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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, of 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

* 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 Puce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

¹ The complainant requested anonymity.

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

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

declaration pursuant to article 22 (1) of the Convention, effective from 26 June 1987. The complainant is represented by counsel.

1.2 On 4 January 2021, 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 deporting the complainant to Afghanistan while his complaint was under consideration by the Committee.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 Since he suffered persecution, harassment and rape as a child from the Taliban, because of his ethnicity, he decided to leave his country and arrived in Sweden in 2015, at 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. When he was a 13-year old child, one day after school in his hometown, he was stopped by some men who asked if he was the son of Hakim (the complainant's father). When he confirmed this, the men blind-folded him and tied his hands and brought him to a house in which there were other members of the Taliban. During the three days he was held captive, the men took turns raping him, under threats of shooting him with a Kalashnikov. This was repeated during the following three nights before the complainant was released. The Taliban members told him that this was a warning. A few weeks later, his father disappeared, and the complainant's mother and uncle decided he should flee the country, in particular after a man came to his home asking for him. His family feared he could also be kidnapped like his father.

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

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 that they were genuine people who lived according to their faith. In August 2017, the complainant learned about the Philadelphia church in Örebro and started attending language and study supporting course. As his interest in Christianity grew, he was invited to the church and started to attend Bible studies once a week in fall of 2017. Following this spiritual experience, he eventually decided that he wanted to live a Christian life and to be baptized.

on 1 July 2020 not to grant the complainant a leave to appeal. The decision to expel the complainant became enforceable as of 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 reason about what appeals to him in Christianity in a nuanced way. He was able to reason about how Islam and Christianity teach about sin and forgiveness of sins in relation to the abuse that he was subjected to in his home country, and the internal conflict he felt because of this. It was also considered that he showed good knowledge about Christianity, about the theology of Christianity and the feasts. 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 that examined the case, found that the complainant was genuine in his Christian conviction and that the complainant intends to live as a Christian convert upon return to Afghanistan. Thus, he found that the complainant would suffer persecution upon 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 fall 2018 and his baptism in March 2019, is too short for the complainant to genuinely convert. According to the Court, the short time interval indicated that there was not any spiritual and mental process that led to the conversion. The complainant questions whether the Court arrived at these conclusions based on objective considerations.⁶ The complainant submits that his interest in other religions arose when he studied religion in school. He started to attend bible studies and church services already during fall 2018. Thus, he had a period of at least six months in which his interest in Christianity grew. The complainant had thus enough time for a mental and spiritual process which resulted in a formal conversion through baptism in March 2019.

2.8 The complainant has been ordered to leave Sweden within four weeks from the date when the decision of the Migration Agency became enforceable on 1 July 2020. He was ordered by the Migration Agency to get temporary travel document from the Afghan Embassy in Stockholm no later than 28 August 2020. Considering the risks and previous serious violations of his rights, the complainant has remained in Sweden, being at immediate risk of deportation by the police. On 27 October 2020, the Migration Agency decided to issue a re-entry ban for 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 before any other mechanism of international investigation or settlement.

Complaint

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

⁶ See the UNHCR Guidelines, § 27 c).

produced a dissenting opinion that the complainant had been able to reason about several core principles of Christianity, makes it clear that his conversion is 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 remedy 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.

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 heard about the other grounds of his asylum request, related to the abuse he suffered in Afghanistan. The time of the questioning was, due to interpretation, cut in half. He submits that he was given between 30-40 minutes to speak, which included 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 also appears in the public counsel's appeal to the Migration Court of Appeal, where it is stated that the complainant said during the oral hearing in the Migration Court that he had more to say about his Christian faith, but due to a lack of time he was not given sufficient opportunity to speak about his faith.

3.5 In support of his arguments, the complainant refers to the case of *Q.A. v. Sweden*,⁷ wherein the Human Rights Committee found that the Swedish migration authorities had assessed each ground for protection separately and not jointly, while the combined grounds enhanced the risk for the author and created multiple vulnerability profiles. The Human Rights 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 is neither possible nor a legal requirement to hide his Christian faith in Afghanistan. He has the right to religious freedom and to practice his religion 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 cases of *F.G. v. Sweden*,⁸ followed by *A.A. v. Switzerland*,⁹ make it very clear that no one should be obliged to hide their faith or practice it "discreetly".

3.7 The complainant submits that 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 behavior. 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 has been known among his friends, one of whom lives in Kabul, and that he took part in on-line church activities during the covid-19 pandemic. Furthermore, the complainant was a leader at a sports event with a Christian profile in August 2020, and a photo from the camp is published on the All-Star Mission's Instagram account. The apostasy will be difficult or impossible to hide when the complainant refuses to attend the mosque or participate in the Islamic prayers and fasting. In addition, his grandfather would not accept that one of his grandchildren does not take part in Islamic practices.

3.8 Finally, the complainant refers to the general human rights situation in Afghanistan. In a report by the organization Open Doors, listing countries where the persecution of Christians is the worst, Afghanistan is ranked on the second place of all the countries in the

⁷ *Q.A. v. Sweden* (CCPR/C/127/D/3070/2017).

⁸ *F.G. v. Sweden*, application no. 43611/11, 23 March 2016.

⁹ *A.A. v. Switzerland*, application no. 32218/17, 5 November 2019.

¹⁰ The complainant refers to *Q.A. v. Sweden*.

world.¹¹ Less than 0.3 percent confess to a different belief than Islam in Afghanistan.¹² The Christian minority consists of mostly individual Afghans who have converted to Christianity.¹³ Christians in Afghanistan stay hidden in the country because of fear of reprisals. Their church is underground, and they meet at home in very small groups.¹⁴ Apostasy is often punished with death after the court has given the defendant a time for reflection.¹⁵ Apostates risk being denounced by their families. It is even possible for individuals to murder the person considered to be an apostate without the case being investigated and judged by a court.¹⁶ Several sources point out that the main threat to an “infidel” is not primarily from the Afghan authorities, but from the family of the person concerned or other individuals in the society.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 to Obtain 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, which on 26 May 2020 rejected the appeal. 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 informs the Committee about 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 enforcements of deportation orders to Afghanistan. It means 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.¹⁹

¹¹ Open Doors, *World Watch List – Afghanistan*, <https://www.opendoorsusa.org/christian-persecution/world-watch-list/afghanistan/>.

¹² US Commission on International Religious Freedom (USCIRF), Annual Report 2017, *Afghanistan*, <http://www.uscirf.gov/sites/default/files/Afghanistan.2017.pdf>.

¹³ Migrationsverket, Tamarapport: Afghanistan – Kristna, apostater och ateister, 2017-12-21, p. 6, The Swedish Migration Agency.

¹⁴ Ibid.

¹⁵ Ibid., p. 9.

¹⁶ Ibid., p. 17.

¹⁷ Ibid., p. 18.

¹⁸ The decision and judgment were provided.

¹⁹ In its 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 widespread lack of reporting.

4.6 As concerns the 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.

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 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 enforcements 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 permit in the complainant's case and the Migration Agency has introduced a decision-making halt in cases from Afghanistan. The State party will inform the Committee on 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 national asylum authorities, the Migration Agency held an introductory interview with the complainant on the day he applied for asylum, on 16 December 2015. 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 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 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 make written submissions and appeals in addition to 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 making 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 only grant leave to appeal in cases where there is a need for legal guidance. It is a well-established principle in the domestic case-law that an alien has the right to have all the circumstances invoked in support of application for a residence permit, before a final and non-appealable decision, assessed during the same proceedings regardless of the grounds on which a right to such a permit is claimed.

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 ruling on the question of a residence permit. The

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. 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 will closely follow the developments in Afghanistan and await further country of origin information before a new assessment can be made.

Migration Court has undertaken relevant investigations, by holding an oral hearing where the complainant has been given the opportunity to talk about his claimed conversion and based on his request, also to hear 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 upon a return 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 the complaint before the Committee, the complainant refers to the Views of the Human Rights Committee in the communication *Q.A v. Sweden*.²⁰ The similarities of the two complaints consist in 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 these claims. In *Q.A. v. Sweden*, the Human Rights 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 whether there are substantial grounds for believing that such a conversion may have serious adverse consequences in the country of origin such as to create a real risk of irreparable harm as contemplated by articles 6 and 7 of the Covenant. Therefore, even when 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 to put him or her at risk of irreparable harm.²¹ 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 failed to adequately assess the complainant's real, personal, and foreseeable risk 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. As regards 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 ideas, 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.* and the complainant in the present case.

4.14 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 these 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*.²² The case of *R.C. v. Sweden* concerned the expulsion to 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 which according to the Court gave a strong indication that the applicant's scars and injuries potentially had been caused by ill-

²⁰ Fn. 7.

²¹ Para. 9.5 of the referred decision by the Human Rights Committee.

²² Application no. 41827/07, 9 March 2010.

treatment or torture. In the case of *R.C.*, 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 is a strong indication that an applicant's injuries may have been caused by torture.²³

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. The domestic authorities rather concluded that the cited underlying threat to the complainant was based on secondary information which 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 its duty to ascertain all the relevant facts in this regard.

4.16 The complainant has attached to the complaint to the Committee a certificate by a psychologist and psychotherapist. The State party notes that, just as the complainant states, the certificate dated 5 December 2020 constitutes new evidence that has not been 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 enforcement of an expulsion order in cases where 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 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 enforcements of deportation orders to Afghanistan until further notice. Consequently, the complainant is not at risk of expulsion. The State party would inform the Committee on any developments concerning the domestic migration authorities' assessment of the human rights and security situation in Afghanistan, with implications for the complaint, 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, contrary to the State party's observations, that the communication is admissible under article 22 (2) as his assertions do 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 he, as former Muslim who has converted to Christianity, will face serious consequences as an apostate in Afghanistan.²⁴ In addition, the complainant lacks an adequate social network in Afghanistan and would be seen as an apostate by his family, countrymen and the authorities. He has previously been

²³ Ibid., para. 53.

²⁴ In Afghanistan, less than 0.3 percent of the population confess that they hold a different belief than Islam.

subjected to persecution in Afghanistan, which has not been questioned by the State party's asylum authorities. The complainant is 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, 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 have been 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 findings,²⁵ and it has the power of a free assessment of the facts based upon the full set of circumstances in every case.²⁶ In this case, all 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 enforcements of deportations to Afghanistan are suspended. While the complainant trusts that his deportation will not be enforced for the time-being, he points out 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 asylum interviews, as pointed out in the initial complaint, the complainant argues that at the time of their conduct he had not yet converted to Christianity. He also notes that less than half of the interview time is *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 over two hour long oral hearing with the complainant in the presence of his public counsel and an interpreter, and that a witness was heard, upon request of the complainant, during an oral hearing, the complainant finds this misleading. Due to formal information before the Court, and due to the need for interpretation, less than an hour would have been left to hear the complainant and a witness. Approximately half of this time is used by the Migration Agency to pose questions. However, in the Court, the Agency's questioning is rarely held as an open and objective investigation. In the Court, the Migration Agency acts as counterparty and normally uses the time to find faults and weaknesses in the complainant's story and statements. Against this background, there was little time for the complainant to actually describe his inner thoughts and beliefs in relation to his conversion, which is required according to the national case-law. The lack of referral to the Migration Agency was a serious

²⁵ *G.K. v. Switzerland* (CAT/C/30/D/219/2002), para. 6.12.

²⁶ *X v. Switzerland* (CAT/C/53/D/470/2011), para. 7.3.

procedural deficiency and gave the complainant no chance to *de facto* 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 the 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. The Migration Court's negative decision, which found no need to refer the case, although it was based predominantly on the perceived credibility of the complainant's statements, 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 Christian conviction and thus that he intended to live as a Christian convert upon a return to Afghanistan". The Migration Agency had never heard the complainant's conversion story orally, as this was heard only in the Migration Court. Against this background and considering that oral hearing is essential for investigation of an individual's genuine conversion, it was not possible for the Agency to make such a claim as the one cited above. The claim hence shows that the Agency had a preconceived position before the hearing was even held at the Court, as written submissions are normally made before the oral hearing. This fact shows even more clearly that no open investigation is held in the Court and that the Migration Agency only acted as a counterparty, lacking objectivity.

5.10 Moreover, the State party has asserted that the complainant's case can be distinguished from the Human Rights Committee's decision in *Q.A. v. Sweden*.²⁷ 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 multi-faceted vulnerability profile. He was subjected to abuse in the home country and has suffered both of 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*.²⁸ The Committee, in a similar way, found that the Swedish asylum authorities failed to sufficiently assess the different risk-enhancing factors and supporting evidence of the complainant. It also failed to make an individualized assessment such as the young age and mental health of the complainant.

5.11 Regarding the acts of torture suffered previously, the complainant stated to the Migration Court that he had been exposed to the bacha bazi custom in Afghanistan and that he had been exposed to torture. Despite this, the Migration Court did not request any torture investigation, which is normally a matter of extensive costs for a complainant, or refer the case back to the Migration Agency for further investigation. The State party holds that the present case is clearly distinguishable from that of *R.C. v. Sweden*²⁹ 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 firstly 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 documents submitted in support thereof.³⁰ 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

²⁷ CCPR/C/127/D/3070/2017, para. 9.7.

²⁸ CAT/C/72/D/918/2019

²⁹ See fn. 22.

³⁰ *R.C. v. Sweden*, para 50.

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.³¹

5.12 In the present case, the complainant has provided certificates from a psychologist stating that the complainant suffers from PTSD, due to the abuse 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 have required evidence concerning the origin of the abuse from the Taliban, which is evidently impossible for the complainant to provide. He described that he could tell that the abusers were Taliban by their clothes and appearances, which should be well known to any person 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 country-of-origin information available on Afghanistan³² that grave human rights abuses and torture by the Taliban is 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 he would be exposed to 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 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 which the authorities have failed to sufficiently take into account.

5.13 The State party has claimed that the certificate from by a psychologist and psychotherapist, dated 5 December 2020, constitutes new evidence that has not been 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 based on this certificate. As the Committee is aware, the State party's authorities would dismiss the certificate as modifications and additions to previous applications. Against this background, the Committee should take the complainant's stated health problems and corroborating evidence, such as this 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. These criteria are fulfilled in the present case. 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, which have not been questioned by the State party's authorities.

5.15 As regards the general decision on suspension of removals to Afghanistan by the Migration Agency due to the prevailing security situation in the country, the complainant notes that this 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 will become statute-barred, on 1 July 2024.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

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

³¹ Ibid., paras 50 and 52.

³² E.g., country information presented in the complaint.

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.³³

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 allegations 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. Therefore, 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

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 following the rejection of his asylum application by the State party would constitute a violation of the State party's obligations under article 3 of the Convention.

7.3 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.

7.4 The Committee recalls its general comment No. 4 (2017), according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing, at the time of its decision, 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 that may be at risk of being tortured in the State of destination. The Committee recalls that its practice has been to determine that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".³⁴ 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 owing to threats of torture.³⁵

7.5 The Committee also recalls that the burden of proof is upon the complainant, who must present an arguable case, that is, submit substantiated arguments showing that the

³³ *E.M.M.A. v. Sweden* (CAT/C/74/D/960/2019), paras. 9.2, 9.4 and 10.

³⁴ General comment No. 4 (2017), para. 11.

³⁵ *Ibid.*, para. 45.

danger of being subjected to torture is foreseeable, present, personal and real. However, when the complainant is in a situation where he or she cannot elaborate on his or her case, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the communication is based.³⁶ 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.³⁷

7.6 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 a new ground 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, 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.³⁸ 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.

7.7 The Committee also considers that the risks faced by the complainant were also insufficiently assessed in connection with the complainant's claims related to his contention that he had been subjected to torture when he was abducted and raped by the Taliban, and 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 the Taliban who had perpetrated the abuses, notwithstanding his descriptions of the way the perpetrators were dressed as well as their appearance, which the complainant notes should be well-known to any person in Afghanistan, and the overall context of general country information regarding widespread reporting of human rights abuses and torture perpetrated by the Taliban. The Committee considers that in view of the totality of the credibility account that the complainant has put forward, including the fact that the State party has acknowledged the credibility of the complainant's account, and including the documentation from psychologists concluding that the complainant suffers from PTSD 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 the Taliban.³⁹ In addition, the Committee takes note that the mere fact, even if true, that it had been persons other than the Taliban that had kidnapped and raped the

³⁶ Ibid., para. 38.

³⁷ Ibid., para. 50.

³⁸ *Q.A. v Sweden*, para. 9.7.

³⁹ See General Comment No. 4, paragraph 38; *R.C. v. Sweden*, paragraphs 50-52.

complainant as a child that would not resolve questions related to the risk of re-traumatization of the complainant if he were forced to return to Afghanistan.

7.8. Finally, the Committee considers that, whether or not the conclusion of the Swedish authorities was warranted when the Swedish authorities considered the claim of the complainant originally, 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 the Taliban and his conversion to Christianity, and the overall human rights situation in the country, has fundamentally changed in view of the vastly different circumstances now prevailing in connection with the change of governments 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 enforcements of deportations to Afghanistan because of the worrying situation and difficulty of assessing it, noting that the State party would inform the Committee on any developments in regard of this suspension.

7.9. In 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 a removal of the complainant to Afghanistan, it would need to make a decision on the basis of an individualized assessment of the risks facing the complainant on the basis of the circumstances as they then exist before expelling him to Afghanistan.

8. In view of the above, 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 Convention⁴⁰ 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 those decisions were taken.

9. 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, taking into account the new circumstances that have emerged following the takeover of Afghanistan by the Taliban in 2021 and in light of the State party's obligations under the Convention and the present decision.⁴¹

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.

⁴⁰ *A.A. v. Sweden* (CAT/C/72/D/918/2019), para. 10.

⁴¹ *Ibid.* para. 11.