



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 55/2018*, **

Communication submitted by: K.S. (represented by counsel, Valida Cicen, of the Swedish Refugee Law Centre)

Alleged victim: The author

State party: Sweden

Date of communication: 22 September 2018 (initial submission)

Date of adoption of decision: 26 August 2022

Substantive issue: Removal to Afghanistan

1. The author of the communication is K.S., a national of Afghanistan who claims to have been born in 1999. He claims to be the victim of violations by the State party of articles 15, 16, 22, 25, 26 and 27 of the Convention. The Optional Protocol entered into force for the State party on 14 January 2009. The author is represented by counsel.

2. On 5 August 2015, the author applied for asylum in Sweden. On 25 August 2016, during an interview with the Swedish Migration Board, the author informed the Board about the daily harassment and abuse he had suffered at the hands of the Taliban. However, he was unable to elaborate on the systematic rape to which he had been subjected between the ages of 11 and 14. The author submits that his reaction during the interview was due to cultural barriers preventing stigmatized boys from talking about sexual assault in Afghanistan. Owing to the unavailability of interviewers familiar with such traumas, he had had no chance to explain his situation. As a result, the Swedish Migration Board rejected his asylum application on the basis that his story was not considered credible. The Board also considered that there was conflicting information in relation to his real age. It did not order an age-assessment proceeding to be conducted but instead considered that the author had been born on 4 August 1998 and could be considered as an adult in the asylum proceedings and not as a child.

3. On 6 April 2017, the Migration Court rejected the author's appeal. The Court considered that the author would be in need of protection if he were returned to Parwan, but that he could remain in Herat, where the specialized medical and psychological support he needed was available. On 13 June 2017, the Migration Court of Appeal refused leave to appeal and the decision to expel the author became final and not appealable.

* Adopted by the Committee at its twenty-seventh session (15 August–9 September 2022).

** The following members of the Committee participated in the consideration of the communication:
Rosa Idalia Aldana Salguero, Danlami Umaru Basharu, Gerel Dondovdorj, Gertrude Oforiwa Fefoame, Vivian Fernández de Torrijos, Mara Cristina Gabrilli, Amalia Eva Gamio Ríos, Samuel Njuguna Kabue, Rosemary Kayess, Kim Mi Yeon, Abdelmajid Makni, Sir Robert Martin, Floyd Morris, Jonas Ruskus, Markus Schefer and Saowalak Thongkuay.



4. The author submits that his psychological situation deteriorated afterwards. He suffered from depression and experienced flashbacks from the previous trauma. As a consequence of his depression, the author renounced Islam and became an atheist.

5. On 22 November 2017, the Swedish Migration Board announced a new review to consider his application for a residence permit. The author claimed that, since 4 October 2017, he had been hospitalized in the Department of Psychiatry of Säter Hospital. The Chief Physician, S.V., assessed his situation and concluded that the author's psychological and mental situation was of serious concern. The author made several suicide attempts, including while in hospital.

6. On 2 March 2018, the Swedish Migration Board rejected the author's application and questioned his intellectual and psychosocial impairment, despite statements by psychiatrists and psychologists, as well as evidence regarding his atheism.

7. On 9 April 2018, the author appealed the decision of the Swedish Migration Board before the Migration Court. The author's application was rejected. On 8 June 2018, the Migration Supreme Court also rejected his appeal.

8. The author claimed that his removal to Afghanistan would breach his rights under articles 15, 16, 22, 25, 26 and 27 of the Convention, given the absence of medical facilities adapted to his needs in that country. The author also claimed that the risks he would face in case of return to Afghanistan could be directly linked to his alleged intellectual and mental disability. He supported his claim by relying on a report by the Office of the United Nations High Commissioner for Refugees in which it is indicated that, in Afghanistan, "persons with disabilities, including in particular persons with mental disabilities, and persons suffering from mental illnesses are reportedly subjected to ill-treatment by members of society, including their own family members, on the grounds that their illness or disability is a punishment for sins committed by the persons affected or by their parents".¹ The author claimed that, if he were to be returned to Afghanistan in his current situation, he would be subjected to ill-treatment by society as it would be believed that his mental health condition was a punishment for sins that he or his parents had committed or that it was caused by an "offence against God".

9. On 2 October 2018, the Committee, acting through its Special Rapporteur on communications, decided to register the communication and to grant interim measures by requesting the State party not to remove the author to Afghanistan while his case was under consideration.

10. In its observations dated 7 June 2019, the State party submitted that the communication was inadmissible *ratione materiae* and *ratione loci* and owing to non-exhaustion of domestic remedies. The State party also submitted that the communication was insufficiently substantiated and that it was without merit. The State party observed, *inter alia*, that the decision to expel the author would become statute-barred on 13 June 2021. On 17 August 2019, the author submitted his comments on the State party's observations on the admissibility and the merits of the communication.

11. At a meeting on 26 August 2022, the Committee took note of the legal position paper on Afghanistan of the State party's Migration Agency dated 30 November 2021, according to which the situation in Afghanistan had changed to such an extent that no effective protection could be obtained from the Afghan authorities and an internal protection alternative was available only in exceptional cases, thus justifying the granting of a new examination of the author's case. On this basis, and observing that the author no longer risked being expelled to Afghanistan, the Committee concluded that the subject matter of the communication had become moot and decided to discontinue the consideration of communication No. 55/2018.

¹ UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan* (Geneva, 2018), p. 80.