a guardian *ad litem*. The minutes from the investigation were communicated to his public counsel on 20 June 2017. On 30 October 2017 country information was also communicated to the public counsel. During the investigation, the complainant confirmed that he understood the interpreter well. Through his public counsel, the complainant has been invited to scrutinise and submit written observations on the minutes from the interview, and to make written submissions and appeals. The complainant has had opportunities to explain the relevant facts and circumstances and to argue his case before the Migration Agency and the Migration Court.

4.13 The Migration Agency and the Migration Court had sufficient information 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. The State party recalls the Committee's view that the Committee is not an appellate, quasi-judicial or administrative body and that considerable weight will be given to the findings of facts made by organs of the State party concerned.[19] Moreover, the Committee has held that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice.[20]

4.14 The State party holds that, in the light of the circumstances, there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. Accordingly, the State party holds that due weight must be attached to the opinions of the Swedish migration authorities, as expressed in their rulings ordering the expulsion of the complainant to Afghanistan. The State party refers to the decisions and judgments of the Migration Agency and the Migration Court in support of its contention that a return of the complainant to Afghanistan would not entail a violation of article 3 of the Convention.

4.15 As regards the complainant's claims, the complainant states that he openly manifests his Christian faith, volunteers in church and missionizes to spread his faith to others, and that he is considered an apostate within the Muslim community and could be subjected to the death penalty, torture or ill-treatment in Afghanistan. The State party also recalls the complainant's claim that the Swedish authorities have not examined his asylum grounds concerning his conversion, his apostasy, and/or the risk of ascribed apostasy or conversion on the merits. Furthermore, he claims that the Swedish authorities have failed to give him an adequate assessment of the risk of him being persecuted in Afghanistan and that an enforcement of his expulsion order, without an in-depth examination on the merits, is a violation of article 3 of the Convention.

4.16 Furthermore, the complainant makes reference to the Migration Court of Appeal's judgments of 2011 and 2019 (MIG 2011:29, MIG 2019:5 and MIG 2019:25), mainly arguing that an oral investigation concerning his religious convictions is necessary, that he has reached the level of probability concerning his conversion and that a new investigation concerning his conversion needs to be held, and that no excuse is needed for any delay in presenting the conversion to the authorities in case a certain level of probability is reached. According to the complainant, the national migration authorities' assessment of his case is not in line with case law of the European Court of Human Rights or the aforementioned Swedish judgments. The State party, however, objects that the Swedish migration authorities have applied the same kind of test

[19] *N.Z.S. v. Sweden* (CAT/C/37/D/277/2005), para. 8.6; *N.S. v. Switzerland* (CAT/C/44/D/356/2008), para. 7.3.; and *S.K. et al. v. Sweden* (CAT/C/54/D/550/2013), para. 7.4.

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

when considering an application for asylum under the Aliens Act as the Committee does under the Convention. In addition, the State party notes that the complainant during the domestic asylum proceedings stated that he was a Shia Muslim and of Hazara ethnicity. His cited conversion was hence not a continuation of religious views which he held before his arrival to Sweden. Consequently, particular attention needs to be paid to the reliability and credibility of the cited religious conversion. The State party furthermore notes that an asylum seeker has the burden of proof to plausibly demonstrate that he upon return to his country of origin would risk a real and personal threat on account of a genuine and personal religious conviction. There is no support for the conclusion that a mere claim of such a conversion is sufficient to conclude that there is a real risk of persecution of an individual which would warrant international protection. The State party does not however contest the complainant's claim that it follows from relevant country of origin information that individuals who return to Afghanistan after having renounced their Muslim beliefs or converted during an asylum process run a real risk of persecution warranting international protection.

4.17 It was not until the expulsion order had become final and non-appealable that the complainant raised claims that he had converted to Christianity and that he had not mentioned this previously. In this regard, the State party notes that the domestic migration authorities' scope of assessment, following an application for a new examination of the question of a residence permit when an expulsion order has gained legal force, differs from the scope applied during ordinary asylum proceedings. In the former cases, the Migration Agency must first decide whether the applicant has cited new circumstances that have not previously been examined. If this is the case, the Agency must assess whether the new circumstances can be assumed to constitute a lasting impediment to enforcement. If both prerequisites are met and if the applicant shows that he or she was unable to cite the new circumstances during the ordinary asylum proceedings or provide a valid excuse for not having done so, the Agency is obliged to grant the applicant a new examination. It is not until a new examination has been granted that the Agency conducts new interviews with an applicant. The purpose of these provisions is to provide the opportunity in certain exceptional cases to take into consideration circumstances that have arisen after the expulsion order was issued. An examination of the impediments to enforcement does not mean a re-examination of the previous decisions in the case.

4.18 In the present case, the Migration Agency, in its decision of 27 November 2019, noted that the claim that the complainant had converted to Christianity constituted new circumstances that had not previously been examined. It further noted that the complainant was baptised almost two months after its decision to reject his application for a residence permit and to expel him to Afghanistan, and that the complainant had received a summons to a follow-up meeting before the Agency on 20 February 2018, but that he did not appear for that meeting. Furthermore, the complainant had visited the Migration Agency seven times, including a follow up meeting on 11 September 2019, after his baptism and he had not told the employees at the Agency at any of those occasions that he had additional grounds for protection. Nor had the complainant – when he wrote to the Agency – used the opportunity to explain that he had converted and had grounds for protection. According to the Agency, the complainant's explanation – that he tried but could not get hold of his lawyer – was not acceptable, and there was no valid excuse as to why he did not previously cite his conversion to Christianity. The Agency found it noteworthy that over the two years, in which the complainant's conversion process progressed up to when the expulsion became final, with knowledge of what it meant in his country of origin and in his family, the complainant did not mention anything about the conversion to the Migration Agency. Furthermore, the Migration Agency noted that the complainant had both a public counsel and a guardian *ad litem* assigned to assist him during the asylum process. In conclusion, the Agency found that no new circumstances had emerged that can be assumed to constitute a lasting impediment of the enforcement of the expulsion order under Chapter 12, Sections 1 – 3 of the Aliens Act. The Agency furthermore concluded there was no basis for undertaking a new examination of the question of a residence permit in accordance with Chapter 12, Section 19 of the Aliens Act.

4.19 The complainant appealed the decision to the Migration Court, which rejected the appeal on 30 January 2020. The Migration Court found that the complainant had not plausibly demonstrated that there was a need for protection under Chapter 12, Section 1 - 3 of the Aliens

Act on grounds of his religious beliefs. The Court concluded that the complainant's claim that he had converted from Islam to Christianity had not been presented in a timely manner. In light of what has emerged about the complainant's conversion process through facts and evidence, the Migration Court found that the complainant had plausibly demonstrated that he had converted to Christianity out of genuine religious convictions. Based on what was known about the situation for Christian converts in Afghanistan, the complainant's account could be assumed to constitute a lasting impediment to enforcement within the meaning of Chapter 12, Section 1 - 3 of the Aliens Act. Subsequently, the Migration Court considered whether the complainant could have cited the circumstance previously.

4.20 The Migration Court noted that the Migration Agency made its decision in the complainant's asylum case in November 2017 and that the complainant was baptised in January 2018. The written account on the complainant's conversion stated that he progressed as a Christian in connection with the baptism and it was a clear turning point for him. The appealed decision in the complainant's initial asylum case was not adjudicated by the Migration Court until August 2019. Given the time at which the complainant stated that he had devoted himself to the Christian faith and the fact that a long time had passed between this occasion and the judgment by the Migration Court, the Court found that the complainant could have cited the new circumstances previously during the initial asylum proceedings. Hence, the Migration Court concluded that the question therefore was whether the complainant had presented a valid excuse for not previously citing the conversion to Christianity. The Court stated that the requirement of a valid excuse includes a requirement that the complainant promptly report to the authorities any new circumstances that emerge and that they consider constitute grounds for protection in Sweden. The Court noted that the complainant had stated that he was not aware that his conversion could be cited as grounds for protection and that he was subsequently unsuccessful in getting hold of the public counsel who represented him in the initial case. The Migration Court found that the complainant's explanations were not acceptable due to the long time-period that had passed when the complainant could have cited the circumstance, and due to the fact that he himself had stated that he became aware of the fact that a conversion entailed a need for protection in 2018. Therefore, the Migration Court found that the complainant had not presented a valid excuse for failing to previously claim this circumstance. The State party concludes that the national migration authorities have found that the complainant has failed to present sufficient grounds to grant him a residence permit or a new examination.

4.21 Before the Committee, the complainant also claims that the circumstances in the present matter are similar to those in the case of *F.G. v. Sweden*[21] before the European Court of Human Rights, and that the national rulings in the present matter, are not in accordance with the judgments of the Migration Court of Appeal (MIG 2019:5 and MIG 2019:25) However, the State party holds that the Swedish migration authorities have complied with article 3 of the Convention. The present complaint is distinguishable from the case of *F.G v. Sweden* before the European Court of Human Rights, and that it is also different from the domestic judgments by the Migration Court of Appeal (MIG 2019:5 and 2019:25). The *F.G. v. Sweden* case concerned an applicant who had converted from Islam to Christianity but did not cite this as grounds for protection during the ordinary proceedings. Despite this, the Swedish migration authorities made some assessments of the risk that the applicant might have encountered upon return to his country of origin. When the applicant subsequently cited his conversion as grounds for protection after the expulsion order had gained legal force, the migration authorities did not consider this circumstance to be new within the meaning of Chapter 12, Section 19 of the Aliens Act. The European Court held that, despite being aware that the applicant had converted in Sweden and that he might therefore belong to a group of persons who could be at risk of treatment in breach of Articles 2 and 3 of the European Convention of Human Rights upon returning to his country of origin, the domestic authorities did not carry out a thorough examination of the applicant's conversion. The European Court further noted that in the reopening proceedings the conversion was not considered a 'new circumstance' which could justify a new examination of his case. Accordingly, the Court found that the Swedish authorities therefore never assessed the risk that the applicant might encounter in his country of origin as a result of his conversion. Turning to the present case, and contrary to

[21] European Court of Human Rights (application no. 43611/11 [GC]) judgment of 23 March 2016.

F.G. v. Sweden, the State party notes that the Migration Agency and the Migration Court did indeed consider the complainant's cited conversion to be a new circumstance and made assessment of the grounds invoked by the complainant in his application for impediments to enforcement of the expulsion order. However, the authorities did not consider that the new circumstance constituted grounds for granting a residence permit or a new examination in the matter of a residence permit in the present case. The State party therefore holds that the matter at hand differs from the specific circumstances in the case of *F.G. v. Sweden*.

4.22 Furthermore, the Migration Court of Appeal case (MIG 2019:25) concerned an applicant who had converted to Christianity but did not cite this as grounds for protection during the ordinary proceedings. After the applicant's expulsion order had become final and non-appealable in November 2018, the applicant was baptised in December 2018. In January 2019, the applicant cited impediments to the expulsion order. The Migration Court of Appeal concluded that the assessment of when a new circumstance must be cited should be based on the premise that it is only when there is a new circumstance that can give rise to a need for protection that that circumstance must be presented. If an applicant has credibly demonstrated that they have need for protection due to their conversion, it can be assumed that they did not previously consider that they had a need for protection on that ground. In such cases, there is generally no reason to question when a need for protection arises. In that particular case, the Migration Court of Appeal found no reason to question that the applicant had cited the new circumstance to the Migration Agency as soon as possible given the applicant's situation. In the present case, the similarities with the aforementioned domestic case law cited by the complainant, mainly consist of the claims of conversion being made after the initial asylum proceedings have ended. However, there have been important differences. In the above-mentioned domestic case (MIG 2019:5), the Migration Court of Appeal attached considerable weight to the fact that the new circumstances in that case, not only could be assumed to constitute a lasting impediment to enforcement, but also attained a higher standard of proof by demonstrating reasonable grounds to assume that the applicant did run such a risk referred to in Chapter 12, Section 1 of the Aliens Act; a standard of proof higher than the requirement in Chapter 12, Section 19 of the Aliens Act, for granting a new examination of the matter. In the present complaint, by contrast, the Migration Agency and the Migration Court, did not find this higher standard of proof had been met. Consequently, the complainant in the present case still had to fulfil the condition of presenting a valid excuse for not previously having cited these circumstances, in accordance with Chapter 12, Section 19 of the Aliens Act.

4.23 In the other case above (MIG 2019:25), the Migration Court of Appeal concluded that there generally is no reason to question when a need for protection arises. However, this general approach, does not preclude an assessment of the cited circumstances in relation to the applicant's situation. In that specific case, the Migration Court of Appeal found no reason to question that in not citing the new circumstances (the conversion) to the Migration Agency until January 2019 – after the expulsion order had become final – the applicant, who had been baptised in December 2018, did so as soon as possible in view of that applicant's situation. The Government holds that this situation clearly differs from the present case, where the complainant was baptised as early as in January 2018 – during the asylum process – and where a long time-period (more than 18 months), passed before he cited his conversion to the Migration Agency on 5 November 2019. As the Migration Court has stated in its judgment of 30 January 2020, the complainant stated in a written account submitted to the Migration Agency that the baptism was a clear turning point for him in his conversion. In view of the above, the State party shares the conclusion of the Migration Agency and the Migration Court, that the complainant did not fulfil the condition of presenting a valid excuse for failing to previously cite his conversion.

Complainant's comments on the State party's observations

5.1 On 2 June 2021, the complainant submitted his comments on the State party's observations.

5.2 The complainant maintains that the communication is admissible under article 22 (2) as his assertions do achieve the minimum level of substantiation required for purposes of admissibility. In particular, he recalls that he, as a previous Muslim who has converted to Christianity, will face serious consequences as an apostate in Afghanistan, where less than 0.3

percent of the population confess that they hold a different belief than Islam. The complainant has sufficiently asserted the fact 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, considering both the general situation for converts in the home country and his individual situation. No examination on the merits of these claims has been made.

5.3 Concerning the merits, the complainant maintains the grounds and circumstances raised during the initial asylum proceedings. The threats from the Taliban for him and his family still remain. This was the reason why he fled and cannot return. He does not contest the State party's assertion that these claims were examined on the merits during the asylum procedure; however, he was a child during these proceedings. The complainant suggests that a joint investigation with the risk of persecution on religious grounds should be possible if a new examination on the merits is held. The complainant agrees with the State party's statement that particular attention needs to be paid to the reliability and credibility of religious conversions sur place. However, no such particular attention was paid to the reliability and credibility since there was no examination of the genuineness of the conversion on the merits. The State party does not effectively rebut this statement by the complainant. The State party, while comparing the complainant's case to the decision in *F.G. v. Sweden* by the European Court of Human Rights, has asserted that the Migration Agency found that the claimed conversion was in fact a new circumstance in the complainant's case. However, the Agency found that this was not a lasting impediment according to Chapter 12, Section 1-3 of the Aliens Act, and there was found to be no excuse for presenting the interest of the conversion at the time in which the complainant did.

5.4 Referring to the guiding case before the Migration Court of Appeal (MIG 2019:5), the complainant objects to the State party's claim that the complainant waited 1.5 years, while his appeal to the Migration Court was being examined, before he made his claim of impediments against enforcement. The guiding case does not differ to any extent from the facts of the present case. Therefore, the standard of proof that the complainant should have reached was higher than what was required for a new trial to be granted and leads to the conclusion that an expulsion entails such a high risk that would imply an absolute prohibition on enforcement according to Chapter 12, Section 1 of the Aliens Act. Consequently, there was no room for considering any exceptional reasons to take measures to prevent enforcement. In addition, the complainant contests the State party's statement that he did not, during his first asylum procedure, tell employees at the Migration Agency that he had additional grounds for protection. The complainant was in contact with the Migration Agency several times and asked for information about how he could get in touch with his public counsel.

5.5 In both the complainant's case and the judgment by the Migration Court of Appeal (2019:25), the applicants were considered to have reached the standard of proof that it could be assumed that the new circumstances constituted a lasting impediment to enforcement (Chapter 12, Section 1-3 of the Aliens Act). As is stated in the referred judgment, in cases regarding conversions, there is generally no reason to question the time at which the applicant considered that the need for protection had arisen.

5.6 The complainant reiterates that his case is clearly comparable on the main points to the case of *F.G. v. Sweden* and the Swedish cases MIG 2019:5 and MIG 2019:25. Furthermore, the complainant holds that even though the principle of non-refoulement is reflected in the Swedish Aliens Act, it has not *de facto* been taken into consideration in the complainant's case. If the principle of non-refoulement were really being respected, the Swedish migration authorities would have granted him a new examination, and as a consequence, held an oral interview with the complainant, in order to determine the genuineness of the complainant's conversion and the risks upon return. It appears from the case that no examination on the merits has been made due to the fact that the complainant was too late in presenting the circumstances to the Migration Agency.

5.7 In addition, the complainant wishes to draw the Committee's attention to the Human Rights Committee's decision in *Q.A. v. Sweden*.[22] The complainant is this case has, just as the author in *Q.A. v. Sweden*, made his faith visible and attracted negative attention. The complainant has received several threats on social media due to his statements regarding Christian faith. The complainant notes that the State party has not commented on this fact, nor on the risks this entails for the complainant.

5.8 In the context of article 3 (2) of the Convention, the aim is to ascertain if the complainant would personally run a foreseeable and real risk of being subjected to torture in Afghanistan. The complainant has submitted a considerable amount of corroborating evidence in support of his claims. There are several testimonies as to the complainant's faith from pastors, church leaders and Christian friends, as well as baptism certificates and photos of the complainant participating in church activities, public statements regarding Christianity and several threats against the complainant, which have not been questioned by the asylum authorities. However, the complainant has been denied an examination of his conversion on the merits and has never been given an oral interview to examine his claims. Thus, he has not been given a thorough and adequate assessment of whether there is a real and personal risk of him being subjected to torture in Afghanistan. A deportation to Afghanistan would hence constitute a violation of article 3 of the Convention, as described in the initial complaint.

5.9 Concerning the interim measures, the complainant holds that it is still necessary that the State party refrain from enforcing the expulsion order.

State party's additional observations

6.1 On 13 September 2021, the State party submitted its additional observations on the complainant's comments of 2 June 2021.

6.2 Firstly, the State party informed the Committee that due to the prevailing security situation in Afghanistan, the Migration Agency decided on 16 July 2021 to suspend all enforcements of deportation orders to Afghanistan. It said that no one who is having a deportation order to Afghanistan will be returned to the country, in accordance with the principle of non-refoulement, until further notice. In its position paper of 16 July 2021, the Migration Agency noted that the security situation in Afghanistan was very worrying and also difficult to assess because of widespread lack of reporting. The Agency held that the Taliban's rapid increased territorial control in the country after 1 May 2021 could lead to profound and long-lasting changes in the country's political, military, and humanitarian conditions.

6.3 The State party clarified that the complainant had the right to remain in Sweden until further notice in compliance with the general decision to suspend all enforcements of deportation orders to Afghanistan. However, the State party indicated that, as of that time, no new national process had been initiated on the issue of residence permit in the complainant's case and the Migration Agency had introduced a decision-making halt in cases from Afghanistan. The State party said that it would inform the Committee on any developments in this regard.

6.4 As regarded the grounds for asylum raised by the complainant during the initial asylum proceedings, including the threats from the Taliban, the State party noted that all of these circumstances had been properly assessed by both the Migration Agency and the Migration Court. The complainant was represented by a counsel during the national proceedings and had a guardian *ad litem*.[23]

6.5 On 23 November 2017 the complainant's legal counsel had appealed the Migration Agency's decision to the Migration Court. The appeal was subsequently supplemented in writing by the legal counsel on 8 December 2017, on 13 March 2018 and on 15 October 2018. The legal

[22] *Q.A. v. Sweden* (CCPR/C/127/D/3070/2017), para. 9.7.

[23] When a minor child turns 18 years old, the assignment of the guardian *ad litem* ends (see The Act on Special representatives for Unaccompanied minors).

counsel had contact with the complainant on several occasions during the initial and subsequent asylum proceedings.

6.6 Turning to the complainant's claim that an oral investigation concerning his religious convictions is necessary, in its decision of 27 November 2019, the Migration Agency noted that the complainant was baptised almost two months after its decision to reject his application for a residence permit and to expel him to Afghanistan, and that the complainant had received a summons to a follow-up meeting before the Agency on 20 February 2018 but that he did not appear for that meeting. Furthermore, the complainant had visited the Migration Agency seven times after his baptism without informing it that he had additional grounds for protection. The Agency found that over the two years, in which the complainant's conversion process progressed up until the expulsion order became final, with knowledge of what it meant in his country of origin and in his family, the complainant did not mention anything about his conversion to the Agency.

6.7 Upon appeal of the Migration Agency's decision, the Migration Court, inter alia, noted in its judgment on 30 January 2020 that the Agency's decision was made in November 2017 and that the complainant was baptised in January 2018. The Court stated that the requirement of a valid excuse includes a requirement that the complainant promptly report to the authorities any new circumstances that they consider constituting grounds for protection in Sweden. The Migration Court found that the complainant's explanations were not acceptable due to the long time period that had passed when the complainant could have cited the circumstance, and due to the fact that he himself had stated that he became aware of the fact that a conversion entailed a need for protection in 2018. The Migration Court found that the complainant had not presented a valid excuse for failing to previously cite this circumstance.

6.8 Lastly, the State party emphasizes that the decision in *Q.A v. Sweden* before the Human Rights Committee concerned an asylum seeker from Afghanistan who, after his initial asylum request had been rejected, claimed that he had left Islam to become an atheist and would be seen as an apostate in Afghanistan. The similarities of the two complaints consist of the fact that the claims of conversion/atheism were made after the initial asylum requests had been rejected and that the complainants before the Committees raised objections regarding procedural deficiencies in the domestic authorities' assessments of the claimed conversion/atheism.

6.9 In *Q.A. v. Sweden*, it was held that when an asylum seeker submits that he or she has become an atheist after their 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. The present complaint, however, does not contain claims regarding the risk of ascribed religious beliefs that can be compared to the very specific circumstances in *Q.A. v. Sweden*. In the present case, nothing suggests that the complainant's cited conversion has come to the knowledge of the Afghan authorities. Accordingly, there is a difference between the two communications as regards the risks associated with ascribed religious beliefs.

6.10 In *Q.A. v. Sweden*, the Human Rights Committee furthermore considered the ascribed religious beliefs in combination with other risk-enhancing factors in a cumulative assessment. In the present case, 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.

6.11 The State party submits that, due to the prevailing security situation in Afghanistan, the Migration Agency had, in line with the principle of non-refoulement, decided to suspend all enforcements of deportation orders to Afghanistan until further notice and that, consequently, the complainant was currently not at risk of expulsion. The State party said that it would inform the Committee on any development concerning the domestic migration authorities' assessment of the human rights and security situation in Afghanistan with implications for the complainant and invited the Committee to await the ongoing re-evaluation. The complaint does not reveal any violation of the Convention.

State party's further observations

7.1 On 13 June 2022, the State party transmitted an e-mail to the Secretariat regarding a status of pending communications before several Committees concerning expulsions to Afghanistan, including the present case. It indicated that the State party's assessment had been revised in a new paper issued by the Migration Agency on 21 April 2022.

7.2 The State party recalled that, on 30 November 2021, the Migration Agency issued a legal position paper on the need for protection in cases concerning Afghanistan. In conjunction with this legal position paper, the Migration Agency lifted the general suspension on enforcement of expulsion orders to Afghanistan. In that paper, the Migration Agency made an assessment of the possibilities to obtain a residence permit under Chapter 12, Section 18 of the Aliens Act or a new examination under Chapter 12, Section 19. This assessment was revised again in a new legal position paper issued by the Migration Agency on 21 April 2022, where the following is stated on impediments to enforcement of expulsion orders.

(a) The changed human rights situation and the limited possibilities for internal flight in the country following the Taliban takeover in Afghanistan can, in the individual case, constitute an impediment to enforcement under Chapter 12, Sections 1–3 of the Aliens Act and justify that a residence permit is granted under Chapter 12, Section 18 of the Aliens Act.

(b) The situation in Afghanistan following the Taliban takeover and the application of Sharia law is a circumstance that can affect the assessment of the cited grounds for asylum. If the grounds for asylum are linked to the Taliban regime, a new examination under Chapter 12, Section 19 of the Aliens Act should as a starting point be granted, since it can be assumed to constitute a lasting impediment to enforcement within the meaning of Chapter 12, Sections 1–3 of the Aliens Act. If, on the other hand, the grounds for asylum are not linked to the Taliban regime, an assessment must be made in the individual case if it can be assumed that the new circumstances constitute lasting impediments to enforcement within the meaning of Chapter 12, Sections 1–3 of the Aliens Act.

7.3 The State party invited the Committees to consider the need for further information from the complainants' counsels on any domestic proceedings, and whether or not they maintain their complaints before the Committees.

Complainant's additional comments

8.1 On 9 December 2022 and 5 July 2023, the complainant's counsel provided further updates,[24] indicating that the case has not been resolved domestically. As stated previously, the impediments against the enforcement of expulsion order were reported to the Swedish Migration Agency on 4 November 2022. On 16 February 2023, the Migration Agency denied the application. The decision was appealed to the Migration Court, which rejected the appeal on 15 March 2023. The negative decision has gained legal force.[25]

8.2 The complainant has not benefitted from a humanitarian stay of removal or other subsidiary grounds of protection. The time-barred nature of the expulsion order (15 October 2023) is still relevant. The counsel invited the Committee to take a decision in this case.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any complaint contained 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.

[24] [At the request of the Secretariat.]

[25] Informal translations of the decisions by the Migration Agency and the Migration Court were attached.

9.2 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 the State party's submission that it does not contest the fact that all available domestic remedies have been exhausted in the present case.[26]

9.3 The Committee notes the State party's argument that the communication is inadmissible as manifestly unfounded. The Committee considers, however, that the arguments put forward by the complainant have been sufficiently substantiated; in particular the allegations 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, considering both the general situation for converts in his country of origin and the individual situation of the complainant. Accordingly, the Committee declares the complainant's claims under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

10.1 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.

10.2 In the present case, the issue before the Committee is whether the forcible removal of the complainant to Afghanistan following the rejection of his asylum applications by the State party would constitute a violation of the State party's obligations under article 3 of the Convention.

10.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally at risk 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 the 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.

10.4 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 a member of a group which may be at risk of being tortured in the State of destination. The Committee recalls that "substantial grounds" exist whenever the risk of torture is **"**foreseeable, personal, present and real".[27] Indications of personal risk may include, but are not limited to: (a) the complainant's ethnic background and religious affiliation; (b) previous torture; (c) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; (d) political affiliation or political activities of the complainant; (e) arrest and/or detention without guarantee of a fair trial and treatment; (f) violations of the right to freedom of thought, conscience and religion; and (g) clandestine escape from the country of origin for threats of torture.[28]

10.5 The Committee further recalls that the burden of proof is upon the complainant, 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, unless the complainant is in a

[26] *E.M.M.A. v. Sweden* (CAT/C/74/D/960/2019), paras. 9.2 and 9.4, and para. 10.

[27] See the Committee's general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 11.

[28] Ibid., para. 45.

situation where he or she cannot elaborate on his or her case.[29] The Committee further recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings and will freely assess the information available to it, in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.[30]

10.6 In assessing the risk of torture, the Committee notes the complainant's claims that his family was previously targeted by the Taliban, and since he converted to Christianity when in Sweden, he fears to face additional risks of being subjected to the death penalty, torture or ill-treatment or persecution, if deported. The country information clearly supports his allegation that converted individuals face risks of torture and other forms of inhuman and degrading treatment in Afghanistan. The Committee also notes the complainant's claim that he has been unlawfully denied an examination of his conversion claim on the merits and his fear of religion-based persecution, in violation of the principle of non-refoulement under article 3. The Committee observes that, in its decision of 10 November 2017, the Migration Agency found that the complainant had failed to substantiate his claim that he would be at risk of persecution by the Afghan authorities. On 27 November 2019, the Migration Agency denied the complainant's application for protection because of the impediments to enforcement of the decision of 10 November 2017, stating that the documents it reviewed did not plausibly demonstrate that the complainant would be ascribed a Christian religious affiliation if returned to Afghanistan. For its part, however, the Migration Court concluded the opposite on 30 January 2020, i.e. that the claimant had plausibly demonstrated the he had converted to Christianity out of genuine religious conviction, and that his account could be considered a lasting impediment to enforcement, but that the complainant had failed to present an excuse for not mentioning his interest in the Christian faith earlier in his asylum process. The Migration Court upheld the negative decision by the Migration Agency.

10.7 The Committee notes the State party's objections that the complainant has not convincingly explained why he presented the fact of his conversion to Christianity after the ruling of the Migration Court on appeal and thus after the expulsion order became enforceable on 15 October 2019. In that connection, the Committee notes the complainant's view that his conversion claims were not assessed on the merits.

10.8 The Committee considers that, when an asylum seeker submits that he or she has converted after his or her initial asylum request has been dismissed, it may be reasonable for an in-depth examination of the circumstances of the conversion to be carried out by the authorities.[31] In addition, regardless of the sincerity of the conversion, the test remains whether there are substantial grounds for believing that such a conversion may have serious adverse consequences in the country of origin such as to create a real risk of irreparable harm such as that contemplated by article 3 of the Convention. Therefore, even when it is found that the reported conversion is not sincere, the authorities should proceed to assess whether, in the circumstances of the case, the behaviour and activities of the asylum seeker in connection with his or her conversion or convictions, could have serious adverse consequences in the country of origin so as to put him or her at risk of irreparable harm.[32]

10.9 In the present case, the Committee observes that the State party does not contest that individuals who return to Afghanistan after having renounced, or after having been perceived to renounce, their Muslim beliefs or converted during an asylum process face a real risk of persecution and punishment, warranting international protection. The Committee notes that the complainant falls within the risk categories. Considering also the fact that the complainant's name

[29] See the Committee's general comment No. 4, para. 38.

[30] Ibid., para. 50.

[31] UNHCR, "Guidelines on international protection: religion-based refugee claims under article 1 (a) (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees", para. 36.

[32] *Q.A. v. Sweden* (CCPR/C/127/D/3070/2017), para. 9.5.; European Court of Human Rights, *F.G. v. Sweden*, para. 156.

is widely known by his friends, acquaintances and the general public through the social media and that he received death threats publicly for the fact of his conversion to Christianity, the risk of his identity and conversion coming to the attention of the Afghan authorities in the context of arranging for his deportation is high. The Committee considers that, owing to the complainant's exposure to multiple risk factors, he would face serious adverse consequences in the country of origin which would put him at risk of irreparable harm.

10.10 In that connection, the Committee recalls that States parties should give sufficient weight to the real and personal risk that a person might face if deported and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the complainant, with multiple risk factors, would face in Afghanistan. The Committee considers that the risk that the complainant would face if returned to Afghanistan is exacerbated by the fact that his family was targeted by the Taliban in the past, and the circumstances surrounding the killing of his brother by the Taliban. The Committee also notes that, when informed about new grounds for asylum due to the impediments to enforcement of the expulsion order based on the complainant's conversion, the Migration Court could have remitted the case to the Migration Agency for reconsideration, which would have allowed the matter to be analysed in detail, as a whole with other risk factors, and the decision based on oral interviews covering all those factors.[33] In these circumstances, it is the view of the Committee that it would be inconsistent with the State party's obligations under article 3 of the Convention to deny the complainant an examination of his claims in their entirety, including as they relate to his conversion, and in the light of the change of government in Afghanistan, before expelling him to Afghanistan.

11. In view of the above, and recognizing that it is not clear that 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 Convention[34] if it proceeded to expel the complainant on the basis of the decisions by the asylum authorities of the State party in regard to the risk factors in Afghanistan as those risk factors existed at the time those decisions were taken.

12. The Committee, reminding the State party of its obligations under article 3 of the Convention, invites the State party to review the complainant's asylum application in the light of its obligations under the Convention and the present decision.[35]

13. 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.

[33] *Q.A. v Sweden* (CCPR/C/127/D/3070/2017), para. 9.7.
[34] *A.A. v. Sweden* (CAT/C/72/D/918/2019), para. 10.
[35] Ibid. para. 11.