



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

Distr.: General
13 December 2024

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 997/2020*, **, ***

<i>Communication submitted by:</i>	M.T. (represented by counsel, Rebecca Ahlstrand)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	20 March 2020 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 26 March 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	1 November 2024
<i>Subject matter:</i>	Deportation of the complainant to Afghanistan
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issue:</i>	Risk of torture if deported to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is M.T., a national of Afghanistan born in 1998. At the time of the initial submission, his request for asylum in the State party had been rejected, and he was facing deportation to Afghanistan. The complainant claims that, if the State party were to proceed with his deportation, it would be in violation of its obligations under article 3 of the Convention. 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 26 March 2020 and 17 September 2024, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to issue a request for interim measures under rule 114 of the Committee's rules of procedure.

Factual background

2.1 The complainant was born in the Islamic Republic of Iran to Afghan parents. He belongs to the ethnic group Hazara. His brother attempted to force him to relocate to the

* Adopted by the Committee at its eighty-first session (28 October–22 November 2024).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Jorge Contesse, Claude Heller, Erdogan Iscan, Peter Vedel Kessing, Liu Huawen, Maeda Naoko, Ana Racu and Abderrazak Rouwane.

*** An individual opinion by Committee member Jorge Contesse (dissenting) is annexed to the present decision.



Syrian Arab Republic. As a result of threats and abuse from his brother, the complainant fled to Afghanistan. He then wanted to return to the Islamic Republic of Iran, but his mother wanted him to go to a safer place, so he fled to Sweden.¹

2.2 On 17 July 2015, the complainant sought asylum in Sweden on the grounds that he faced a real risk of torture and inhuman and degrading treatment in Afghanistan due to his brother's abuse and threats. On 14 October 2016, the Swedish Migration Agency denied his application on the grounds that his allegations of individual threat were not reliable and that he had not demonstrated the existence of a concrete and personal risk in case of removal to Afghanistan. There was also nothing in the file to suggest that there was a specific and personal threat to the complainant in Afghanistan because he was Hazara. As to his health, the Migration Agency noted that he had not shown that he was suffering from a life-threatening disease. The complainant appealed, submitting, inter alia, that he had tried to commit suicide in connection with the rejection of his asylum application and had been hospitalized. He cited extracts from his medical record in support of his general state of health being affected. On 22 May 2017, the Gothenburg Migration Court dismissed the appeal. In particular, it noted that the medical evidence was not sufficient to show that his state of health was of a kind that could be considered to be an exceptionally distressing circumstance. On 18 August 2017, the Migration Court of Appeal refused leave to appeal.

2.3 The complainant became interested in Christianity when he arrived in Sweden and began to learn about the religion. For more than three years, he met regularly with a pastoral assistant and activities manager from the Vinberg-Ljungby congregation. He joined the congregation and has been an active participant in it. He also chose to get tattoos of Christian symbols.² In 2016 and 2017, he participated in a baptismal teaching course in Falkenberg, after which he decided that he wanted to be baptized. Prior to his baptism, a priest from the Church of Sweden in Falkenberg warned him about the persecution of converts to Christianity in Afghanistan. On 4 March 2017, the complainant was baptized in the presence of 70 people.

2.4 On 22 September 2017, the complainant sought a stay of his deportation and requested the re-examination of his case because of new circumstances: his baptism and his conversion to Christianity. He also claimed that he was suffering from mental illness that had manifested in serious self-harm behaviour and suicide attempts, which meant that he would be particularly vulnerable if returned to Afghanistan.

2.5 On 11 June 2018, the Swedish Migration Agency denied his application. While noting that the conversion was a new circumstance that had not previously been examined,³ the Migration Agency examined whether the complainant had been able to invoke it earlier or had a valid excuse for citing the circumstances so late in the process. It noted that he had attended the church several times towards the end of 2015 and had begun to participate in teaching and activities at the church in the beginning of 2016, which was before the rejection of his asylum application on 14 October 2016. It also noted that the complainant had been baptized on 4 March 2017, which was more than two months before the decision of 22 May 2017 of the Gothenburg Migration Court. The Migration Agency did not consider as an acceptable explanation the complainant's argument that he had felt fear and concern about the reactions of people around him, that he had not been able to talk about it and that he had been ignorant of what could and should have been invoked in an asylum process. It therefore concluded that the complainant had been able to invoke his conversion within the framework of the basic process, which was also in line with his responsibility to provide all relevant circumstances.

2.6 The Swedish Migration Agency further considered that, given the general situation of converts to Christianity in both Afghanistan and Iran (Islamic Republic of), it was not reasonable to assume that the complainant would have been unaware of the relevance of his conversion to the assessment by the Migration Agency and the Migration Court of his need

¹ No further details were provided on the claims cited in the present paragraph.

² A cross on his left hand and a cross with wings on his upper back.

³ The complainant invoked his conversion for the first time in his appeal before the Migration Court of Appeal, but since that court did not grant leave to appeal, the substance of the circumstance was not examined.

for protection. Regarding the complainant's tattoos, the Migration Agency admitted that country information supported the allegation that tattoos could be expected to attract negative attention but considered that there was no reason to assume that they would automatically lead to the general public considering such a person to be a convert. The Agency therefore considered that the complainant had not made it presumable that he would be at risk of being attributed a religious opinion only as a result of his tattoos. It also considered that the complainant could be reasonably required to hide or remove his tattoos to avoid any future problems.

2.7 As to the complainant's state of health, the Swedish Migration Agency noted that his self-harm behaviour and suicide attempts had already been examined in the context of the final and non-appealable expulsion order. The patient records submitted by the complainant had also been examined. The Agency also noted that the complainant had not submitted a doctor's certificate and concluded that his mental illness was not, in itself, a new circumstance.

2.8 The decision by the Swedish Migration Agency was upheld on 10 August 2018 by the Gothenburg Migration Court. In particular, the Migration Court considered that the complainant's fear of what other Muslims would think about his new religion ought to have been most prominent during the period 2015–2016, when he first came into contact with Christianity. Despite his fear, the certificates show that he chose to continue with his Christian faith and started christening instruction towards the end of 2016. For the Migration Court, the complainant should – at least by March 2017, when he had been active in two Christian parishes for a long time, had undergone christening instruction and had held thorough conversations with the priest – have had a Christian conviction that enabled him to, for instance, tell his public counsel or his guardian, who had become involved in his initial case, about this circumstance. It could not have been unknown to the complainant, at the time of his conversion, that conversion was prohibited in his country of origin and that that circumstance could therefore be grounds for a residence permit. On 17 September 2018, the Migration Court of Appeal refused leave to appeal.

2.9 On 22 May 2019, the complainant submitted a second application to stay his removal based on further evidence regarding his involvement with the Christian faith (certificates and pictures from church services). On 20 June 2019, the Swedish Migration Agency denied his application on the grounds that there were no new circumstances that would constitute an obstacle to enforcement. The complainant appealed. On 19 August 2019, the Gothenburg Migration Court considered that an oral hearing was not necessary because the legal issue at stake was whether new circumstances had emerged that would lead the Migration Agency to re-examine the issue of residence permits, and not a question of a reconsideration of previously stated reasons for asylum. On 6 September 2019, the Migration Court dismissed the complainant's appeal. On 17 October 2019, the Migration Court of Appeal refused leave to appeal.

2.10 On 18 August 2021, the decision to deport the complainant became statute-barred. On 22 April 2022, the complainant lodged a new application for asylum, which was dismissed by the Swedish Migration Agency on 30 June 2022. As to the complainant's request for a supplementary oral hearing in case of rejection, the Agency held that the documentation was comprehensive and that the complainant had been given enough opportunities to explain his grounds for asylum, including his religious beliefs, both at the stage of investigation and through submissions.

2.11 As to the complainant's conversion, the Swedish Migration Agency did not question that he had been baptized or that he had participated in church activities. However, it held that the baptism certificate and the documents issued by a priest in his support did not demonstrate that the complainant had converted to Christianity out of a genuine, personal and religious conviction. The Migration Agency also considered that tattoos had only a vague connection to the practice of Christianity and did not demonstrate that the practice of faith would be genuine. The Agency did not rule out that the purpose was to create the conditions for international protection to be granted. There was also a lack of support for the fact that tattoos representing Christian messages and symbols would automatically lead to those around a person considering that person a convert.

2.12 The Swedish Migration Agency examined the complainant's oral declarations about his conversion. It did not question how he had become interested in Christianity or that he had converted, but noted that his account consisted mainly of general, vague and repetitive information about sins and punitive thoughts in Islam compared with forgiveness and security in Christianity and that, within Christianity, he had found that it was enough to have faith to get to paradise. It therefore considered his statements to lack deeper religious considerations and an account of the intellectual process surrounding his conversion. In the light of the fact that the complainant had declared that he had already started to distance himself from Islam in 2015 and that he had been clear in his conviction about his conversion in 2017, the Migration Agency found his statement to lack depth and consideration. The information he provided was deemed to reflect more closely the positive sense of community that the complainant received in the church than a genuine Christian belief. The Migration Agency therefore assessed that the complainant had not provided reliable information that he had left Islam and converted to Christianity out of a genuine, religious and personal conviction.

2.13 Furthermore, the Swedish Migration Agency considered that the complainant's credibility was negatively affected by the fact that he had not declared before the Migration Agency – until after his deportation decision became final and despite being active in the church since 2016 and baptized even before the expulsion decision came into effect – that he was at risk of persecution due to his religious beliefs. The Migration Agency therefore concluded that the complainant had not made it likely that he would live as a convert in his home country.

2.14 The Swedish Migration Agency noted the complainant's allegation of persecution because of his Hazara ethnicity. While not questioning his ethnic background, the Agency noted the available country information, according to which the Hazara were a vulnerable group in Afghanistan and the risk of continued violence against the group and other Shia Muslims in the country was high. However, it also noted that the Taliban had not introduced any policies against Hazara after taking power, that the reports of violence against Hazara did not concern all parts of the country and that there was no support in the country information that all Hazara were at risk of treatment that would trigger a need for international protection. The mere fact of being Hazara was therefore not considered sufficient for a need for protection to be considered to exist. The Agency noted that the complainant had never personally been threatened because of his ethnicity and nothing had emerged to suggest that there was any concrete and individual threat against him because of his ethnicity. The Agency therefore assessed that the complainant was not in need of protection on that basis.

2.15 On 26 June 2023, the Gothenburg Migration Court – after holding an oral hearing – rejected the complainant's appeal. In particular, it noted that, while the written evidence provided some support for the complainant's conversion out of a genuine and personal religious conviction, that evidence alone was not sufficient on its own but must be evaluated in the light of the complainant's oral declarations. The Court did not accept his statement that it was the fault of his former counsel that he had not mentioned his conversion in the initial set of proceedings. It noted the lack of deeper religious considerations, reflections and feelings, which was considered abnormal given the risks it generally entailed in Afghanistan to abandon Islam and convert to Christianity and the separation that it could be assumed to create between the complainant and his family. In the light of that, the Court considered that the complainant had not made it likely that he had converted to Christianity out of a genuine and personal religious conviction and that he would continue to practise his new faith if he settled in Afghanistan.

2.16 The Migration Court noted that the complainant had not presented any personal circumstances to demonstrate a risk because he was Hazara. Although the Court did not dispute that the complainant had to some extent adapted to a Western lifestyle during his stay in Sweden, it considered that he had not explained in more detail how that would prevent him settling in Afghanistan because he had not explained his Western values and his adaptation beyond being pro-equality, dressing in Western clothes and not having a beard. Nor had he been able to provide any detailed explanation as to why it was important for him to live according to the norms and values found in Western society. He was a grown man who had grown up in the Islamic Republic of Iran in an Afghan family and should not be alien to

Afghan culture. He should therefore be able to adapt to the conditions in Afghanistan in terms of, for example, customs and external attributes.

2.17 As to his allegation of risk of discrimination and violence on the basis of mental illness – which he supported with medical records – the Migration Court held that the complainant had not produced any evidence to support that his state of health was currently life-threatening or otherwise particularly painful or that his illness was such that he would risk being noticed by those around him upon his return. The Court did not dispute that the conditions in Afghanistan were difficult but considered that that was not sufficient to make it likely that the complainant’s situation in his home country would be exceptionally distressing. On 15 August 2023, the Migration Court of Appeal refused leave to appeal.

Complaint

3.1 The complainant submits that, due to his Christian religion, if returned to Afghanistan, he faces a real risk of persecution, including the death penalty, in violation of article 3 of the Convention. He relies on a report from Open Doors International to emphasize that Christians in Afghanistan experience extreme persecution.⁴ He claims that individuals who refuse to convert back to Islam are often placed in mental institutions and face abuse by society. The complainant alleges that less than 0.3 per cent of the population of Afghanistan adheres to a religion other than Islam and that there are no Christian communities there. Christian Afghans are forced to live in secrecy. He claims that there would be no way for him to practise his religion in Afghanistan without being exposed to danger.

3.2 The complainant submits that, in Afghanistan, serious crimes such as apostasy are often punishable with death. Apostates are also at risk of being disowned by their families or even killed by them. Other individuals in society pose a threat to persons who have renounced Islam. He claims that his tattoos of Christian symbols mark him as an apostate. It would be impossible for him to avoid being recognized as a Christian in Afghanistan as the tattoos are placed very visibly and are difficult to hide.

3.3 The complainant claims that his conversion to Christianity has not been examined on the merits, which is in violation of both Swedish law and the case law of the European Court of Human Rights.⁵ Owing to his religion, the complainant would face a risk of inhuman and degrading treatment, torture and death penalty in Afghanistan. He thus invokes deficiencies in the examination of his case, considering that, although the evidence confirmed that he had a genuine conviction and involvement with his faith, the migration authorities did not hold an oral hearing to assess his faith. He claims that the Swedish authorities assumed that he was not credible without any examination of the merits, which is in violation of article 3 of the Convention, because the State party cannot find that an asylum applicant lacks credibility merely because he or she did not invoke a certain ground of persecution at a certain time.

State party’s observations on admissibility and the merits

4.1 On 26 November 2020, the State party challenged the admissibility of the complaint, arguing that it was manifestly unfounded because it failed to rise to the minimum level of substantiation.

4.2 On the merits, the State party referred to the decisions issued at the domestic level, holding that there was no reason to conclude that they were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. The complainant, who was represented by a public counsel, has had several opportunities to explain the relevant facts and circumstances in support of his claim and to argue his case before the Swedish Migration Agency and the Migration Court, which are specialized bodies with particular expertise in the field of asylum law and practice. However, he was not able to demonstrate a valid excuse for not having said anything about his conversion at an earlier

⁴ No reference was provided.

⁵ The complainant relies on *F.G. v. Sweden* (Application No. 43611/11, Judgment, 23 March 2016) to claim that written evidence such as certificates from a pastor or priest are enough to warrant a new examination by the Swedish authorities.

stage of the proceedings, and thus to be able to have his conversion examined as part of the ordinary asylum proceedings.

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

5.1 On 7 April 2021, the complainant submitted comments on the State party's observations, alleging that his mental health would deteriorate in case of deportation. He complained about the fact that the Swedish authorities had failed to sufficiently evaluate the risk posed by his health condition.

5.2 The complainant considers that the Swedish authorities cannot claim to have been in a good position to assess the credibility of his conversion in the absence of an oral hearing because it is not possible to assess the genuineness of conversions through evidence and written submissions from a counsel. Moreover, he has provided extensive corroborating evidence in support of his assertion of a genuine conversion – such as a baptism certificate, photographs from his baptism, certificates from church members and pastors, and photos of his Christian tattoos – which is normally enough to consider the conversion plausible and merit a new examination.⁶ For the complainant – since the State party recognizes that apostates and converts run a real risk of persecution warranting international protection – it is a clear violation of international law to not investigate his claims on the merits.

5.3 The complainant recalls that credibility is a central issue in religion-based refugee claims according to the Office of the United Nations High Commissioner for Refugees (UNHCR) guidelines on religion-based refugee claims.⁷ He thus interprets the UNHCR guidelines in the sense that an interview must be held to be able to fully assess the credibility of the alleged conversion.

State party's additional observations

6.1 On 17 October 2024, the State party provided further observations. It notes that, in the last set of proceedings, the complainant was given the opportunity to develop his claims of conversion from Islam to Christianity during an extensive investigation before the Swedish Migration Agency and an oral hearing before the Migration Court, as well as in writing, in accordance with the UNHCR guidelines on religion-based refugee claims. The Swedish migration authorities found that the complainant had not provided reliable information about having converted on the grounds of a genuine religious conviction. The national authorities emphasized that the complainant had not provided a reasonable explanation as to why he had waited to present his cited conversion as a reason for asylum. It was also noticed that the complainant provided vague and general information about his thoughts and feelings that reasonably must have preceded his cited distancing from Islam and conversion to Christianity. The authorities found that the complainant should have been able to explain his religious considerations and inner process in a more in-depth and detailed way. The complainant was hence not considered to have plausibly demonstrated that he had converted on the basis of a genuine and personal religious belief.

6.2 The State party notes that, although the complainant's views on religion were not considered to render him at risk of being perceived as a convert, the national migration authorities proceeded to assess whether the behaviour and activities of the complainant could put him at risk upon return to Afghanistan. This assessment included the complainant's ethnicity and social media activities and thus the risk of being attributed a religious belief or opinion, as well as the risk of being perceived as "westernized" upon return to Afghanistan, according to available and relevant country information. Taking that information into account, the Swedish Migration Agency also noted that the general security situation in the

⁶ The complainant explains that, in a subsequent judgment, the Migration Court of Appeal clarified that no excuse was needed if an applicant reached the necessary level of probability (Migration Court of Appeal, *M.A. v. Sweden*, Case No. 2019:5, Decision, 4 October 2019). He also invokes the decision by the Human Rights Committee in *Q.A. v. Sweden* (CCPR/C/127/D/3070/2017), paras. 9.7 and 9.8.

⁷ Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, document HCR/GIP/04/06, para. 28.

country was not such that the complainant would risk indiscriminate violence upon return, an assessment that the Migration Court shared at the appeal of the Agency's decision. The State party therefore maintains that a removal of the complainant would not entail a violation of article 3 of the Convention.

Additional submission from the complainant

7.1 On 25 October 2024, the complainant contested the State party's observations. He submits that country information clearly supports his argument of an immediate danger both of torture and of inhuman and degrading treatment in Afghanistan for individuals who are apostates and convert from Islam. He is thus at high risk of being subjected to death penalty, ill-treatment or torture if expelled, due to his conversion and other risk-enhancing factors in his case, such as his ethnicity, his lack of experience of Afghanistan, his mental health, his Christian tattoos and his westernization in general.

7.2 The complainant questions the standard used by the migration authorities to make an individualized assessment of his case. He points out that the UNHCR guidelines on religion-based refugee claims stipulate that every case needs to be individualized based on grounds such as the individual's age, gender, cultural and socioeconomic and educational background, in order to establish the individual applicant's ability to explain his or her thoughts and feelings orally. However, the complainant considers that the Swedish migration authorities failed to make an individualized assessment because they put little or no weight on the corroborating evidence such as baptism certificates, diplomas, certificates and letters from pastors, priests and others, as well as his way of living and activities, which resulted in the evaluation of credibility being limited almost completely to his ability to make an oral presentation.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

8.3 The Committee notes that the State party challenges the admissibility of the complainant's claims under article 3 on the basis that they are manifestly unfounded, given that the complainant has not substantiated the existence of substantial grounds for believing that he would face a foreseeable, present, personal and real risk of torture if returned to Afghanistan. The Committee considers, however, that the complainant has sufficiently substantiated his claims for the purposes of admissibility, on the basis of article 3 of the Convention, regarding his risk of being subjected to torture and ill-treatment if returned to Afghanistan. Accordingly, it declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

9.1 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.

9.2 In the present case, the issue before the Committee is whether the return of the complainant to Afghanistan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where

there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Afghanistan. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances. Moreover, the Committee notes that, since Afghanistan has not made the declaration provided for in article 22 (1) of the Convention, in the event of a violation of the complainant's rights under the Convention in that country, he would be deprived of the legal option of recourse to the Committee for protection of any kind.

9.4 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 risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to be shown to be highly probable, the burden of proof generally falls on the complainant, who must present an arguable case establishing that he or she faces a foreseeable, real and personal risk.⁸ The Committee also recalls that, in accordance with its general comment No. 4 (2017), it gives considerable weight to findings of fact made by organs of the State party concerned, while, at the same time, it is not bound by such findings and instead has the power, under article 22 (4) of the Convention, to make a free assessment of the information available to it, taking into account all the circumstances relevant to each case (paras. 11, 39 and 50).

9.5 In the present case, the Committee notes that the complainant maintains that he fears for his life, should he be returned to Afghanistan, because he considers that he will be targeted by the authorities because he has converted from Islam to Christianity. In particular, it would be impossible for him to avoid being recognized as a Christian in Afghanistan because he has two tattoos of Christian symbols that are placed very visibly and are difficult to hide.

9.6 The Committee also notes that the State party's authorities have not called into question that the complainant had converted from Islam to Christianity, nor have they contested the baptism certificate, but they have held that the complainant did not demonstrate that he had converted out of a genuine and personal religious conviction and that he would continue to practise his new faith if he returned to Afghanistan. In that connection, the Committee observes that, although the complainant started to attend a Christian church shortly after having submitted his asylum request in Sweden and was baptized before the Migration Court's decision, he did not invoke his interest in Christianity and his conversion during the original asylum proceedings. The Committee notes that the complainant has not provided a reasonable explanation for not having invoked his conversion in the initial set of proceedings, although he may reasonably be supposed to have been aware at that time of the consequences he might have suffered as an apostate if returned to Afghanistan.

9.7 The Committee further notes the argument of the Swedish authorities that the complainant's two tattoos do not demonstrate a genuine practice of Christianity and can be removed or hidden. The Swedish authorities also assessed that there was no evidence to assume that in Afghanistan, tattoos representing Christian messages and symbols would automatically lead to those around a person considering that person to be a convert. They also assessed that the mere fact of being Hazara did not automatically pose a risk in all parts

⁸ See, *inter alia*, *A.R. v. Netherlands* (CAT/C/31/D/203/2002), para. 7.3; and *Dadar v. Canada* (CAT/C/35/D/258/2004), para. 8.4.

of Afghanistan. The Committee observes that the complainant has provided no evidence to challenge these specific arguments given by the Swedish authorities or to demonstrate a personal risk to him by virtue of being Hazara, which would put him in a special situation of risk and in a situation significantly different to many other Hazara Afghans. In this sense, the Committee reiterates that the occurrence of human rights violations in a complainant's country of origin is not, of itself, sufficient for it to conclude that a complainant would face a personal risk of being tortured there.⁹

9.8 The Committee notes that the complainant was given the opportunity to substantiate and clarify his claims before the domestic authorities, orally and in written, in several sets of proceedings. However, on the basis of the evidence provided, the domestic authorities held that it had not been possible to confirm that the complainant had demonstrated that he had converted to Christianity out of a genuine and personal conviction rather than to attempt to create conditions in support of his request for international protection.

9.9 In particular, the Committee notes that the main question before the Swedish authorities was whether the complainant was able to demonstrate the genuineness of his conversion to Christianity. In these circumstances, the Committee notes that, according to the UNHCR guidelines for religion-based refugee claims, where individuals convert after their departure from the country of origin, "particular credibility concerns tend to arise and a rigorous and in-depth examination of the circumstances and genuineness of the conversion will be necessary" (para. 34). In the present case, the Committee notes that, during the last asylum proceedings and although the Swedish authorities did not make an express reference to the UNHCR guidelines, oral hearings were held at both first instance and appeal levels, which should have allowed the Swedish authorities to evaluate the complainant's credibility regarding the genuineness of his conversion. However, the Committee notes that the Swedish authorities questioned the complainant's credibility because his account consisted mainly of general, vague and repetitive information about Christianity, and thus lacked deeper religious considerations, reflections and feelings, including an account of the intellectual process surrounding his conversion.

9.10 In the light of the considerations above, and on the basis of all the information submitted to it by the complainant and the State party, including on the general situation regarding human rights in Afghanistan, the Committee considers that, in the present case, the information in the file does not allow it to conclude that the decision of the domestic authorities was arbitrary in finding that the complainant would not face a real, foreseeable, personal and present risk of being subjected to torture if he were to be deported to Afghanistan or that the authorities of the State party failed to conduct a proper investigation into his allegations in accordance with the UNHCR guidelines.¹⁰

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

⁹ *H.S. v. Denmark* (CAT/C/71/D/792/2016), para. 8.13. For similar conclusions of the Human Rights Committee, see *W.K. v. Canada* (CCPR/C/122/D/2292/2013), paras. 10.4 and 10.5.

¹⁰ See also *A.B. v. Sweden* (CAT/C/71/D/908/2019), para. 8.11.

Annex

Individual opinion of Committee member Jorge Contesse (dissenting)

1. Respectfully, I find myself unable to concur with the Committee's decision in this case.

2. Under the Committee's practice, the Committee gives considerable weight to findings of fact made by organs of the State party concerned, while, at the same time, it is not bound by such findings. Under article 22 (4) of the Convention, the Committee has the power to make a free assessment of the information available to it, taking into account all the circumstances relevant to each case.¹ While the State party's authorities are in the best position to make an assessment of the particular case, in the light of all relevant circumstances, in my view the State party did not properly consider all the circumstances in the present case. As a result, I see two problems in the Committee's decision finding no violation of article 3 of the Convention. First, it validates the State party's faulty examination of the complainant's conscience under international human rights standards. Second, it fails to adequately assess the risk to which the complainant might be exposed upon return to Afghanistan.

3. The State party concedes that the complainant converted to Christianity, but questions whether he did so out of a genuine and personal religious conviction (see paras. 2.12, 2.15, 6.1 and 9.6–9.8 above). The State party found that the complainant's statements "lack deeper religious considerations and an account of the intellectual process surrounding his conversion" (see para. 2.12 above); that "the complainant had not made it likely that he would live as a convert in his home country" (see para. 2.13 above); that he failed "to provide any detailed explanation as to why it is important for him to live according to the norms and values found in Western society"; and that he "should therefore be able to adapt to the conditions in Afghanistan in terms of, for example, customs and external attributes" (see para. 2.16 above). I believe that these findings and expectations are problematic.

4. Despite its centrality in the present case, there is little guidance on how the State party assessed the genuineness of the complainant's conversion. The record shows that the complainant "became interested in Christianity when he arrived in Sweden" (see para. 2.3 above); that he participated in a baptismal teaching course and met regularly with a pastoral assistant and activities manager from the Vinberg-Ljungby congregation; that he was baptized in the presence of 70 people, and that he produced corroborating evidence of his conversion, such as certificates, letters from pastors, and pictures from church services. However, the State party notes – and the Committee accepts – that the complainant's account "consisted mainly of general, vague and repetitive information about Christianity, and thus lacked deeper religious considerations, reflections and feelings, including an account of the intellectual process surrounding his conversion" (see para. 9.9 above).

5. As this case is not only about the risk of being subjected to torture, but also about the scope of freedom of conscience, it is helpful to have in mind the statements of United Nations mechanisms specialized in this field.

6. Freedom of conscience is protected in several human rights instruments, such as the International Covenant on Civil and Political Rights (art. 18). It is a highly protected right, as shown by the fact that it is listed among the non-derogable rights in article 4 (2) of the Covenant. The Human Rights Committee has stated that article 18 of the Covenant "does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice", adding that "these freedoms are protected unconditionally".² The Special Rapporteur on freedom of religion or belief has observed that "it is generally agreed that within the ambit of freedom of religion or belief,

¹ General comment No. 4 (2017), para. 50.

² General comment No. 22 (1993), para. 3.

the *forum internum*, namely, the internal dimension of a person's religious or belief related conviction, enjoys absolute protection".³ This heightened level of protection is neatly seen in the position of Rosalyn Higgins, a former member of the Human Rights Committee, who, at a meeting of the Committee at its forty-fifth session, "resolutely opposed the idea that 'States could have complete latitude to decide what was and what was not a genuine religious belief'" and noted that "the contents of a religion should be defined by the worshippers themselves".⁴ It is a matter, in other words, that belongs primarily to the deep corners of an individual's intimate convictions.⁵

7. Of course, in the context of asylum applications, States have the right (and the duty) to carefully assess a claimant's credibility in conversion cases. However, as noted in the Office of the United Nations High Commissioner for Refugees (UNHCR) guidelines on religion-based refugee claims, States' latitude to conduct such inquiry is not unqualified: "knowledge tests [of a claimant's religion] need to take account of individual circumstances, particularly since knowledge of a religion may vary considerably depending on the individual's social, economic or educational background and/or his or her age or sex".⁶ In the present case, we know the complainant's age and sex: he is a 25-year-old male. But we know nothing about his social, economic or educational background, a key element of a proper assessment of his alleged lack of deep consideration of his conversion to Christianity. The Committee notes that the State party's authorities questioned the complainant's credibility "because his account consisted mainly of general, vague and repetitive information about Christianity" (para. 9.9 above). However, under the UNHCR guidelines, "a claimant's detailed knowledge of his or her religion does not necessarily correlate with sincerity of belief".⁷ Conversely, a general knowledge of his religion – as both the State party and the Committee find – does not correlate with insincerity of belief.

8. While the complainant is a "grown man" (see para. 2.16 above), he has lived as a Christian in a Western country for approximately eight years, that is, a third of his entire life. The complainant will be removed to a country where United Nations experts – including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment – and other international mechanisms have reported that apostates are subject to discrimination and persecution, including torture, ill-treatment and death.⁸ Moreover, he will be forced to practise his religion in secret. Despite the fact that he has two tattoos representing his Christian faith, one of them a cross on his left hand, the State party considers that tattoos have "only a vague connection to the practice of Christianity" (para. 2.11 above) and he could be "reasonably required to hide or remove his tattoos to avoid any future problems" (para. 2.6 above). I do not believe imposing such a requirement on the complainant is reasonable. In addition, expecting the complainant to hide his religion or to practise in secret in his country of origin in order to avoid persecution to conceal his religious beliefs is an unreasonable burden, as expressly noted by the Special Rapporteur on freedom of religion or belief.⁹ Tellingly, the Special Rapporteur has equated the persistent exposure to coercion in

³ A/67/303, para. 19.

⁴ CCPR/C/SR.1166, para. 48.

⁵ "No temporal tribunal can search the heart, or fathom the intentions of the mind, otherwise than as they are demonstrated by outward action" (William Blackstone, *Commentaries on the Laws of England*, vol. 4, *Of Public Wrongs (1769)* (Chicago and London, University of Chicago Press, 1979), chap II.

⁶ UNHCR, Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, document HCR/GIP/04/06, para. 28.

⁷ *Ibid.*, para. 29.

⁸ "Consistent credible reports of summary executions and acts tantamount to enforced disappearances, widespread arbitrary detention, torture, and ill treatment, as well as arbitrary displacement have caused increased concern. The hardest hit are women and girls, ethnic, religious and other minorities..." (see <https://www.ohchr.org/en/statements/2023/08/afghanistan-un-human-rights-experts-denounce-idea-reformed-taliban>). See also European Union Agency for Asylum, *Country Guidance: Afghanistan* (Luxembourg, Publications Office of the European Union, 2024), p. 51 ("'appropriate' punishments for apostates in Sunni Hanafi jurisprudence are beheading for men").

⁹ A/64/159, para. 23.

an individual's religious beliefs to an act of torture.¹⁰ Without necessarily subscribing to this position, it nonetheless signals how delicate interfering with a person's inner beliefs can be.

9. Lastly, the Committee makes three findings that I am concerned about. First, the Committee notes that the complainant failed to provide "a reasonable explanation for not having invoked his conversion in the initial set of proceedings" (para. 9.6 above). However, the complainant claims to have "felt fear and concern about the reactions of people around him" and that "he had not been able to talk about it" (para. 2.6 above). We do not know whether this is true – as I mentioned, the State party's authorities are in the best position to assess factual claims. But it is plausible that an 18-year-old going through a conversion process in a foreign country might feel unsure about talking about it. We do know, however, that the complainant was baptized in March of 2017 and that he invoked his conversion in the summer of 2017.¹¹ This does not seem like a particularly late invocation of the circumstance.

10. Second, the Committee considers that the information in the file does not allow it to conclude that the State party failed to conduct a proper investigation into the complainant's allegations in accordance with the UNHCR guidelines (para. 9.10 above). It notes that, on the basis of the evidence provided, the domestic authorities held that it had not been possible to confirm that the complainant had demonstrated that he had converted to Christianity out of a genuine and personal conviction rather than to attempt "to create conditions in support of his request for international protection" (para. 9.8 above). I have already noted how, under the UNHCR guidelines, the State party should have conducted a different inquiry. In addition, the guidelines expressly state that "in the event that the claim is found to be self-serving but the claimant nonetheless has a well-founded fear of persecution on return, international protection is required" (para. 36). As noted above, the complainant has substantiated a well-founded fear of persecution on return as an apostate. Therefore, even if the baptism, church activities, letters and certificates from priests and tattoos were all made to create conditions for international protection, the situation in the country of origin demanded a stricter review.

11. Third, the Committee notes that Afghanistan has not made the declaration provided for in article 22 (1) of the Convention. The Committee acknowledges that, as a result, in the event of a violation in Afghanistan of the complainant's rights under the Convention, he would be "deprived of the legal option of recourse to the Committee for protection of any kind" (para. 9.3 above). Such circumstance makes the Committee's decision all the more problematic.

12. The complainant substantiated his conversion to Christianity and his plan to live as a Christian. Consequently, there are substantial grounds for believing that he would face a foreseeable, present, personal and real risk of torture upon return to Afghanistan.

13. For these reasons, I dissent from the Committee's decision.

¹⁰ "Exposure to coercion in this inner nucleus [of religious convictions], for example, by being forced to conceal one's true position or conviction or to feign a belief that is not authentic, can mean betraying oneself. If this happens repeatedly or over a long period, it can undermine the preconditions for developing a stable sense of self-respect. That experience warrants an interpretation of articles 18 (2) and 19 (1) of the Covenant in close analogy to the unconditional prohibition of slavery and the equally unconditional prohibition of torture" (A/HRC/31/18, para. 19).

¹¹ Gothenburg Migration Court, Judgment of 26 June 2023, p. 8 (on file). As noted in the footnote to paragraph 2.5 above, the Gothenburg Migration Court did not grant leave to appeal. As a result, the substance of the circumstance of his conversion was not examined.