



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 949/2019*, **

<i>Communication submitted by:</i>	A.S. (represented by counsel, Rebecca Ahlstrand)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	26 July 2019 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 30 July 2019 (not issued in document form)
<i>Date of present decision:</i>	27 July 2022
<i>Subject matter:</i>	Deportation of the complainant from Sweden to the Islamic Republic of Iran
<i>Substantive issues:</i>	Risk of torture in the event of deportation to country of origin (non-refoulement); prevention of torture
<i>Procedural issue:</i>	Admissibility – <i>ratione materiae</i>
<i>Article of the Convention:</i>	3

1.1 The complainant is A.S., a national of the Islamic Republic of Iran born in 1989. His application for asylum in the State party has been rejected and he risks deportation to the Islamic Republic of Iran. He claims that if the State party were to proceed with his deportation, it would violate his rights under article 3 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 8 January 1986. The complainant is represented by counsel.

1.2 On 30 July 2019, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from deporting the complainant while the complaint was being considered.

Facts as submitted by the complainant

2.1 In 2013, while living in the Islamic Republic of Iran, the complainant became interested in Christianity through a co-worker. He started to attend a house church for weekly

* Adopted by the Committee at its seventy-fourth session (12–29 July 2022).

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



meetings and through his church he was introduced to the Seventh-Day Adventist Church in Armenia. The complainant travelled several times to Armenia in 2013 and 2014 and was baptized there in October 2014. In June 2015, he learnt that his house church had been discovered by the Iranian authorities and that the leaders of the church had been arrested by the intelligence services. He feared they had denounced him and fled to Armenia on 28 June 2015. After staying for a few months in Armenia, he travelled to Sweden to live with his sister. He arrived in Sweden on 10 November 2015. Two weeks later, his house in the Islamic Republic of Iran was searched by intelligence service agents, and his sister and mother were told that the complainant was required to report to the intelligence services.

2.2 In June 2017, the complainant was diagnosed with a pituitary tumour that required medication for at least four years. If he stopped medicating, there was a possibility that it would lead to blindness or even early death. The complainant has also been mentally unstable and suffers from post-traumatic stress disorder. On an unspecified date, he was hospitalized at a closed psychiatric clinic due to suicidal thoughts and attempts to hang himself.

2.3 The complainant applied for asylum on 10 November 2015. On 6 December 2017, the Swedish Migration Agency rejected his application. While the Agency accepted that the complainant had attended church meetings in the Islamic Republic of Iran and had undergone baptism in Armenia, it concluded that the complainant's conversion was not genuine and that if he returned he would not risk persecution because of his religious beliefs.

2.4 On 18 October 2018, the Migration Court in Malmö held that it was not probable that the complainant was at risk of being subjected to protective-based treatment due to a religious belief. The complainant's health, his adaptation in Sweden and the general human rights situation in the Islamic Republic of Iran were also taken into account, however no conditions were found to make him eligible for a residence permit.

2.5 On 26 November 2018, the Migration Court of Appeal denied his request for leave to appeal the decision of the Migration Court in Malmö.

2.6 On 12 April 2019, the Swedish Migration Agency examined the complainant's claim of an obstacle to the execution of the expulsion decision due to a life-threatening disease. The Agency decided that the complainant's disease was not so serious that an execution of the expulsion decision was unreasonable and that the general level of health care in the Islamic Republic of Iran was acceptable and treatment was available in the country.

2.7 On 12 June 2019, the Migration Court in Malmö denied the complainant's leave to appeal the Swedish Migration Agency's decision of 12 April 2019.

2.8 On 28 July 2019, the Migration Court of Appeal upheld the decision of the Migration Court in Malmö.

2.9 The complainant states that he has exhausted all available domestic remedies.

Complaint

3.1 The complainant claims that on account of his conversion to Christianity, he would be tortured or sentenced to death if he is returned to the Islamic Republic of Iran. He asserts that the examination of the genuineness of his faith in Sweden has been more rigorous than is recommended in the guidelines on international protection regarding religion-based refugee claims of the Office of the United Nations High Commissioner for Refugees (UNHCR).¹ He asserts that the Swedish authorities have made a *sur place* conversion assessment in his case, while he is not a *sur place* convert.

3.2 The complainant also claims that he will face cruel, inhuman and degrading treatment because he will not have access to sufficient medical care to treat his pituitary tumour and severe anxiety problems. In their assessment, the Swedish authorities determined that the complainant would have access to adequate medical care in the Islamic Republic of Iran;

¹ See UNHCR, "Guidelines on international protection: religion-based refugee claims under article 1 A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees" (2004).

however, in the complainant's opinion that is not accurate due to very high cost of medications and their lack of availability because of the sanctions against the country.

State party's observations on admissibility and the merits

4.1 On 28 April 2020, the State party submitted its observations on admissibility and the merits. It argues that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of article 3 of the Convention if returned to the Islamic Republic of Iran fails to rise to the minimum level of substantiation required for the purposes of admissibility.

4.2 The State party also submits that the complainant appears to allege that he would risk ill-treatment not amounting to torture in the Islamic Republic of Iran because of his stated conversion to Christianity and a lack of appropriate medical care. However, the State party notes, the scope of the non-refoulement obligation described in article 3 does not extend to situations of ill-treatment envisaged by article 16. Accordingly, the communication should be declared inadmissible *ratione materiae* to the extent that the complainant claims a risk of ill-treatment not amounting to torture in the Islamic Republic of Iran.

4.3. The State party further notes that the complainant might be understood to claim that his removal per se would constitute cruel, inhuman or degrading treatment in violation of article 16 because of his medical condition. According to the State party, the Committee has repeatedly held that only in very exceptional circumstances does a removal per se constitute cruel, inhuman or degrading treatment.² As such exceptional circumstances have not been presented, the State party submits that any claim under article 16 is inadmissible *ratione materiae*.

4.4 With regard to the merits of the case, the State party notes that the Migration Agency held an introductory interview with the complainant in connection with his asylum application on 9 March 2016, the minutes of which were communicated to his public counsel on 18 January 2017. On 3 March 2017, an extensive asylum investigation that lasted for more than four hours took place in the presence of the public counsel. Both the interview and the investigation were conducted in the presence of interpreters, whom the complainant confirmed that he understood well. On 2 October 2018, the Migration Court held an oral hearing, lasting for more than two hours, at which the complainant, assisted by an interpreter, and his public counsel were present. The State party notes that the complainant has had several opportunities to explain the relevant facts and circumstances in support of his claim and to argue his case orally as well as in writing, before the Migration Agency and the migration courts. In the light of the above, the State party concludes that there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice, and that considerable weight must be attached to the opinions of the Swedish migration authorities.

4.5 On the issue of the complainant's conversion from Islam to Christianity, the State party notes that the Migration Agency and the Migration Court have concluded that the complainant did not plausibly demonstrate that his conversion was based on a genuine religious conviction and that he intended to live as a Christian upon his return to the Islamic Republic of Iran, or that his conversion had come to the attention of the Iranian authorities. According to the State party, asylum seekers have the burden of proof to plausibly demonstrate that a claimed conversion from Islam to Christianity is based on a genuine personal conviction. When examining whether someone has demonstrated that his or her conversion is genuine in the sense that it was based on a genuine personal religious conviction, the Swedish migration authorities make an individual assessment in accordance with the UNHCR handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.³

4.6 The State party submits that in the complainant's case, the Migration Agency conducted an extensive asylum investigation with the complainant and the Migration Court

² *M.M.K. v. Sweden* (CAT/C/34/221/2002), para. 7.3.

³ Available from <https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>.

held an oral hearing in order to examine the character of the complainant's acquired faith, how he came to know about Christianity, the nature of and connection between any religious convictions held before or since conversion and possible disaffection with his previously held religion. The national authorities also examined the complainant's experience of and involvement in his new religion and considered any corroborating evidence regarding involvement in and membership of the new religious community. The State party holds that the complainant has failed to demonstrate that the domestic migration authorities failed to take into account relevant facts, written evidence or risk factors in their assessments and has not shown that the authorities' assessments were arbitrary or amount to a manifest error or a denial of justice.

4.7 As to the complainant's health issues, the State party submits that the Migration Agency considered that the complainant's illness was currently not so serious that enforcement of the expulsion order seemed unreasonable and noted that his condition had been assessed by doctors as treatable. The Migration Agency further held that, considering the level of general care in the Islamic Republic of Iran, there was no reason to assume that acceptable care and treatment would not be available in the country. The State party notes that the Migration Agency based its assessment on the information obtained from reports by the Swedish Ministry for Foreign Affairs,⁴ the World Health Organization (WHO) and an article published in the Archives of Iranian Medicine.

4.8 The State party notes that the Human Rights Committee also adopted a restrictive approach to the non-refoulement obligations of a State party in the case of a medical condition, when it held that a condition must be of an exceptional nature.⁵ In that case, the author suffered from a chronic heart disease, which had already required several bypass surgeries with the possibility of another surgery. The author had also been considered to have a high risk of suicide and suffered from a major depressive disorder characterized by pervasive sadness, insomnia, anorexia and weight loss. The Committee nevertheless considered that the file did not show that the author's medical condition in itself was of such an exceptional nature as to trigger the State party's non-refoulement obligations under article 7 of the Covenant.

4.9 The State party also refers to the judgment of the European Court of Human Rights in *Paposhvili v. Belgium* and argues that only very exceptional circumstances may raise an issue under article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) in this context.⁶ According to the State party, in that case the Court clarified that "other very exceptional cases" might raise the issue of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her health resulting in intense suffering or a significant reduction in life expectancy.

4.10 The State party notes that it does not wish to underestimate the complainant's cited medical condition and any concerns that may be expressed with respect to the shortcomings in the accessibility of medical care in the Islamic Republic of Iran. However, in view of the above, it concludes that the complainant has not shown that his medical condition is of such an exceptional nature that his removal to the Islamic Republic of Iran would violate article 3 of the Convention.

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

5.1 On 28 August 2020, the complainant submitted his comments on the State party's observations. The complainant contests the State party's assertion that his claims fail to rise to the minimum level of substantiation required for the purposes of admissibility. The complainant notes that his claim of a violation of article 3 of the Convention concerns both

⁴ <https://lifos.migrationsverket.se/dokument?documentSummaryId=39436> (in Swedish only).

⁵ *Z. v. Australia* (CCPR/C/111/D/2049/2011), para. 9.5.

⁶ Application No. 41738/10, 13 December 2016, paras. 172–180 and 183.

his conversion to Christianity and his exceptional medical condition, which cannot be treated in the Islamic Republic of Iran. Concerning his health, he submits that in the Islamic Republic of Iran he would risk suffering blindness or even death, as well as a serious psychiatric illness, which could lead to suicide if not treated. However, if the Committee finds that his removal to the Islamic Republic of Iran, despite serious health issues, does not reach the minimum level of torture, the complainant asserts that his circumstances, in regard to his health issues, amount to such exceptional circumstances which would lead to cruel, inhuman and degrading treatment in violation of article 16 of the Convention.

5.2 With regard to the merits of the complaint, the complainant notes that during his oral hearing in the Migration Court which, according to the State party lasted for more than two hours, he had very little time to express his deeper thoughts and reflections and his genuine convictions to the Court because a significant amount of time was spent on interpretation and questioning from the Migration Board and counsel.

5.3 The complainant submits that in line with the established case law of the Swedish Migration Court of Appeal,⁷ the assessment of conversion cases should, when it is a matter of *sur place* conversion, be made through an individual assessment according to the UNHCR guidelines on religion-based refugee claims and through an overall assessment in light of all the circumstances surrounding the conversion. Against this background, the complainant questions whether the principles, which are to be applied in conversion cases *sur place*, are applicable in his case. He notes that the domestic authorities have not questioned his baptism in Armenia in 2014. The complainant contends that the authorities should have given him the benefit of the doubt and not, as is required in *sur place* conversion cases, have paid in depth attention to his credibility. The complainant therefore asserts that the Swedish authorities have wrongfully applied a higher credibility standard in his case.

5.4 The complainant notes that unlike in the guiding case of the Migration Court of Appeal, which establishes guidelines to be applied in *sur place* conversion cases, he was converted and baptized long before entering Sweden, which was not questioned by the Swedish authorities. In addition to a certificate from the Seventh-Day Adventist Church of Yerevan, a certificate from the Seventh-Day Adventist Church of Malmö confirms his membership in the church and his continuing and diligent practice of the Christian faith, as well as his genuine conviction over a long period of time. Furthermore, he was not baptized hastily but was thoroughly taught Christian doctrine and way of life through several courses he attended in Armenia before his baptism. The complainant notes that he was very well aware of the risks of being a Christian in the Islamic Republic of Iran, considering his repeated and dangerous trips to Armenia and the security rules of the house church he attended. However, contrary to established case law, which clarifies that these factors enhance the credibility of a conversion, very limited or no consideration was paid to those circumstances. The complainant also notes that his oral presentation during his asylum interview showed that he had significant knowledge of Christian doctrine and life and could make a detailed account of who led him to Christian faith and the process through which he converted.

5.5 According to the complainant, the protocol of his asylum interview held on 3 March 2017 includes a detailed account of the house church meetings, with addresses, that he attended, the names of participants and even references to certain dates and times. However, he notes that the Migration Court disregarded this and concluded in a subjective manner that he had not expressed enough feelings and that a conversion from Islam to Christianity must generate more feeling than he had been able to show. The complainant asserts that there is no legal basis for such a statement from the court because feelings and expressions can differ significantly between individuals and it disregards other more substantial parts of his story. Thus, the court's ruling was based on arbitrary arguments rather than on an overall assessment of all the circumstances, as required under domestic case law and the UNHCR guidelines on religion-based refugee claims.

5.6 The complainant further notes that the Swedish authorities assessed all risk factors individually and not in an overall assessment of the aggravated risks the circumstances he

⁷ The complainant makes reference to the case at <https://lagen.nu/dom/mig/2011:29> (in Swedish only).

was facing amounted to. He refers to the case of *Q.A. v. Sweden*, decided by the Human Rights Committee, in which the Committee held that the Swedish authorities, while examining every risk factor individually, had failed to consider all the risk-enhancing factors combined.⁸ The Committee found that the authorities had failed to adequately assess the author's real, personal and foreseeable risk of returning to Afghanistan, as a perceived apostate (atheist) and with a myriad of risk-enhancing factors, creating multiple vulnerable profiles, such as mental illness, being suicidal and lacking a social network.

5.7 Similarly, the complainant notes that he has a number of risk-enhancing factors, such as severe mental illness and a serious medical condition in need of extremely expensive, and therefore unavailable, treatment and medication in the Islamic Republic of Iran. In addition, his proselytizing and activities on the Internet have exposed him to the attention of the Iranian regime and his failed asylum claim could in itself spark attention upon his return. The complainant submits that these factors have not been examined jointly, but separately.

5.8 The complainant refers to a number of new country reports concerning the Islamic Republic of Iran that show that the monitoring of house churches and individuals has increased steadily, that individuals who have been proselytizing and active on social media and the Internet, and who return from a stay in western countries, are likely to be subjected to attention and control upon return, including investigation of their telephones, social media and Internet activities.⁹ According to the complainant, he is at high risk of arrest and torture upon return, considering that he has proselytized and belongs to a proselytizing movement, and proselytizing is considered a crime against national security in the Islamic Republic of Iran. He has also been open and active on the Internet, which was noticed by the Iranian authorities who then shut down his blog.¹⁰

5.9 With regard to his health, the complainant submits that the position of the Migration Agency concerning the availability of health care in the Islamic Republic of Iran is based on a WHO report that was published in 2006 and an article from the Archives on Iranian Medicine from 2017. The complainant asserts that the reports lack information about the effects of sanctions against the country on the availability of treatment and cannot be considered reliable against this background. He refers to a more recent article from 2018, which contains information on the consequences of the sanctions, resulting in a lack of medication and treatment, including for cancer.¹¹

5.10 Finally, the complainant notes that the European Court of Human Rights, by its decision in the case of *Paposhvili v. Belgium*, requires individual and sufficient guarantees to be obtained from a receiving State that the current treatment will be available to the person concerned to ensure that there is no violation of article 3 of the Convention. The complainant submits that no such guarantees have been obtained from the Islamic Republic of Iran in his case.

State party's additional observations

6.1 On 22 January 2021, the State party submitted its additional observations and noted that it fully maintained its position regarding the facts, admissibility and merits of the complaint, as expressed in its initial observations. With regard to the complaint's admissibility, the State party refutes the complainant's assertions that there have been procedural deficiencies during the domestic proceedings. It notes that a significant part of any oral hearing in a Migration Court consists of interpretation and questions from parties; however this does not support the notion that there is a lack of opportunity for a complainant to argue his or her case in writing and orally before the domestic migration authorities. On

⁸ *Q.A. v. Sweden* (CCPR/C/127/D/3070/2017).

⁹ The complainant makes reference to the following reports: <https://lifos.migrationsverket.se/dokument?documentSummaryId=44432> (relating to the situation of converts and surveillance of the Internet and social media, in Swedish only) and <https://lifos.migrationsverket.se/dokument?documentSummaryId=40964>.

¹⁰ The complainant provides no further details.

¹¹ Mehrnaz Kheirandish and others, "Impact of economic sanctions on access to noncommunicable diseases medicines in the Islamic Republic of Iran", *Eastern Mediterranean Health Journal*, vol. 24, No. 1 (2018).

the contrary, the State party reiterates that that it must be considered that the Migration Agency and the migration courts have had sufficient information, together with the facts and documentation in the case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the complainant's need for protection in Sweden.

6.2 The State party submits that an overall assessment was made of the complainant's conversion and of whether he could be expected to live as a convert upon his return to the Islamic Republic of Iran, as well as the risk of an ascribed religious belief. Both, the Migration Agency and the Migration Court have concluded that the complainant's account was not reliable and that his conversion was not based on a genuine religious conviction. The State party considers that that there is support for the assessment that individuals who return to the Islamic Republic of Iran after renouncing their Muslim beliefs or converting run a real risk of persecution warranting international protection. However, the State party reiterates its position that the complainant, in this particular case, has not plausibly demonstrated that he intends to live as a Christian upon his return to the Islamic Republic of Iran or that his conversion has come to the attention of the Iranian authorities and he thus risks being subjected to treatment contrary to article 3 of the Convention.

6.3 With regard to the complainant's reference to the case of *Q.A. v. Sweden*, the State party notes that the case is clearly distinguishable from the complainant's case. In *Q.A. v. Sweden*, the claims regarding a conversion were made after the expulsion order had become final and non-appealable, which is not the situation in the complainant's case. The State party also notes that in the former case, the Human Rights Committee attached considerable weight to the fact that the complainant's name was widely known to friends and the general public through the mass media and social media, and that a letter revealing the author's atheism and identity had been sent to the Embassy of Afghanistan in Sweden. In the present case, the State party submits, the domestic authorities made an assessment regarding the risk of persecution, not only as a consequence of the claimed conversion but also as a consequence of ascribed religious beliefs.

6.4 According to the State party, the fact that the complainant, in his application on impediments to the enforcement of the expulsion order, invoked health issues does not change the view presented above. The State party asserts that there is no support for the claim that the complainant's health issues should affect the assessment of the claimed conversion, and the risks associated with it, in such a way that an enforcement of the expulsion order would be in violation of the Convention for that reason. The State party notes that the domestic migration authorities, inter alia, assessed whether the enforcement of the expulsion order would violate article 3 of the European Convention on Human Rights due to the complainant's cited medical condition and concluded that it would not, and that the Migration Court, in its assessment, took the judgment of the European Court of Human Rights in *Paposhvili v. Belgium* into account.

Complainant's additional comments

7. On 10 June 2022, the complainant submitted a medical certificate from the University Hospital of Skåne, signed by a specialist doctor who had been treating the complainant since 2017 when he was first diagnosed with pituitary adenoma. It states that initially the complainant was prescribed medication for four years. The certificate mentions that at one point the complainant stopped taking the medication, which caused the prolactin levels to go up, however after the treatment was resumed, the prolactin content also normalized. The doctor recommends that attempts at withdrawal from the medication should not take place until the prolactin value has been continuously normal for at least two years, provided that tumor regression is also detected. However, since magnetic resonance imaging (MRI) examinations have not so far shown tumor regression (or progression), the doctor's assessment is that the complainant will need to continue the treatment for the next three to four years. According to the certificate, if the complainant does not receive the current medical treatment, there is a risk that the tumor will increase in size, which may affect the optic nerves and the complainant may lose his vision. In addition, if medical treatment is stopped too soon, the complainant will most likely suffer from hormonal disorders.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether the communication 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 contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

8.3 The Committee notes the State party's submission that the complainant alleges that he would risk ill-treatment not amounting to torture in the Islamic Republic of Iran because of his stated conversion to Christianity and due to a lack of appropriate medical care, while the scope of the non-refoulement obligation described in article 3 does not extend to situations of ill-treatment envisaged by article 16. Accordingly, the State party argues that the communication should be declared inadmissible *ratione materiae* to the extent that the complainant claims a risk of ill-treatment not amounting to torture in the Islamic Republic of Iran. In that regard, the Committee notes that the preamble to the Convention proclaims that any act of torture or inhuman or degrading treatment or punishment is an offence to human dignity. Accordingly, cruel, inhuman and degrading treatment is addressed in the preamble in connection with article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights. Those explicit references enabled the Committee, in its general comment No. 2 (2007), to make it clear that obligations under the Convention, including with regard to article 3, extend to both torture and other acts of cruel, inhuman or degrading treatment or punishment, and that, as previously stated by the Committee, article 16 of the Convention is non-derogable.¹² The Committee notes that this interpretation is corroborated by the majority of international conventions which, even though they may draw a terminological distinction between the two concepts, confirm the absolute nature of their prohibition in each case.¹³ The Committee further notes that the Convention does not detract from the State party's obligations under other human rights instruments to which it is a party, including the European Convention on Human Rights, which includes no exception and also links the two concepts in the interpretation of article 3. The Committee emphasizes in this context that the European Court of Human Rights systematically highlights the mandatory nature of the principle of non-refoulement and hence of the prohibition of the transfer of an applicant to a State where he is at risk of being subjected to torture and ill-treatment.¹⁴ It is clear from all these rules that international law now extends the principle of non-refoulement to persons exposed to risks other than torture.¹⁵

8.4 In the light of the foregoing, the Committee declares the communication submitted under article 3 of the Convention 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 the Islamic Republic of Iran 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

¹² General comment No. 2 (2007), in particular paras. 1, 3, 6, 15 and 25.

¹³ *Harun v. Switzerland* (CAT/C/65/D/758/2016), para. 8.6.

¹⁴ See *Saadi v. Italy*, Application No. 37201/06, 28 February 2008, and *Ramzy v. the Netherlands*, Application No. 25424/05, 20 July 2010.

¹⁵ See Human Rights Committee, general comment No. 20 (1992), para. 9.

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 at risk of being subjected to torture upon return to the Islamic Republic of Iran. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.¹⁶

9.4 The Committee recalls its general comment No. 4 (2017), according to which the non-refoulement obligation exists whenever there are “substantial grounds” for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or a member of a group which may be at risk of being tortured in the State of destination. The Committee recalls that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real”.¹⁷ Indications of personal risk may include, but are not limited to: (a) the complainant’s ethnic background and religious affiliation; (b) previous torture; (c) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; (d) political affiliation or political activities of the complainant; (e) arrest warrant without guarantee of a fair trial and treatment; (f) violations of the right to freedom of thought, conscience and religion; (g) clandestine escape from the country of origin for threats of torture; and (h) violations of the right to freedom of thought, conscience and religion.¹⁸

9.5 The Committee recalls that the burden of proof is on the complainant, who must present an arguable case, namely submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real.¹⁹ However, when complainants are in a situation where they cannot elaborate on their case, such as when they have demonstrated that they have no possibility of obtaining documentation relating to their allegation of torture or have been deprived of their liberty, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the complaint is based.²⁰ The Committee gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings. The Committee will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.²¹

9.6 In assessing the risk of torture in the present case, the Committee notes the complainant’s claim that he would face a risk of torture if he were returned to the Islamic Republic of Iran because of his conversion to Christianity and his medical condition, for which there is a lack of medication and treatment in the country. The Committee notes that the complainant became interested in Christianity through a co-worker in 2013 and was baptized in Armenia in 2014. In 2015, his house church was discovered by the Iranian authorities and the leaders of the church were arrested by the intelligence services, which prompted the complainant to flee the country. Two weeks after he arrived in Sweden, his

¹⁶ See, for example, *E.T. v. Netherlands* (CAT/C/65/D/801/2017), para. 7.3, and *Y.G. v. Switzerland* (CAT/C/65/D/822/2017), para. 7.3.

¹⁷ Para. 11.

¹⁸ Para. 45.

¹⁹ General comment No. 4 (2017), para. 38.

²⁰ *Ibid.*

²¹ *Ibid.*, para. 50.

house in the Islamic Republic of Iran was searched by intelligence service agents and his sister and mother were told that the complainant was required to report to the intelligence services.

9.7 The Committee recalls that it must ascertain whether the complainant currently runs a risk of being subjected to torture if returned to the Islamic Republic of Iran. It notes that the complainant had ample opportunity to provide supporting evidence and more details about his claims to the Migration Agency and the Migration Court, but that the evidence provided did not lead the Swedish authorities to conclude that he would be at risk of being subjected to torture or cruel, inhuman or degrading treatment upon his return. The Committee notes the State party's submission that the complainant has not plausibly demonstrated that his conversion to Christianity was based on a genuine religious conviction and that he intended to live as a Christian upon his return to the Islamic Republic of Iran, or that his conversion had come to the attention of the Iranian authorities. In that regard, the Committee observes that the complainant has not submitted any evidence that would demonstrate that he is wanted by the Iranian authorities for his involvement with the house church that was discovered in 2015 or for his blogging activities, which he claims led to his blog being shut down.

9.8 The Committee notes that the complainant contests the decision by the Swedish authorities and asserts that it was based on arbitrary arguments rather than on an overall assessment of all circumstances, as is required under domestic case law and the UNHCR guidelines on religion-based refugee claims. In that regard, the Committee observes that the UNHCR guidelines suggest that domestic decision makers elicit information about the individual's religious experiences, such as asking him or her to describe in detail how he or she adopted the religion, the place and manner of worship, or the rituals engaged in, the significance of the religion to the person, or the values he or she believes the religion espouses. The Committee also notes the State party's submission that the Migration Agency conducted an extensive asylum investigation with the complainant and the Migration Court held an oral hearing in order to examine the character of the complainant's acquired faith, how he came to know about Christianity, the nature of and connection between any religious convictions held before or since conversion and any possible disaffection with his previously held religion. The Swedish authorities also examined the complainant's experience of and involvement in his new religion and considered any corroborating evidence regarding his involvement in and membership of his new religious community. In view of the above, the Committee cannot conclude that the assessment by the authorities of the complainant's case was inconsistent with the UNHCR guidelines, were arbitrary or amounted to a manifest error or a denial of justice with regard to his claim of risk of torture due to his conversion to Christianity.

9.9 The Committee further takes note of the complainant's claim that, if deported to the Islamic Republic of Iran, he would probably have no access to the specialized medical treatment for his pituitary adenoma which, if not treated, can lead to blindness, or to psychiatric treatment for his depression and high level of anxiety. The Committee also notes the State party's assertion that the complainant's illness is currently not so serious that enforcement of the expulsion order seems unreasonable and that his condition has been assessed by doctors as treatable. According to the State party, considering the level of general care in the Islamic Republic of Iran, there is no reason to assume that acceptable care and treatment would not be available.

9.10 The Committee observes that the migration authorities and domestic courts based their information about the availability of acceptable care and treatment in the Islamic Republic of Iran on reports dating from 2006 to 2017, while the complainant asserts that another report published in 2018 suggests that sanctions against the country have resulted in deficiencies in the availability of certain medicines, including those used for treatment of cancer. At the same time, the Committee notes that the complainant has not provided any specific information as to the availability in the Islamic Republic of Iran of the drugs he is currently taking as part of his treatment. The Committee recalls that it is in fact for domestic courts to evaluate facts and evidence in a particular case, unless the evidence assessment is clearly arbitrary and amounts to a denial of justice.²² The Committee also does not consider that the

²² *P.E. v. France* (CAT/C/29/D/193/2001), para. 6.5.

complainant's medical condition is in itself of such an exceptional nature as to trigger the State party's non-refoulement obligations.²³

10. On the basis of the above, and in the light of the material before it, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his forcible removal to his country of origin would expose him to a real, foreseeable, personal and present risk of being subjected to treatment contrary to article 3 of the Convention.

11. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to the Islamic Republic of Iran by the State party would not constitute a breach of article 3 of the Convention.

²³ *Z. v. Australia*, para. 9.5