



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

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Committee against Torture

Communication No. 625/2014**

**Decision adopted by the Committee at its sixty-first session (24 July –
11 August 2017)**

<i>Submitted by:</i>	G.I (represented by counsel Niels-Erik Hansen)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Denmark
<i>Date of complaint:</i>	14 August 2014 (initial submission)
<i>Date of present decision:</i>	10 August 2017
<i>Subject matter:</i>	Deportation to Pakistan
<i>Procedural issues:</i>	Level of substantiation of claims,
<i>Substantive issues:</i>	Non-refoulement; Risk of torture upon return to country of origin
<i>Articles of the Convention:</i>	3

** The following members of the Committee took part in the consideration of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller-Rouassant, Jens Modvig, Ana Racu, Sébastien Touzé and Kening Zhang

1.1 The complainant is Mr. G.I, a Pakistani national born on [REDACTED] 1980. He is a Christian by birth. He claims that his removal to Pakistan by the State party would constitute a violation of his rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). He is represented by counsel. Denmark made the declaration under article 22 of the Convention on 26 June 1987.

1.2 On 26 August 2014, pursuant to rule 114, paragraph 1, of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to expel the complainant while his case was being considered by the Committee.

Factual background

2.1 The complainant is a Pakistani national born on [REDACTED] 1980 and Christian by birth. He used to live in [REDACTED], Islamabad. In 2004, he became a member of a religious organization called "[REDACTED]". His main task within the organization was to share the Bible with people of other religions.¹ In June 2008, he had an argument about Islam and Christianity with a mullah, during an event held at [REDACTED] Islamabad. The mullah verbally threatened the complainant. Later, on [REDACTED] January 2010, the complainant's car was stolen and three days later, he received a letter threatening him with "serious consequences" if he continued to preach the Bible.²

2.2 On [REDACTED] August 2011, the complainant was attacked and beaten by three unknown men while he was driving his taxi. He indicates that the three men got into the taxi and asked him to stop at a place called [REDACTED]. There, the three men hit him in the head with a rock and cut his wrist. The complainant claims that the men told him that this was the consequence of not having stopped of preaching his "false God". He lost consciousness and woke up at the [REDACTED] Hospital where he stayed for ten days approximately.³

2.3 The complainant further indicates that on an unspecified date, four police officers attacked him while he was seating in his taxi at the taxi stand. They blindfolded him and took him to a police station where they beat him, hung him from the ceiling upside down and plugged water into his nose. They accused the complainant of distributing the Bible among Muslim people, and told him that he should accept Islam. Then, they falsely accused him of illegal alcohol possession, alleging that he was hiding 24 bottles of alcohol in his taxi. As a consequence, the complainant was charged and detained. After being detained for about one week, he was released on bail paid by the President of [REDACTED]. The complainant indicates that he has visible scars in his forehead, arms and legs as a result of this incident.⁴

2.4 The complainant further states that on [REDACTED] January 2014, he received a letter in his house threatening to kill him and his family. Consequently, he moved his spouse and children from Islamabad to Faisalabad where his wife's parents live and he left Pakistan. In his interview with the RAB, he indicated that after he left Pakistan, a number of persons

¹ The complainant provides a letter by the organization [REDACTED] dated [REDACTED] June 2014, indicating that the complainant was part of it and that he would be at risk if returned to Pakistan because preaching Christianity is considered blasphemy which can be punished with execution, crucifixion, or cutting hands and feet from opposite sides. The letter also indicates that the complainant had been attacked while in Pakistan because his activities with the organization, in particular by distributing Bibles to Muslim communities, and that the organization has also been the object of threats which has forced its members to change their offices location and name.

² The complainant does not provide further details on this incident and has not provided the threatening letter to the Committee.

³ The complainant does not provide any document to support this allegation.

⁴ The complainant provides a picture of his scars and a medical certificate by [REDACTED], dated [REDACTED] August 2011 which indicates that on [REDACTED] August 2011, the complainant was admitted at the centre and that he had a femur fracture and injuries in his left hand and forehead. Due to his injuries he was in critical condition and needed a surgery.

contacted his family asking about his whereabouts, and that his family was therefore considering moving to another location. The author claims that he has not sought protection from the Pakistani authorities because they do not protect Christians: for example, in 2014, a Christian boy was killed in a police station and the authorities did not take any action.

2.5 On ● February 2014, the complainant entered Denmark without valid travel documents. On an unspecified date, he applied for asylum. On ● May 2014, the Danish Immigration Service (DIS) rejected his asylum claim and refused granting him a residence permit. On ● August 2014, the Refugee Appeals Board (RAB) confirmed the DIS' decision and rejected the asylum claim. The RAB found that the complainant's explanations were constructed for the occasion. The RAB found that it was unlikely that the complainant had been persecuted because of his religion in Pakistan, taking into account that the alleged incidents linked to such persecution took place "every year or year and a half". In addition, the RAB considered that although the complainant has made consistent statements regarding the events claimed as his grounds for asylum, he has given very vague and evasive answers when asked about some details. For instance, when his car was stolen, the complainant only reported the theft to the police, but he did not report the threatening letter he had received. When asked why he did so, he replied that it was because the police officers were Muslims and therefore, they would not protect him. The RAB also found that the complainant's statements regarding the threatening letter dated ● January 2010 were not consistent with the letter produced in the hearing before the RAB: in his interviews with the DIS, the complainant indicated that the letter was unsigned, while the document provided to the RAB was signed by a religious group.⁵ In addition, the RAB considered not plausible the explanations given by the complainant on why the mentioned letter was not presented at an earlier stage of the asylum proceedings, and it was presented only after the asylum claim was rejected.⁶ Furthermore, the RAB considered that it could not be ruled out that according to a picture provided by the complainant, the scars in his leg were consistent with his allegation that they were caused by the assault he suffered in 2011.⁷ However, the RAB also considered that, in view of their characteristic, the author's injuries could also have been sustained in the context of an ordinary criminal behaviour, traffic accident, or other accidents. In view of the complainant's credibility issues, the RAB considered that the existence of the mentioned injuries could not change the assessment that if returned, the complainant would not be at risk of persecution in Pakistan.

2.6 Concerning the incident in the police station, the RAB found it not likely that the arrest had a different background than the possession of alcohol, which corresponds to the content of the police report submitted by the complainant to the Board. In addition, the RAB considered that the complainant's claim that he had been assaulted when he was arrested in connection with such charges, would not change its assessment, as he had been subsequently released and has not been contacted in connection with those charges. The RAB emphasized on the fact that the injuries suffered by the complainant were not permanent compared with the long period of time that elapsed between this incident, his release and his departure from the country. Finally, as to the complainant's request to stay proceedings on a torture medical investigation, the Board found no reason to do so, as the outcome of such an investigation would not affect the decision on his asylum application.

2.7 The author indicates that he has exhausted all available domestic remedies as the decisions by the RAB cannot be appealed.

The complaint

3.1 The complainant submits that his deportation to Pakistan by the State party would constitute a violation of its obligations under article 3 of the Convention since he would be at risk of being persecuted and tortured by members of the Muslim community due to his

⁵ See footnote 2.

⁶ In the RAB's decision of ● August 2014, it is indicated that when asked why he had not previously stated that he had this document, he replied that he had not attached much importance to the letter, but that he had subsequently spoken to his counsel who had advised him to gather evidence..

⁷ See para. 2.2.

Christian beliefs and activities, reason for which he has already been harassed, threatened and attacked. In addition, he claims that the Pakistani authorities would not protect him and would not investigate any torture claims he would make, because he is a Christian.

3.2 The complainant claims that despite his visible scars resulting from the torture he has been subjected to in Pakistan, the State party has denied him a medical examination. He claims that his complaint is identical to communications *Said Amini vs. Denmark*⁸ and *K.H. vs. Denmark*⁹ in which the Committee found a violation of the Convention, because the State party rejected the complainants' requests to carry on a medical examination in order to determine if they had been tortured. He further indicates that in one of the cases mentioned – *K.H. vs. Denmark* – the State party's failure to protect the complainant from *refoulement* has had dramatic consequences, as he has been subjected to torture after being deported to his country of origin.

3.3 The complainant further claims that in case of return to Pakistan, he will be at risk of being interviewed and tortured by the police upon arrival at the airport due to his visible scars on his legs, arms and forehead.

3.4 The complainant also claims the existence of a pattern of massive human rights abuses and use of torture in Pakistan and refers to the « UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan » that include Christians among potential risk profile groups.¹⁰

State party's observations on admissibility and merits

4.1 On 26 February 2015, the State party submitted its observations on the admissibility and merits of the complaint. It maintains that the complaint is manifestly unfounded and therefore inadmissible. Should the Committee find that the complainant's allegations are admissible, the State party submits that there is no supported evidence or substantial grounds for believing that the complainant would be in danger of being tortured if returned to Pakistan.

4.2 The State party describes the structure and composition of RAB. The RAB activities are based on section 53a of the Aliens Act, according to which it addresses all the DIS decisions that are appealed, unless the application has been considered manifestly unfounded. The RAB is an independent, quasi-judicial body and is considered a court within the meaning of Article 39 of the Council of the European Union Directive on minimum standards on procedures for granting and withdrawing refugee status (2005/85/EC). Under the Danish Aliens Act, the RAB members are independent and cannot seek directions from the appointing or nominating authority. The RAB decisions are final. Aliens may, however, bring an appeal before the ordinary courts which can adjudicate any matter concerning the limits to the competence of a public authority. As established by the Supreme Court, the ordinary courts' review of decisions made by the RAB is limited to a review on points of law, and the RAB's assessment of evidence is not subject to review.

4.3 The State party also describes the proceedings before the RAB. These proceedings are oral. The board may if needed assign a legal counsel to the asylum seeker free of charge. The decisions of the board are made on the basis of an individual and specific assessment of the relevant case, and the asylum seeker's statements regarding his grounds for asylum are assessed in the light of all relevant evidence, including what is known about the conditions in his country of origin. In this connection, the State party attests that the board has a comprehensive collection of general background material on the situation in countries from which Denmark receives asylum seekers, including information from UNHCR, the Danish Ministry of Foreign Affairs, the Country of Origin Information

⁸ Communication 339/2008, *Said Amini vs. Denmark*, Opinion adopted on 15 November 2010. .

⁹ Communication 464/2011, *K.H. vs. Denmark*, Opinion adopted on 23 November 2013.

¹⁰ UNHCHR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan, 14 May 2012. Available at <http://www.refworld.org/docid/4fb0ec662.html>.

Division of the Danish immigration service, the Danish Refugee Council and other reliable sources.

4.4 Concerning the legal basis to grant asylum, the State party indicates that, pursuant to section 7 (1) of the Aliens Act, a residence permit will be issued to an alien if he or she falls within the definition of refugee under the Convention Relating to the Status of Refugees. Pursuant to section 7 (2) of the Act, a residence permit will be issued if an asylum seeker risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his or her country of origin. In addition, according to section 31 (2) of the Act, no alien may be returned to a country where he or she will face persecution in the terms established in the Convention.

4.5 The State party indicates that the fact that an asylum seeker has been subjected to torture or ill-treatment in his country of origin may be an essential point in the assessment made by the RAB of whether the conditions required by section 7(1) of the Aliens Act are met. However, according to the RAB's case law, the conditions for granting asylum cannot be considered satisfied in all cases where an asylum seeker has been subjected to torture in his country of origin. The State party refers to communication *A.A.C v. Sweden*, in which the Committee considered that previous experience of torture is only one consideration in determining whether a person faces a personal risk of torture upon return to his country of origin, and that it must consider whether or not the torture occurred recently, and in circumstances which are relevant to the prevailing political realities in the country concerned.¹¹

4.6 The State party also indicates that when torture is invoked as grounds for asylum, the RAB takes into account factors like the nature of the torture, including the extent, grossness and frequency of the abuse, the asylum seeker's age, and the time elapsed between the alleged torture and the asylum seeker's departure from his or her country of origin. The State party further indicates that a crucial point for a review of an asylum claim is the situation in the country of origin at the time of the potential return of the asylum seeker and refers to Communication *M.C.M.V.F v. Sweden*, in which the Committee took into account the change of the situation in the country of origin of the complainant –El Salvador–, where the armed conflict had ceased ten years before the complaint was brought to the Committee.¹² In addition, the State party indicates that the RAB takes into account information as to whether systematic, gross, flagrant or mass human rights violations take place in the country of origin.

4.7 Regarding the complainant's allegation related to the State party's denial to conduct a medical examination in order to look for signs of torture in his body, the State party indicates that when torture is invoked as grounds for asylum, the RAB may order such examination, but that this decision is only taken during the Board's hearing, as the assessment of the need of a medical examination depends on the asylum seeker's statement, in particular his credibility. Therefore, the RAB generally does not order an examination for signs of torture when the asylum seeker has lacked credibility during the asylum proceedings. Furthermore, even if the RAB considers it proved that the asylum seeker has previously been subjected to torture, if it finds that there is no real risk of torture upon return at the present time, it will not order a medical examination. The State party refers to Communication *Milo Otman v. Denmark*,¹³ in which the Committee considered that there had not been a violation of the Convention due to the complainant's lack of credibility, despite his statement that he had been subjected to torture and the medical evidence he had provided to demonstrate this allegation.¹⁴ The State party also refers to a decision taken by

¹¹ Communications No. 227/2003, *A.A.C vs. Sweden*, Opinion adopted on 16 November 2006, para.8.3; No. 466/2011, *Nicmeddin Alp vs. Denmark*, Opinion adopted on 14 May 2014, para. 8.6.

¹² Communication No. 237/2003, *M.C.M.V.F vs. Sweden*, Opinion adopted on 14 November 2005, para. 6.4.

¹³ Communication No. 209/2002, *Milo Otman vs. Denmark*, Opinion adopted on 12 November 2003.

¹⁴ The State party also refers to Communication No. 466/2011, *Nicmeddin Alp v. Denmark*, Opinion adopted on 14 May 2014.

the European Court of Human Rights, *Cruz Varas and Others v. Sweden*,¹⁵ in which the Court found that despite the medical evidence provided by the applicant, substantial grounds had not been shown for believing that the applicant's expulsion would expose him to a real risk of being subjected to inhuman or degrading treatment upon return to his country of origin, due to the inconsistencies of his statement during his asylum proceedings. The State party considers, therefore, that as decided by the RAB, there was no need to conduct a medical examination in the present case, taking into account the lack of credibility of the complainant.¹⁶ It adds that the medical report provided by the complainant, dated August 2011, does not substantiate that the complainant is a victim of torture.

4.8 Furthermore, the State party maintains that the RAB has taken into account all relevant information in its decision of August 2014 and that the complainant has not brought any new information to the Committee. The State party refers to ECHR's decision on *R.C. v. Sweden* in which the Court considered that "as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is them who have had an opportunity to see, hear and assess the demeanor of the individual concerned".¹⁷ The State party indicates that the RAB, after making a thorough assessment of the complainant's credibility and his specific circumstances, found that he had failed to demonstrate that he would be at risk of torture if returned to Pakistan. For instance, based on the time elapsed between the incidents mentioned by the complainant as grounds for asylum, the RAB found that he had failed to substantiate that he was persecuted for religious reasons, whether by public officials or other groups. In addition, the State party recalls that given that the complainant had made inconsistent and contradictory statements during the asylum proceedings, the RAB did not accept them as facts.¹⁸ The State party recalls that the RAB found that although the arrest of the complainant in 2012 may have happened, he could not demonstrate that the reason for such arrest was other than illegal possession of alcohol. In addition, it considered that given that he was subsequently released and that he had not been contacted in relation to this matter afterwards, his claim that he had been assaulted during interrogation, could not independently justify asylum. The State party further recalls that the RAB emphasized on the nature of the assault which resulted in no permanent injuries, as well as on the long time passed between his release and his departure from Pakistan.

4.9 The State party considers that the complainant is trying to use the Committee as an appellate body and that his complaint merely reflects that he disagrees with the assessment of his credibility made by the RAB. It also indicates that the complainant failed to identify any irregularity in the decision-making process or any risk factors that the RAB had failed to take properly into account. The State party refers to the Committee's jurisprudence according to which it is for the State parties to examine the facts and evidence in a particular case, unless it can be ascertained that the manner in which the evidence was evaluated was clearly arbitrary or amounted to denial of justice.¹⁹

4.10 The State party further submits that the complainant's allegation that the Pakistani police would consider him a person of interest upon arrival at the airport due to his scars, has not been substantiated in any way.

4.11 Regarding the complainant's reference to Communication *Said Amint v. Denmark*²⁰, the State party indicates that it is different from the present case, as in that case the complainant provided objective evidence that he had been subjected to torture in his

¹⁵ European Court of Human Rights, Application 15576/89, *Cruz Varas and Others v. Sweden*, Judgment 20 March 1991, paras. 77-82.

¹⁶ See para. 2.6.

¹⁷ ECHR, Application N. 41827/07, *R.C. v. Sweden*, 9 March 2010, para. 52. The State party also refers to ECHR's decision on Application 58363/10, *M.E. vs. Denmark*, 8 July 2014.

¹⁸ See para. 2.5 and 2.6.

¹⁹ It refers to Communication 148/1999, *A.K. v. Australia*, Opinion adopted on 5 May 2004 and Communication 282/2005, *S.P.A. v. Canada*, Opinion adopted on 7 November 2006.

²⁰ See para. 3.2.

country of origin immediately before his arrival to Denmark. He also demonstrated that he would be at risk of torture if returned. Concerning the complainant's allegation that his case is similar to *K.H. v. Denmark*,²¹ the State party indicates that, in that case, the RAB considered as fact the complainant's allegations that he would be subjected to torture by the Taliban if returned to Afghanistan.

4.12 Concerning general conditions for Christians in Pakistan, the State party indicates that it is not of such nature that the complainant, who was born Christian, risks persecution because of his religion, taking into account that he is a very low-profile person. The State party refers to a report by the British Home Office,²² according to which there are an estimated three or four million Christians in Pakistan and that although they experience discrimination and assaults, no authorities in Pakistan adopt legal sanctions against them on the basis of their religion.²³ The State party further indicates that legal provisions on blasphemy do not automatically result in criminal charges and imprisonment.²⁴ The State party also refers to another report by the British Home Office which indicates that despite discrimination, Christians are able to practice their religion in Pakistan: they can attend church, participate in religious activities and have their own schools and hospitals.²⁵ In addition, the government is willing to provide protection to Christians who are victims of attacks by non-governmental actors, and relocation is a viable option.²⁶

Complainant's comments on the State party's observations

5.1 On 10 June 2016, the complainant provided comments on the State party's observations. He considers that the State party has failed to demonstrate that his communication is manifestly unfounded and therefore, it should be declared admissible. In addition, he maintains that such argument is closely linked to the merits of the communication and that therefore it should be declared admissible. Regarding the merits of the communication, the complainant maintains that it has been demonstrated that the State party has violated article 3 of the Convention, in particular because his request to have a medical examination to determine if he had been subjected to torture before arriving to Denmark has been rejected by the State party's authorities.

5.2 The complainant reiterates that that his complaint is identical to communication *K.H. vs. Denmark*,²⁷ in which the complainant has been denied a medical examination. Following a decision of the Committee, the complainant had to be re-admitted to Denmark -after having been deported- and has been granted refugee status. He also reiterates that his case is very similar to communication *Said Amini v. Denmark*.²⁸ The complainant also refers to the Committee's Opinion on communication *F.K v Denmark*,²⁹ in which the Committee considered that by rejecting the complainant's asylum application without ordering a medical examination, the State party failed to sufficiently investigate whether there were substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to his country of origin.

²¹ Ibid.

²² British Home Office, Country of Origin Information (COI) on Pakistan, 9 August 2013. Available at <http://www.refworld.org/docid/5209feb94.html>.

²³ The State party also refers to a report in Danish by Landinfo, Thematic memorandum on Pakistan: Situation of Christians, 20 June 2013.

²⁴ Ibid.

²⁵ British Home Office, Country of Origin Information (COI) on Pakistan: Christians and Christian converts, May 2016. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/566235/Pakistan-Christians_and_Christian_converters.pdf

²⁶ The State party refers to UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan, op. cit., p. 25.

²⁷ See para. 3.2.

²⁸ Ibid.

²⁹ Communication No. 580/2014, *F.K vs Denmark*, Opinion adopted on 23 November 2015

5.3 Regarding the State party's reference to the ECHR's decision on *R.C v Sweden*,³⁰ the complainant indicates that the ECHR in that case disagreed with the State party's conclusion, as it found that the applicant's story was consistent throughout the proceedings and that notwithstanding some uncertain aspects, such uncertainties did not undermine the overall credibility of his story. The Court declared that article 3 of the European Convention on Human Rights would be violated if the applicant would be deported to his country of origin. The complainant maintains that the ECHR found such violation because the Swedish authorities should have ordered that a medical expert opinion be obtained as to the probable cause of the applicant's scars, taking into account that he had made out a prima facie case as to their origin.³¹

5.4 The complainant further claims that by denying him the possibility to undergo a medical examination that would have confirmed that he had been subjected to torture, based solely on his credibility, the State party violated article 3 of the Convention. He argues that his case was sufficiently substantiated prima facie, especially through the medical certificate provided by [REDACTED] and the letter from the organization [REDACTED] confirming that the complainant had been persecuted because of his activities with the organization.³² This is confirmed by the fact that when he submitted his asylum application, the DIS has not even asked him to fill in the form to consent undergoing a medical examination.

5.5 The complainant also indicates that he should have benefited of a different standard of proof from refugees who have not been subjected to torture, in particular taking into account that, as he indicated to the authorities of the State party, he could not remember many events clearly because of the struck in the head he suffered while being tortured. Therefore, by denying him the medical examination, the RAB did not respect the principle of the "benefit of the doubt", and applied a wrong standard of proof. The complainant further submits that it is not possible to get a medical certificate indicating that a person was tortured because of his or her activities. The application of the principle of the "benefit of the doubt" is therefore crucial in such cases, and the possibility of undergoing a medical examination to confirm the torture was essential in his case.³³ The complainant also indicates that the State party's authorities have authorised this kind of medical examinations in only two cases during the year 2015.³⁴ He claims that taking into account that in 2015 the number asylum applications was very high, it is questionable that the authorities have found necessary to carry out a medical examination in such a limited number of cases.³⁵

5.6 The complainant further indicates that in Bill N. 97 amending the "Danish Act on Legal Aid for lodging and pursuing complaints with and before International Complaints Bodies under Human Rights Conventions and the Danish Administration of Justice Act" presented to the Parliament, cases like his are excluded from legal aid. According to this Bill, when the RAB decides not to authorize a medical examination, this cannot be invoked as a ground to submit a communication to the Committee.

State party's further submission

6.1 On 29 March 2017, the State party reiterated that the complaint is inadmissible and that it does not disclose any violation of the Convention. It further indicates that in his comments, the complainant has not provided any new information on his grounds of asylum, in particular in relation with his conflicts in his country of origin. It refers to communication *R.K. v. Australia*³⁶ in which the Committee indicated that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, and that while the risk does not have to meet the test of being highly probable, the burden of proof generally

³⁰ See para. 4.8.

³¹ ECHR, *R.C v. Sweden*, op. cit, para. 53.

³² See footnote I.

³³ The complainant refers to communication *F.K v. Denmark*. See para.5.2

³⁴ The complainant does not provide further information on this matter.

³⁵ Ibid.

³⁶ Communication No. 609/2014, *R.K. v. Australia*, Opinion adopted on 11 August 2016, para. 8.4.

falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk. In addition, considerable weight should be given to the findings of fact made by organs of the State party concerned. The State party further argues that the complainant had failed to establish that the assessment made by the RAB was arbitrary or amounted to manifest error or denial of justice, and reiterates that the complainant has also failed to identify any irregularity by the authorities during his asylum proceedings.³⁷

6.2 The State party refers to communication *S.A.P. v. Switzerland*,³⁸ in which the Committee considered that although the complainants alleged that they had suffered serious injuries and PTSD as a result of persecution in their country of origin, they had not provided sufficient evidence to allow it to conclude that such injuries were caused by the alleged acts of persecution by the authorities of their country of origin.³⁹

6.3 The State party further indicates that even in cases in which medical examinations, included those issued by the Amnesty International Danish Medical Group, indicate that the injuries of an asylum seeker are consistent with his or her statement in relation to torture, if the RAB disregard the asylum seeker's account because it cannot in any way be considered a fact that he or she has been involved in politics, nor that any such political involvement has been discovered by the authorities, there is no need to allow a medical examination for signs of torture. In such cases a medical examination conducted by the Department of Forensic Medicine will not provide more clarity on the matter, as such examination will only show that the asylum seeker suffered an injury which may have been inflicted in the way described by him, although it could also have been inflicted in numerous other ways. Therefore, there is no need to postpone a decision on a case in order to wait for a medical examination which will not clarify why an asylum seeker has suffered the injuries he claims to be the result of torture. The State party refers to Communication *Z v. Denmark*,⁴⁰ in which the Committee considered that although the State party rejected the complainant's request to conduct a medical examination, the complainant had failed to substantiate basic elements of his claims, and therefore found that it was not demonstrated that the authorities had failed to conduct a proper assessment of the risk of torture.⁴¹

6.4 The State party also refers to communication *M.B, A.B., D.M.B. and D.B. v. Denmark*,⁴² in which the Committee considered that given that the complainant had specifically requested the RAB to order a medical examination for signs of torture in order to prove his credibility, an impartial and independent assessment could have been made of whether the reason for the inconsistencies in his statement was due to the torture he had been subjected to. The State party indicates that it disagrees with this decision, as there is no obligation for the State party to conduct a medical examination every time an asylum seeker requests so, including in those cases in which the complainant has provided medical information indicating that he or she may have been subjected to torture. The State party adds that the decision of ordering a medical examination is based on an individual assessment in each case.

³⁷ The State party refers to the jurisprudence of the Human Rights Committee according to which it is generally for the organs of the State party to review and evaluate facts and evidence in order to determine whether a risk exists, unless it is found that the national authorities' evaluation was clearly arbitrary or amounted to a denial of justice. See Communication No. 2378/2014, *A.S.M and R.A.H v. Denmark*, Views adopted on 7 July 2016, communication No. 2272/2013, *P.T v. Denmark*, Views adopted on 1 April 2015, and communication No. 2426/2014, *N. v. Denmark*, Views adopted on 23 July 2015.

³⁸ Communication No. 565/2013, *S.A.P. v. Switzerland*, Opinion adopted on 25 November 2015, para. 7.4.

³⁹ In this regard, the State party refers again to Communication *Milo Otman v. Denmark* and ECHR's decision on *Cruz Yaras v. Sweden*, para. 4.7.

⁴⁰ Communication No. 555/2013, *Z v. Denmark*, Opinion adopted on 10 August 2015, para. 7.5.

⁴¹ The State party refers to communication No. 571/2013, *M.S v. Denmark*, Opinion adopted on 10 August 2015, para. 7.6.

⁴² Communication No. 634/2014, *M.B, A.B., D.M.B. and D.B. v. Denmark*, Opinion adopted on 25 November 2016, para. 9.6.

6.5 With respect to the complainant's argument that he should benefit of a different standard of proof because he was subjected to torture in the past, the State party indicates that when the asylum seeker makes inconsistent statements, the RAB takes into account the person's explanations of the causes of such inconsistencies in its assessment of his or her credibility. In the case of persons who have been tortured, the RAB, in practice, sets a more lenient standard of proof. However, in the complainant's case, the RAB did not accept as fact the complainant's statement that he had been subjected to torture in Pakistan, due to the inconsistencies in crucial elements of his grounds for asylum.

6.6 Concerning the complainant's allegations in relation to the Bill N. 97 amending the "Danish Act on Legal Aid for lodging and pursuing complaints with and before International Complaints Bodies under Human Rights Conventions and the Danish Administration of Justice Act",⁴³ the State party notes that the Bill has no impact on the complainant's case, as it only governs the eligibility for free legal aid to submit complaints to international bodies, and reiterates that the decision of conducting or not a medical examination to verify signs of torture is closely related to the credibility of the asylum seeker.

6.7 With respect to the complainant's allegation that the DIS did not even ask the complainant to fill a form consenting a medical examination to look for signs of torture, the State party notes that the RAB is an independent quasi-judicial body that makes free assessment of evidence. Therefore, if it had found relevant to order such examination, it could have asked the complainant's consent during his hearing before it. Furthermore concerning the complainant's allegation that the RAB has only ordered two medical examinations to look for signs of torture in 2015, the State party indicates that taking into account that the RAB has given asylum in 81% of cases in 2015, and that in cases in which it grants refugee status, there is no need to order a medical examination, it is normal that such examinations have been ordered only in few cases.

6.8 Concerning the situation of Christians in Pakistan, the State party reiterates that their situation is not of such nature that the complainant should be deemed to be in risk of being subjected to torture upon return because of his religion. It refers to publicly available background information,⁴⁴ according to which some Christians suffer discrimination and attacks in Pakistan, and that there are reports of a general failure of the police to investigate, arrest or prosecute those responsible of abuses against religious minorities.⁴⁵ However, there is also evidence of measures taken by the authorities to protect them against violence.⁴⁶ The State party reiterates that Christians can practice their religion in Pakistan, and adds that, although they face increased discrimination and are targeted because of their religion, the evidence shows that they are not, in general, subject to a real risk of persecution or inhuman or degrading treatment.⁴⁷ The State party refers to a decision of the Human Rights Committee regarding a complaint filed by a Pakistani Christian alleging persecution because of her religion. Taking into account the recent amendments to the blasphemy laws, and the comprehensive and thorough examination of the evidence conducted by the State party according to which the author had not had any conflicts with

⁴³ See para. 5.6.

⁴⁴ British Home Office, Country Information and Guidance on Pakistan: Christians and Christians converts, May 2016. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/566235/Pakistan-Christians_and_Christian_converters.pdf; European Asylum Support Office, Country of Origin Information Report: Pakistan, August 2015. Available at https://www.easo.europa.eu/sites/default/files/public/EASO_COI_Report_Pakistan-Country-Overview_final.pdf.

⁴⁵ See Country Information and Guidance on Pakistan: Christians and Christians converts, op. cit. p. 9.

⁴⁶ Ibid.

⁴⁷ Ibid. p. 6.

the Pakistani authorities, the Committee considered that her deportation to Pakistan would not violate article 7 of the Covenant on Civil and Political Rights.⁴⁸

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the present case, the State party has not contested that the complainant had exhausted all available domestic remedies.⁴⁹ The Committee therefore finds that the requirement under article 22 (5) (b) of the Convention has been met.

7.3 The State party maintains that the complaint should be declared inadmissible, pursuant to rule 113 (b) of the Committee's rules of procedure, as it is manifestly unfounded. The Committee, however, observes that the complainant has sufficiently detailed the facts and the basis of his claims of violations of the Convention and thus considers that the complaint has been sufficiently substantiated for the purposes of admissibility. As the Committee finds no obstacles to admissibility, it declares the present communication admissible and proceeds to its examination on the merits.

Consideration of the merits

8.1 In accordance with 22 (4) of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

8.2 The issue before the Committee is whether the forced removal of the complainant to Pakistan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Pakistan. 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 evaluation 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 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.⁵⁰

⁴⁸ Human Rights Committee, Communication 2351/2014, *R.G. et al vs Denmark*, Views adopted on 2 November 2015. The State party also refers to Human Rights Committee, *A. and B. v. Denmark*, Views adopted on 13 July 2016.

⁴⁹ See, for example, communication No. 455/2011, *X.Q.L. v. Australia*, decision adopted on 2 May 2014, para. 8.2.

⁵⁰ See, for example, communication No. 550/2013, *S.K. and others v. Sweden*, decision adopted on 8 May 2015, para. 7.3; communication 716/2015, *S.T. vs Australia*, Opinion adopted on 11 May 2017.

8.4 The Committee recalls its general comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable", the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a "foreseeable, real and personal" risk.⁵¹ The Committee also recalls that it gives considerable weight to findings of fact that are made by organs of the State party concerned,⁵² while at the same time it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention, of free assessment of the facts based on the full set of circumstances in every case.

8.5 In assessing the risk of torture in the present case, the Committee notes the complainant's contention that there is a foreseeable, real and personal risk that he will be persecuted and tortured if returned to Pakistan by members of the Muslim community or by the authorities – police – due to his Christian beliefs and activities, taking into account that he has already been harassed, threatened and attacked for those reasons. In this regard, the Committee notes the complainant's allegations that he has received two threatening letters, that he has been attacked and beaten on at least two occasions in connection with his religious activities: first by three unknown men while he was driving his taxi in August 2011, and second, on an unspecified date, by four police officers who took him to a police station where they beat him, hung him from the ceiling upside down and plugged water into his nose, following which they falsely accused him of illegal possession of alcohol. The Committee also notes the State party's observation that its domestic authorities found that the complainant lacked credibility because, inter alia, when his car was stolen, he only reported to the police the theft, but he did not report the threatening letter he had received. The State party also argued that the author had given contradictory statements regarding the threatening letter dated ● January 2010, as he initially said that it was anonymous, but he later submitted to the RAB a letter signed by a religious group, and gave contradictory statements regarding how he had got this letter: he initially indicated that it was not in his possession, but after his asylum request was rejected, he produced it to the RAB, indicating that he had given it to his mother who kept it and sent it to him.

8.6 The Committee also takes note of the complainant's claim that although he requested the RAB to have access to a specialized medical examination in order to verify whether he has signs of torture, and showed the Board alleged signs of torture, the Board rejected his request for asylum without ordering this examination. It also notes the State party's argument that such an examination was not relevant because, whatever its outcome, it could not serve to prove that the complainant had been subjected to abuse because of his activities with the Christian organization . [REDACTED] and that such examination would not demonstrate that the risk for the complainant in Pakistan is personal and real at the present time. The Committee also notes the State party's argument that the medical certificate submitted by the complainant does not substantiate that he is a victim of torture, as the injuries described thereof could be the result of torture or "of many other causes, such as an accident or war".

8.7 The Committee observes that it is not disputed that the complainant was detained by the Pakistani police, subjected to violence and accused of illegal possession of alcohol.⁵³ The Committee also notes that the RAB has considered that although the complainant made consistent statements regarding the events claimed as his grounds for asylum, in his interviews before the DIS and the RAB, he provided inconsistent statements as to the threatening letter dated ● January 2010, including as to who signed it and as to the way he obtained it. The Committee further notes the complainant's claim that he has indicated to the authorities of the State party that he could not remember many events clearly because of

⁵¹ See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003 and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

⁵² See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

⁵³ See paras 2.6 and 4.8.

the struck in the head he suffered while being tortured, and that he should therefore have benefited of a different standard of proof.⁵⁴

8.8 The Committee recalls that although it is for the complainant to establish a prima facie case to request for asylum, it does not exempt the State party from making substantial efforts to determine whether there are grounds for believing that the complainant would be in danger of being subjected to torture if returned.⁵⁵ In the circumstances, the Committee considers that the complainant provided the State party's authorities with sufficient material supporting his claims of having been subjected to torture, including a medical report⁵⁶ to seek further investigation on the claims through, inter alia, a specialized medical examination. Therefore, the Committee concludes that by rejecting the complainant's asylum request without seeking further investigation on his claims or ordering a medical examination, the State party has failed to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned. Accordingly, the Committee concludes that, in the circumstances, the deportation of the complainant to his country of origin would constitute a violation of article 3 of the Convention.⁵⁷

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Pakistan by the State party would constitute a breach of article 3 of the Convention.

10. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

⁵⁴ See para. 5.5.

⁵⁵ See Communication 464/2011, *K.H. vs. Denmark*, Opinion adopted on 23 November 2013, para. 8.8; Communication No. 580/2014, *F.K vs Denmark*, Opinion adopted on 23 November 2015, para. 7.6.

⁵⁶ See footnote 4.

⁵⁷ See for example Communication 464/2011, *K.H. vs. Denmark*, Opinion adopted on 23 November 2013, para.8.8

Flygtningenævnets præmisser

Nævnet stadfæstede i august 2014 Udlændingestyrelsens afgørelse vedrørende en mandlig statsborger fra Pakistan. Indrejst i 2014.

”Ansøgeren er etnisk punjabi og kristen af trosretning fra Islamabad, Pakistan. Ansøgeren har siden 2004 været medlem af den kristne organisation ”[...]”, hvor hans arbejde har bestået i at sprede det kristne budskab samt at uddele eksemplarer af biblen.

Ansøgeren har som asylmotiv henvist til, at han ved en tilbagevenden til Pakistan frygter, at han og hans familie vil blive slået ihjel af en imam, som ansøgeren i 2008 havde en uoverensstemmelse med på grund af en religiøs diskussion. Ansøgeren frygter endvidere at blive slået ihjel af de pakistanske myndigheder, idet ansøgeren er kristen, og myndighederne yder ikke beskyttelse til kristne.

I juni 2008 gav ansøgeren en bibel til en imam, hvorefter der opstod en religiøs diskussion imellem dem.

Den [...] januar 2010 blev ansøgerens bil stjålet fra hans bopæl, og tre dage senere modtog han et trusselsbrev, hvoraf det fremgik, at tyveriet af bilen kun var en forsmag på, hvad der ville ske, hvis ansøgeren ikke ophørte med at prædike om kristendommen. Selve tyveriet af bilen blev politianmeldt, men politiet foretog sig ikke yderligere.

Den [...] august 2011 blev ansøgeren udsat for fysiske overgreb af tre mænd, som ansøgeren havde samlet op i sin taxa. Under køreturen bad en af mændene ansøgeren om at standse, hvorefter han blev truet, udsat for overgreb og opfordret til at stoppe med sine kristne aktiviteter. Efter overgrebet besvimeede ansøgeren, og han vågnede op på hospitalet [...]’s Hospital i Islamabad. Ansøgeren blev udskrevet ti dage senere.

Den [...] juni 2012 blev ansøgeren opsøgt af fire ukendte personer, da han ventede på en taxaholdeplads. De fire mænd steg ind i ansøgerens taxa og gav ham bind for øjnene. Han blev herefter kørt til politistationen ”[...]” i Islamabad, hvor han blev beskyldt for at uddele bibler og at opfordre andre til at konvertere til kristendommen. Under tilbageholdelsen blev han udsat for fysiske overgreb og blev ligeledes opfordret til at konvertere til islam. Under tilbageholdelsen, som varede i otte til ni dage, blev ansøgeren desuden anklaget for at være i besiddelse af 24 flasker spiritus, hvorefter han blev overført til et fængsel ved navn [...], som ligger i [...]. Han blev herefter løsladt mod kaution, som blev stillet af formanden for ”[...]”.

Den [...] januar 2014 modtog ansøgeren endnu et brev, hvoraf det fremgik, at han og familien ville blive dræbt. Ansøgeren tog truslen alvorligt, idet han frygtede for sin ægtefælles og sine børns liv.

Flygtningenævnet finder ikke at kunne lægge forklaringen om ansøgerens asylmotiv til grund, idet den forekommer konstrueret til lejligheden. Flygtningenævnet lægger herved vægt på, at det lange tidsrum, som konflikten efter ansøgerens forklaring skulle have strakt sig over med alene få episoder med et til halvandet års mellemrum, i sig selv har formodningen imod sig. Flygtningenævnet lægger endvidere vægt på, at ansøgeren, selvom han har afgivet en for så vidt konsistent forklaring om forløbet af de episoder, han angiver at have været udsat for, har svaret i høj grad upræcist og afglidende, når der er spurgt ind til enkeltheder i forklaringen. Flygtningenævnet lægger tillige vægt på, at hans tidligere forklaring om indholdet af det trusselsbrev, som skulle have været afgørende grund til udrejsen, ikke svarer til indholdet af det dokument, som han har fremlagt

under nævnsmødet. Han har således tidligere forklaret, at der ikke var afsender på trusselsbrevet, men det fremlagte dokument angives at være underskrevet af en kendt religiøs gruppe. Flygtningenævnet bemærker endelig, at ansøgeren ikke har kunnet give en rimelig forklaring på, hvorfor dette dokument først er fremkommet efter Udlændingestyrelsen afslag, og at han tidligere end ikke har oplyst, at det fortsat var i behold.

Ansøgeren har derfor ikke på tilstrækkelig vis sandsynliggjort, at han har været efterstræbt på grund af sin religiøsitet.

Flygtningenævnet bemærker, at det på baggrund af det fremlagte foto af ansøgerens ben ikke kan afvises, at ansøgeren har fysiske skader, svarende til de han har beskrevet skulle stamme fra det angivelige overfald i 2011. Der er imidlertid tale om en type skader, som ligeså vel kan være opstået ved almindelig kriminalitet, færdselsuheld eller andre uheld, og set på baggrund af ansøgerens manglende troværdighed, findes eksistensen af sådanne skader ikke at kunne ændre vurderingen.

Flygtningenævnet bemærker endvidere, at uanset om ansøgeren måtte have været anholdt af politiet i 2012, findes det af samme grund ikke sandsynliggjort, at anholdelsen skulle have anden baggrund end en sigtelse for besiddelse af alkohol svarende til indholdet af den af ansøgeren fremlagte politirapport. Henset til, at ansøgeren blev løsladt efterfølgende og ikke siden da har hørt til sagen, findes den omstændighed, at han måtte have været udsat for overgreb under afhøringen ikke i sig selv at kunne medføre asyl. Flygtningenævnet lægger herved vægt på karakteren af overgrebene, som ifølge ansøgeren ikke har medført mén, sammenholdt med det lange tidsrum fra løsladelsen og frem til udrejsen.

Flygtningenævnet finder derfor ikke grundlag for at udsætte sagen på en torturundersøgelse, idet de oplysninger, der vil kunne fremkomme af en sådan undersøgelse, efter det foran anførte ikke vil kunne få betydning for afgørelsen af sagen.

Flygtningenævnet finder således ikke, at ansøgeren har sandsynliggjort, at han ved en tilbagevenden til Pakistan vil være i risiko for forfølgelse omfattet af udlændingelovens § 7, stk. 1, eller overgreb omfattet af udlændingelovens § 7, stk. 2.

Flygtningenævnet stadfæster derfor Udlændingestyrelsens afgørelse.”