



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3032/2017\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	J.I. (represented by counsel, Elin Edin)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Sweden
<i>Date of communication:</i>	31 October 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 2 November 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	13 March 2020
<i>Subject matter:</i>	Deportation from Sweden to Afghanistan
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Risk of torture, cruel, inhuman or degrading treatment or punishment; non-refoulement
<i>Articles of the Covenant:</i>	6, 7 and 18
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is J.I., a national of Afghanistan born in 1996. He claims that his deportation to Afghanistan by the State party would violate his rights under articles 6, 7 and 18 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The author is represented by counsel.

1.2 On 2 November 2017, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from returning the author to Afghanistan while his case was under consideration by the Committee.

\* Adopted by the Committee at its 128th session (2–27 March 2020).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Tigroudja, Andreas Zimmermann and Gentian Zyberi.

\*\*\* An individual opinion by Committee member Gentian Zyberi (dissenting) is annexed to the present Views.



**The facts as submitted by the author**

2.1 The author lived with his parents and older brother in the Nawur village of the Ghazni province in Afghanistan. His parents were Christians and practised their religion in secrecy at home. His father worked for the Provincial Reconstruction Team and made sufficient earnings so that the family had some protection. The family had little contact with neighbours and had no relatives. At Easter, the author's mother would give bread and fruit to two or three families who lived nearby. Inside the author's house was a room for prayer, and the author's father used to read the Bible. The family also had a cross and pictures of Mary (the mother of Jesus) and the baby Jesus that were kept hidden. They would pray at every meal, thanking God for the food. The author's father would say that Jesus was the saviour. The author and his brother did not go to school because schools were in mosques and local clergy did not allow them to study there because of their religion. The author and his brother spent most of their time at home helping with farming. They both carried small wooden crosses that their father had made for them.

2.2 Two days after his tenth birthday, the author was playing in the field with his brother when they heard screaming and gunfire. They saw cars and armed people outside their house. The author believes that these people were affiliated with the Taliban. After a while, the cars left, and the author and his brother returned to the house to find that their parents were gone. They called their father's colleague who used to give their father a ride to work every morning. The colleague took the brothers to Ghazni where a smuggler took them to Pakistan and then to the Islamic Republic of Iran.

2.3 The author and his brother spent five years in the Islamic Republic of Iran. They worked in a plastic factory in Tehran. The author's brother was in a car accident and lost one leg while in the country. Owing to their illegal status, they were afraid of being caught by the police. As they lived at the factory, they did not interact with any Christians. They would pray, however, and they wore their crosses underneath their shirts. One day, the author's supervisor saw his cross and slapped his face so hard that he hurt his ear. He still has a problem with that ear and had surgery on it after arriving in Sweden. The author's brother borrowed money from his employer to send the author to Sweden. The brother himself could not go because of his leg. A smuggler took the author to Turkey by car. After staying in Istanbul for six months, the author was put on a boat to Italy and subsequently driven by car to Sweden.

2.4 On 29 August 2014, the author applied for asylum in Sweden. He was initially assigned a legal guardian and moved to a foster family in 2015. He regularly attended a local church, gatherings for Bible studies, and Christian camps and conferences. In August 2015, he was baptized during a big camp gathering, which was attended by more than 200 people.

2.5 On 21 August 2015, the Migration Agency rejected the author's asylum application, finding his account to be too brief, not detailed and contradictory. The Agency did not question that the author was going to church regularly in Sweden, but questioned whether his faith was genuine. The Agency concluded that the author's accounts as to his Christian upbringing in Afghanistan and his wish to live a Christian life in Sweden were not credible.

2.6 On 11 November 2015, the Migration Court remitted the case to the Agency, as the Agency's decision did not specify a country to which the author was to be expelled. On 30 December 2015, the Agency again rejected the author's application. On 31 March 2016, the Migration Court denied the author's appeal. On 19 May 2016, the Migration Court of Appeals rejected the author's appeal. From that moment, the decision of the Migration Court entered into force, and all ordinary domestic remedies were exhausted. The deadline for the author's voluntary departure from Sweden was set for 16 September 2016. On that date, the author left Sweden for Germany and tried to apply for asylum there. However, under the Dublin III Regulation, Germany ordered the author's return to Sweden on 21 September 2016.

2.7 On 12 December 2016, the author submitted an application to the Migration Agency, claiming impediments to enforcement of his expulsion. In support, the author enclosed his legal guardian's personal statement, printouts of the author's Facebook page containing Bible quotes and prayers, his pastor's certification and several articles about the situation of

unaccompanied Afghan minors in Sweden. On 23 December 2016, the Migration Agency rejected this application. The Migration Court also rejected the author's appeal on 15 June 2017, as it was submitted late.

2.8 On 10 July 2017, the author submitted a second application claiming impediments to enforcement, indicating that staff members of the Afghan Embassy in Stockholm had learned of his Christian faith. He also claimed that while in immigration detention, he had been harassed by other Afghan detainees and some staff members for being openly Christian, and that some of those detainees had already been deported to Afghanistan. On 12 July 2017, the Migration Agency rejected this application, finding that his interest in the Christian faith would not attract the interest of the Afghan authorities or private actors and that his religious affiliation was not genuine. The author's appeal to the Migration Court was rejected on 20 July 2017. The Migration Court of Appeals also denied a review permit or leave to appeal.

### **The complaint**

3.1 The author claims that his deportation to Afghanistan would amount to a violation by the State party of articles 6, 7 and 18 of the Covenant, because there is a real and substantiated risk of irreparable harm, even death, due to severe persecution of Christians in Afghanistan. He submits that, in Afghanistan, Christians and converts have been sentenced to long imprisonment for blasphemy, and members of the parliament have even called for the execution of converts. Furthermore, because the author belongs to the Hazara ethnic group and will thus be presumed to be Shia Muslim, he will be punished with death for apostasy. In this connection, he asserts that the migration authorities have failed to assess the risks associated with apostasy.

3.2 The author further contends that the Migration Agency erred in not finding his accounts to be credible because he could not give an eloquent theological explanation as to why he is a Christian. He emphasizes that he has not received any formal education and that certain statements during the asylum proceedings were incorrectly attributed to the author who was then found to be inconsistent. In addition, the fact that Christians are persecuted in Afghanistan was used against him, as the Agency concluded that, because of such persecution, the author's account of his parents having lived as Christians in Afghanistan was not credible. Moreover, the Agency mistakenly demanded that the author demonstrate the thought process that one can expect from a convert, while the author in fact is not a convert, but was born into a Christian family.

### **State party's observations on admissibility and the merits**

4.1 In a note verbale dated 2 March 2018, the State party submitted its observations on admissibility and the merits of the communication.

4.2 The State party submits that according to an official note by the Migration Agency, the author was encountered on 28 August 2014 in the city of Malmö, Sweden. He claimed to be an orphan, born in 1999 in Afghanistan. He was registered as a minor and placed in special housing for children. On 29 August 2014, the author applied for asylum and was assigned a public counsel on 18 September 2014. During an interview on 28 September 2014, the author stated that he did not know exactly when he was born, but that he knew that he was 10 years old when he left Afghanistan. A medical age assessment conducted by the National Board of Forensic Medicine estimated his age to have been at least 18.3 in November 2014. Accordingly, the Agency assessed the author's case in accordance with the procedure applicable to adults.

4.3 The State party describes the procedural history concerning the author's asylum application and subsequent appeals. It further explains that under the Dublin III Regulation, the Agency accepted the transfer of the author from Germany on 3 October 2016. On 12 December 2016, the Agency decided to place the author under supervision, pursuant to chapter 10 (6) of the Aliens Act, and he was placed in detention from 10 April to 14 July 2017.

4.4 With regard to the author's application of 12 December 2016, the State party notes the claims therein that his Christian faith had been revealed in the media, as a Swedish

public television broadcaster (SVT1) had broadcast four church services in which he participated. The author further claimed that he had written Christian texts on Facebook and, as an ethnic Hazara, he belonged to a particularly vulnerable group in Afghanistan. In this connection, the State party notes that re-examination of an asylum case may only be granted where it can be assumed, on the basis of new circumstances, that there are lasting impediments to the enforcement of an expulsion order, pursuant to chapter 12 (1)–(3) of the Aliens Act, and that these circumstances could not previously have been cited, or the applicant otherwise provides a valid excuse for not having done so. In this regard, the Agency has a limited scope to take into account circumstances such as frustrated hopes, anxiety about returning to the country of origin, or social or financial issues.

4.5 On 23 December 2016, the Agency rejected the author's application, finding that the author's claims as to his Christian faith had already been examined. However, his statements about his appearance in the media were considered new. The Agency held that to be attributed Christian religious beliefs in Afghanistan can result in persecution, although mainly from private actors, therefore constituting a need for international protection. It concluded, however, that Afghanistan has neither the capacity to monitor its citizens' actions abroad nor an interest in doing so. Since no evidence indicated that anyone in Afghanistan had noted the author's texts on Facebook or in the Swedish television broadcasts, the Agency concluded that the author had not plausibly demonstrated his need for protection owing to attributed religious beliefs in Afghanistan. Moreover, the mere fact of being an ethnic Hazara in Afghanistan does not in itself qualify as a ground for international protection.

4.6 On 3 July 2017, the author reported the Migration Agency and the Agency's Director-General to the police for improper exercise of public authority and obstructing the course of justice for rejecting his asylum application. The prosecutor considered that it could not decide on the matter, which contained an appeal of the Migration Agency's decision and a request for immediate release from detention, and sent the report to the Agency. The Agency interpreted this report as a notification of impediments to the enforcement of the expulsion order and rejected it on 5 July 2017.

4.7 The author lodged a new application to the Agency on 10 July 2017 and claimed impediments to the enforcement of his expulsion order (para. 2.8). In the application, he claimed that prior to his detention, he had attended a Bible course and actively participated in the congregation's activities. He also submitted that conversion was punishable by death according to Afghan law and that Afghanistan actively sought and prosecuted people who blaspheme against Islam. The Agency rejected this application on 12 July 2017, finding that the author had not plausibly demonstrated that his conversion was out of genuine personal religious conviction. Moreover, the Agency found no evidence indicating that his conversion had come to the attention of the Afghan public. Regarding the new claim about the Embassy's knowledge about the author, the Agency noted that no supporting evidence had been presented. Nor did the author substantiate his claim of harassment at the detention centre. Accordingly, the Agency concluded that the cited new circumstances did not provide reasonable grounds for believing that the author had attracted the interest of the Afghan authorities or individuals in such a way that he would risk persecution upon his return.

4.8 As concerns the author's claim that the Agency held that he had not proven that individuals were persecuted for blasphemy in Afghanistan, the State party asserts that the Agency has made no such or similar findings in its decision. In addition, the State party submits that it was the author who initially raised claims of conversion and that the author's counsel repeatedly argued in the asylum application that the author's conversion would put him at risk if returned to Afghanistan. Several of those references to conversion have been omitted from the author's English translation of the asylum application.

4.9 On 20 July 2017, the Migration Court rejected the author's appeal, holding that his claims were supplements to what he had previously stated about Christianity. Furthermore, even if staff members of the Afghan Embassy had been made aware of the author's beliefs, this was not sufficient to constitute a need for international protection as there was nothing in the available country of origin reports to support the idea that Afghan authorities would contribute to such active persecution.

4.10 As to the admissibility, the State party submits that the communication is not sufficiently substantiated and is manifestly unfounded, making it inadmissible pursuant to article 3 of the Optional Protocol and rule 96 (b) of the Committee's rules of procedure. As regards the author's claim under article 18, the State party contends that, unlike articles 6 and 7, article 18 does not have extraterritorial application. It submits that this part of the communication should therefore be declared inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol.<sup>1</sup>

4.11 With regard to the alleged violation of articles 6 and 7 of the Covenant, the State party notes that when determining whether the expulsion of the author to Afghanistan constitutes a breach of article 6 or 7 of the Covenant, the following considerations are relevant: the general human rights situation in Afghanistan and, in particular, the personal, foreseeable and real risk of breach of article 6 or 7 of the Covenant that the author would be subjected to following his return to Afghanistan. The State party also notes that considerable weight should be given to the assessment conducted by the State party, as it is generally for the domestic authorities to directly review or evaluate facts and evidence in order to determine whether a real risk of irreparable harm exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.

4.12 As to the general human rights situation in Afghanistan, the State party notes that Afghanistan is a party to the Covenant, as well as to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also refers to the Migration Agency's new legal position paper on Afghanistan, indicating that even though the security situation in the country has deteriorated, there is still great variation in the intensity of the conflict in different locations. The State party submits that while it does not wish to underestimate the concerns with respect to the current situation in Afghanistan, a general situation does not in itself suffice to establish that the author's expulsion would contravene articles 6 and 7 of the Covenant. The assessment before the Committee must thus focus on the foreseeable consequences of the author's expulsion to Afghanistan in the light of his personal circumstances.

4.13 The State party submits that the author has failed to substantiate his claim that he would run a personal and real risk of being subjected to treatment in Afghanistan in violation of articles 6 and 7 of the Covenant. The State party points out that several provisions in the Aliens Act of Sweden reflect the same principles as those laid down in articles 6 (1) and 7 of the Covenant. Thus, the Swedish migration authorities apply a similar test when considering an application for asylum under the Aliens Act as the Committee does when it is examining a complaint under the Covenant.

4.14 The Migration Agency conducted several interviews with the author in presence of a public counsel and interpreters. Therefore, the author had several opportunities to explain the relevant facts and circumstances in support of his claim and to argue his case, both orally and in writing, before the Migration Agency, and in writing before the Migration Court.

4.15 Against this backdrop, the State party holds that it must be considered that the Migration Agency and the Migration Court had sufficient information, together with the facts and evidence in regard to the present case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk-assessment concerning the author's case. Furthermore, in view of the fact that the Migration Agency and the migration courts are specialized bodies with particular expertise in the field of asylum law and practice, the State party contends that there is no reason to conclude that the national rulings were inadequate or were in any way arbitrary or amounted to a denial of justice. Accordingly, the State party holds that considerable weight must be attached to the opinions of the Swedish migration authorities.

4.16 As regards the author's claims that he risks persecution as he is an ethnic Hazara, the State party refers to country information indicating that the Shia and Hazara ethnic minorities are essentially one and the same group in Afghanistan and that the Taliban has referred to them as "brothers". The State party further notes that discriminatory intent based

<sup>1</sup> *J.D. v. Denmark* (CCPR/C/118/D/2204/2012), para. 10.7.

upon ethnicity or religion was not documented among the motives for the many instances of targeting the Hazara. While discrimination against ethnic Hazaras persists, Sunni versus Shia discrimination is on the decline and confined to some localities. In light of the foregoing, the State party's authorities found that the general situation for ethnic Hazaras did not in itself suffice to establish a need for international protection.

4.17 The State party accepts that Christians in Afghanistan and those returning there are generally at risk of persecution because of their beliefs. It notes, however, that the asylum seeker must substantiate that he or she belongs to a group that is at risk of persecution because of religious beliefs. The State party also submits that the author's Christian faith must be based on genuine conviction. Having conducted extensive interviews with the author, the State party's authorities found that his accounts were unreliable or not credible. In particular, the Migration Agency noted the author's statement that his Christian parents had not really taught their children about Christianity or what it meant to be a Christian. In light of how unusual Christianity is in Afghanistan and the considerable pressure on Christians, the Agency considered that the author's family must have lived under unusual and difficult circumstances and that only the most devout and genuine believers would take such risks of living as Christians in Afghanistan. It thus found it strange that the author's parents had not told him more about Christianity. Furthermore, his responses to the questions about his Christian life in Afghanistan were found to be very brief and lacking in detail. While noting his young age at that time, the Agency considered that he, as a young adult, should be able to explain more about this upbringing based on his own perspective today. The Agency further observed that the author failed to explain anything about his thoughts or feelings regarding how it was to be different from other children in the area.

4.18 Furthermore, the State party notes the author's statement that he had no knowledge of Christianity during his time in Afghanistan or when he and his brother went to the Islamic Republic of Iran. The author also stated that he had obtained knowledge about Christianity by watching a film about Jesus at his workplace in the Islamic Republic of Iran. The Agency found this account implausible, given the status of Islam in that country. It also considered that the author failed to describe in a detailed and authentic way what drew him to Christianity and why he decided to explore the religion in Sweden. In this connection, the Agency took note of the author's statement that he had left the Islamic Republic of Iran to secure his future and obtain an education. Furthermore, the author's claim that his parents died because of their religion was deemed speculative, as he was not able to explain how he had obtained this information and he had never received any confirmation of their deaths.

4.19 In addition, the State party notes that the author's claim that the Migration Court's decision had been erroneous was not raised in his appeal to the Migration Court of Appeals. In his appeal, he only argued that the Migration Court's decision contained misunderstandings and errors without specifying what they were.

4.20 In conclusion, the State party notes that during the domestic asylum proceedings, the author's accounts were considered to be far too brief, too lacking in detail and too contradictory to be deemed a personal experience. Neither his account of his upbringing as a Christian in Afghanistan nor his account of wanting to live as a Christian in Sweden was considered reliable. The State party concludes that the author has failed to substantiate that his faith is based on genuine personal religious conviction or that, upon return to Afghanistan, he intends to practice Christianity. The State party therefore considers that the author's deportation would not constitute a violation of its obligations under articles 6 and 7 of the Covenant.

#### **Author's comments on the State party's observations on admissibility and the merits**

5.1 On 15 October 2018, the author submitted his comments on the State party's observations.

5.2 With regard to his claim under article 18, he concedes that article 18 does not have extraterritorial application, but he maintains his claims under articles 6 and 7.

5.3 The author reiterates that no new hearing was granted after the exhaustion of ordinary remedies and that he therefore never had a chance to orally substantiate all the

written evidence about his active Christian life in Sweden. While he was born into a Christian family, he did not initially have in-depth knowledge, and his faith was that of a child. However, the fact that his faith has evolved in Sweden and that his active Christian life exposes him to a risk of being perceived as an apostate has never been assessed by the migration authorities. Moreover, while his religious congregation was willing to testify for him, the migration authorities have not granted such an opportunity.

5.4 The author argues that the requirement to invoke new circumstances under chapter 12 of the Aliens Act is problematic, as it is often interpreted in a way that the circumstances cannot be related to the original asylum grounds. The migration authorities seem to interpret new circumstances as new grounds, thereby preventing asylum applicants from having their new claims assessed. The State party has been criticized for this practice, to no avail. In this regard, the author claims that his three years of active participation in church activities and religious practice were considered as a mere modification of his original asylum ground and thus were disregarded.

5.5 As concerns his assertion in his asylum application that he was a convert, the author contends that the person who was his counsel at that time submitted such a claim without his knowledge. He further claims that regardless of whether he is a convert or was born Christian, he would face a risk of persecution if returned to Afghanistan. In addition, he points out that the interpreters have noticed that both he and his brother have Christian names. He also asserts that the migration authorities acted arbitrarily when finding that no one could have lived as a Christian in Ghazni, although the Migration Agency has previously granted refugee status to other nationals of Afghanistan from this district on the basis of their Christian faith. Regarding the State party's statement that his conversion is unknown to the Afghan authorities, the author claims that the Swedish authorities should not request evidence as to whether the Afghan authorities are aware of his conversion or demand that he hide his religion in Afghanistan.

5.6 Regarding the "Christianity tests" conducted by the Swedish authorities, the author cites criticisms expressed by some Swedish lawyers and churches, which found the tests irrelevant and far too complicated and considered the migration authorities to be religiously illiterate. Furthermore, he claims that the authorities ignored the fact that he had created, as a self-defence mechanism, a certain emotional distance to his accounts about his parents, since it is a traumatic memory for him. He submits that his religion is deeply connected to his love and longing for his parents. He feels that he lost them because they were Christian and that his religion is all that he has left of them. He contends that the authorities failed to take into account this emotional and psychological aspect when assessing his asylum claim. Regarding the negative credibility finding based on his claim of having gained knowledge about Christianity by watching a film in the Islamic Republic of Iran, the author contends that there are many ethnic and religious minorities in that country and that the country's regime does not have any issue with Christianity. Lastly, the author states that during one of his asylum interviews, he hardly understood the interpreter who spoke a dialect different from his own.

5.7 The author submits that having a strong social network, a support system and cultural competence is crucial in Afghanistan, but he does not have any family or relatives. He has an accent from which Afghans can tell that he has lived abroad, and his non-participation in Muslim traditions will eventually reveal his Christianity. In addition, the human rights situation in his hometown, Ghazni, has deteriorated, as the Taliban control many parts of the city. The author considers that the State party is naive to believe the statement made by the Taliban, in which the group claims that ethnic Hazaras are their brothers. In view of the foregoing, the author claims that he would face a serious risk of persecution upon return.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in that connection, the Committee considers that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

6.4 Notwithstanding the State party's contention that article 18 does not have extraterritorial application, the Committee notes that the author merely invokes article 18 of the Covenant without advancing any arguments to support this claim. Therefore, the Committee considers that this claim is insufficiently substantiated for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.<sup>2</sup>

6.5 The Committee notes the State party's challenge to admissibility on the grounds that the author's claim under articles 6 and 7 of the Covenant is unsubstantiated. However, the Committee considers that, for the purposes of admissibility, the author has provided sufficient information in support of this claim that his deportation to Afghanistan would result in a risk of treatment contrary to articles 6 and 7 of the Covenant. Therefore, the Committee declares the communication admissible insofar as it raises issues under articles 6 and 7 and proceeds with its consideration of the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that returning him to Afghanistan would expose him to a real risk of irreparable harm, in violation of articles 6 and 7 of the Covenant. He claims that in Afghanistan, he would face persecution that is potentially life threatening, owing to his particular vulnerability related to his Christian faith, which has been publicized through social media, and his Hazara ethnicity. These factors are aggravated by the fact that he left Afghanistan at the age of 10 and does not have any family or network in the country, while the security situation is seriously worsening.

7.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.<sup>3</sup> The Committee has also indicated that the risk must be personal<sup>4</sup> and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>5</sup> Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>6</sup> The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists,<sup>7</sup> unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>8</sup>

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<sup>2</sup> The Committee also notes that the author did not maintain his claim in regard to article 18 as it concedes the State party's claim *ratione materiae*.

<sup>3</sup> Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

<sup>4</sup> *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3; *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2; *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2.

<sup>5</sup> *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

<sup>6</sup> *Ibid.* See also *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2.

<sup>7</sup> *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4; *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

<sup>8</sup> See, e.g., *K v. Denmark*, para. 7.4.

7.4 In the present case, the Committee notes that the State party's authorities considered that the author's accounts regarding his Christian parents, upbringing and faith were not credible and that he thus failed to substantiate that his conviction was genuine, despite the certificate of baptism and the letters of support from a Christian pastor. The Committee also notes the authorities' conclusion that the author has failed to substantiate that, in Afghanistan, he would risk persecution by the Afghan authorities because of his Christianity. In this connection, the Committee notes the author's view that the assessment of his claim regarding his Christianity was arbitrary, as the authorities disregarded the facts that, although he was born into a Christian family, he was a child when he lost his parents and that his faith was therefore that of a child, which has further evolved after his arrival in Sweden. In this regard, the Committee notes that the State party's authorities found that the author had failed to describe in a detailed and convincing manner how he had learned about Christianity in the Islamic Republic of Iran, and why he had decided to further explore Christianity upon his arrival in Sweden. The Committee also observes that the State party's authorities noted the author's statement that he had left the Islamic Republic of Iran to secure his future and obtain an education.

7.5 The Committee considers that, in any event, as concerns an asylum seeker's claim of conversion or religious conviction, the test is whether, regardless of the sincerity of the conversion or conviction, there are substantial grounds for believing that such conversion or conviction may have serious adverse consequences in the country of origin such as to create a real risk of irreparable harm, as contemplated by articles 6 and 7 of the Covenant. Therefore, even when it is found that the reported conversion or conviction is not sincere, the authorities should proceed to assess whether, in the circumstances of the case, the asylum seeker's behaviour and activities in connection with his or her conversion or conviction, could have serious adverse consequences in the country of origin so as to put him or her at risk of irreparable harm.<sup>9</sup>

7.6 In the present case, the Committee notes the finding of the Migration Agency that, while claiming a risk of harm in Afghanistan because of his Christian faith, the author failed to present sufficient evidence to substantiate his claim that his faith had attracted the attention of: the Afghan authorities through his texts on social media networks and his appearance in the Swedish media; the staff members of the Afghan Embassy in Stockholm; and other Afghan detainees in the migration detention centre. The Committee also finds that although the author contests the assessment and findings of the Swedish authorities, he has not presented any evidence to the Committee to substantiate his claim that he has been targeted by the Afghan authorities on the basis of his Christianity, or that his alleged Christianity is indeed known to the Afghan authorities.

7.7 The Committee considers that the information at its disposal demonstrates that the State party took into account all the elements available when evaluating the risk of irreparable harm faced by the author upon his return to Afghanistan. The Committee also considers that, while the author disagrees with the factual conclusions of the State party's authorities, he has not shown that the Migration Agency's decision of 30 December 2015 was arbitrary or manifestly erroneous, or that it amounted to a denial of justice.

7.8 The Committee recalls that the obligation not to remove an individual contrary to a State party's obligations under the Covenant applies at the time of removal and that, in cases of imminent deportation, the material point in time for assessing this issue must be that of its own consideration of the case.<sup>10</sup> Accordingly, in the context of the communications procedure under the Optional Protocol, in assessing the facts submitted by the parties for consideration, the Committee must also take into account new developments that may have an impact on the risks that an author subject to removal may face. In the present case, the information in the public domain has signalled a significant deterioration

<sup>9</sup> *S.A.H. v. Denmark* (CCPR/C/121/D/2419/2014), para. 11.8. See also European Court of Human Rights, *F.G. v. Sweden* (application no. 43611/11), judgment of 23 March 2016, para. 156.

<sup>10</sup> See, e.g., *S.Z. v. Denmark* (CCPR/C/120/D/2625/2015), para. 7.9.

of the situation in Afghanistan in recent times.<sup>11</sup> However, on the basis of the information in the case file, the Committee is not in a position to assess the extent to which the current situation in his country of origin may impact the author's personal risk. In this context, the Committee recalls that it remains the responsibility of the State party to continuously assess the risk that any individual would face in case of return to another country before the State takes any final action regarding his or her deportation or removal.

7.9 While not underestimating the concerns that may legitimately be expressed with respect to the general human rights situation in Afghanistan, and without prejudice to the continuing responsibility of the State party to take into account the present situation of the country to which the author would be deported, the Committee considers that the evidence and circumstances invoked by the author have not adduced sufficient grounds for demonstrating that he would face a real and personal risk of treatment contrary to articles 6 and 7 of the Covenant if returned to Afghanistan.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's forcible return to Afghanistan would not be a violation by the State party of articles 6 and 7 of the Covenant.

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<sup>11</sup> See, e.g., Samuel Hall, Norwegian Refugee Council and Internal Displacement Monitoring Centre, *Escaping War: Where to Next? A Research Study on the Challenges of IDP Protection in Afghanistan* (Oslo, 2018).

## Annex

### Individual opinion of Committee member Gentian Zyberi (dissenting)

1. I regret I cannot join the Committee in its assessment for the following reasons. First, although most cases brought before the Committee by nationals of Afghanistan involve their conversion to Christianity after their departure from the country as a reason for their potential persecution and risk upon return, in this case the author claims he was raised as a Christian since childhood in Afghanistan. Second, the application of the “genuine conversion” test presents significant challenges, as it is generally very difficult to assess whether a person is genuinely interested in the activity in question, be it a political cause or a religion, or whether the person has only become involved in it in order to create post-flight grounds.<sup>1</sup> The issue of assessing whether there is genuine interest is even more difficult in this case. Third, ethnic Hazaras were persecuted by the Taliban in the period 1996–2001,<sup>2</sup> and the Taliban are likely to return to power in Afghanistan.<sup>3</sup> The above-mentioned issues are aggravating factors to the possibility of a real and foreseeable risk of irreparable harm to the author being inflicted by a prominent non-State actor and soon-to-be State authority. As a real or perceived Christian of Hazara ethnicity, the author cannot count on protection either from the State authorities or from his own Hazara community. Fourth, the case involves a young adult who: has little if any formal education; has no family or network in Afghanistan, since he has lived most of his life outside of the country; is a Christian; and is from the Ghazni province, where the security situation is rather precarious.<sup>4</sup> The combination of these personal circumstances increases the likelihood of the violation of articles 6 and 7 of the Covenant with respect to the author, if he were returned.

2. In asylum procedures, the burden of proof lies on the person submitting a claim.<sup>5</sup> However, after the applicant has made a genuine effort to substantiate his or her story, there may still be a lack of evidence for some of the statements. Since it is hardly possible for a refugee to prove every part of his or her case, it is frequently necessary to give the applicant the benefit of the doubt.<sup>6</sup> It is an understatement to say that the accounts of the author and the relevant Swedish authorities differ widely (see para. 7.4). How could a national of Afghanistan, who had fled the country as a minor, provide proof of his age and identity and of what happened to his parents? And should the Swedish authorities, better placed and resourced with access to Afghan authorities, have tried to establish these basic facts? The author’s father worked for the Provincial Reconstruction Team. These were civil-military units, which were introduced by the Government of the United States of America to support reconstruction efforts in unstable States. The units were established in Afghanistan in early 2002. Could other reasonable inferences have been drawn from these facts regarding the family’s religious conviction, as well as the reasons for the targeting of the author’s family by the Taliban? The practice of medically establishing a person’s age, which was carried

<sup>1</sup> European Court of Human Rights, *F.G. v. Sweden* (application no. 43611/11), judgment of 23 March 2016 (Grand Chamber), para. 123.

<sup>2</sup> For the persecution of the Hazaras, see Landinfo, “Report: Hazaras and Afghan insurgent groups”, (3 October 2016), p. 11, stating that “Hazaras and other ethnic groups suffered serious abuse under the reign of the Taliban from 1996 to 2001.”

<sup>3</sup> For the potential foreseeable return of the Taliban to power in Afghanistan, reference is made to the agreement between the Government of the United States of America and the Taliban, signed in Doha on 29 February 2020.

<sup>4</sup> European Asylum Support Office, *Country of Origin Information Report: Afghanistan Security Situation (June 2019)*, pp. 130–131. Of the 19 districts in Ghazni province, 12 are under the control of the Taliban. Available at [www.ecoi.net/en/file/local/2010329/Afghanistan\\_security\\_situation\\_2019.pdf](http://www.ecoi.net/en/file/local/2010329/Afghanistan_security_situation_2019.pdf).

<sup>5</sup> Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (HCR/IP/4/Eng/Rev.1), para. 196.

<sup>6</sup> *Ibid.*, para. 203.

out by the National Board of Forensic Medicine, has since been discontinued. Moreover, its report on the author also notes that there was a 16 per cent chance he was 16 years old.

3. It is not contested that Christians or converts who return to Afghanistan run a real risk of persecution and punishment, including the death penalty, under the Afghan legal system, and that the security situation in Afghanistan has seriously deteriorated.<sup>7</sup> In addition, it is not contested that ethnic Hazaras in Afghanistan are subjected to discrimination and occasionally subjected to targeted attacks and that persons who have no network in or knowledge of the country would be in a vulnerable position. The author falls in all of these vulnerable categories. Considering the above-mentioned facts, including that the author has openly expressed his Christian faith on social networks and was subjected to exposure through national Swedish media while participating in church services, and also considering that the staff of the Afghan Embassy in Stockholm are aware of his Christian faith, it is highly possible his identity and Christianity would come to the attention of Afghan authorities and individuals. In my view, the author's vulnerability profiles combined with other multiple risk-enhancing circumstances would have serious adverse consequences in the country of origin so as to put him at risk of irreparable harm. In this case, the migration authorities seem to have assessed each ground for protection the author alleged separately, but did not consider that the combined grounds aggravate the risk of the author even though he has multiple vulnerability profiles.<sup>8</sup>

4. States parties should give sufficient weight to the real and personal risk that a person might face if deported, and it is incumbent upon the concerned State party to undertake an individualized assessment of the risk that the author, with multifaceted vulnerability, would face in Afghanistan. The risk the author would face if returned to Afghanistan is exacerbated by the fact that he has no family or relatives in that country, which he has not visited since he left there at the age of 10.<sup>9</sup>

5. In view of the above, the Swedish authorities have failed to adequately assess the author's real, personal and foreseeable risk of returning to Afghanistan as a perceived Christian with additional risk-enhancing factors, and to take into due consideration the consequences of the author's personal situation in his country of origin. Hence, the author's removal to Afghanistan would, if implemented, violate his rights under articles 6 and 7 of the Covenant.

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<sup>7</sup> See European Asylum Support Office, Country of Origin Information Report: Afghanistan Security situation (June 2019). In the "Afghanistan 2018 International Religious Freedom Report" by the United States Department of State, it is reiterated that "Conversion from Islam to another religion is considered apostasy, which is punishable by death, imprisonment, or confiscation of property according to the Sunni Islam's Hanafi school of jurisprudence". It is also noted that: "There were no reports of government prosecutions for blasphemy or apostasy during the year, but converts from Islam to other religions reported they continued to fear punishment from the government as well as reprisals from family and society".

<sup>8</sup> *A.Q. v. Sweden* (CCPR/C/127/D/3070/2017), para. 9.6.

<sup>9</sup> *Ibid.*, para. 9.7.