



# 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. 677/2015\*, \*\*

<i>Submitted by:</i>	A.N.M. (represented by counsel, Helen Westlund)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	9 July 2014 (initial submission)
<i>Date of decision:</i>	5 May 2017
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Procedural issue:</i>	Level of substantiation of the complaint
<i>Substantive issues:</i>	Risk of torture
<i>Article of the Convention:</i>	Article 3

1.1 The complainant is A.N.M., an Afghan national born on 30 September 1995<sup>1</sup> and subject to a deportation order from Sweden to Afghanistan. He claims that his deportation would constitute a violation by Sweden of his rights under article 3 of the Convention. The complainant is represented by counsel.

1.2 On 1 May 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to issue a request for interim measures under rule 114 (1) of the Committee's rules of procedure and requested the State party not to deport the complainant to Afghanistan while the complaint was being considered by the Committee.

#### Factual background

2.1 The complainant is a Shia Muslim of Hazare ethnicity from Jangalak village in the Afghan province of Ghazni. On an unspecified date, as he was bringing apples to be sold at the market in Kabul with his father, the complainant was approached by a Farsi-speaking Iranian man, who offered him a job. The job was to distribute secretly 12 pamphlets, each containing about 70 pages of the Bible, and nine DVDs, also with biblical content, among his acquaintances, which the complainant agreed to do. The complainant distributed all the pamphlets and DVDs within one day. He then contacted the Iranian man to obtain more copies, and he travelled to Kabul to collect the material. However, as his activity became

\* Adopted by the Committee at its sixtieth session (18 April-12 May 2017).

\*\* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu and Kening Zhang.

<sup>1</sup> This is the date provided by the complainant, which differs from the date on his Afghan identity document (see para. 2.3 below).



known, the village imam reported the complainant to the police in Ghazni.<sup>2</sup> Subsequently, the complainant fled his village and, with the Iranian man's assistance, he was smuggled out of Afghanistan.

2.2 On an unspecified date, the complainant arrived in Sweden, and on 21 May 2013 he applied for asylum.<sup>3</sup> On 30 September 2013, the Swedish Migration Agency rejected his application. The Agency found that the complainant's allegations lacked credibility, in particular those related to the distribution of biblical pamphlets and DVDs and to his departure from Afghanistan. The Agency concluded that the complainant would not be at risk of being subjected to ill-treatment on account of his faith or ethnic group if returned to Afghanistan, and that "an internal refuge in the cities of Kabul, Mazar-e-Sharif or Herat would be available to the complainant".

2.3 Although the complainant had claimed to be 17 years old when he applied for asylum, the Agency, after several interviews with him, had found grounds to question his age. Therefore, a dental X-ray had been taken, which had determined that the complainant was at least 19.2 years old. However, there was a 16-per-cent chance, according to the test, that the complainant was under 18.2 years of age. The complainant had submitted an Afghan identity document, according to which he had been born on 1 Jawza 1375 (21 May A.D. 1996). The document had been issued on 28 Sunbula 1388 (19 September A.D. 2009) when the complainant had sought hospital care.<sup>4</sup> However, the Agency considered that the document was "of a very simple nature and had low probative value".

2.4 On 10 December 2013, the Stockholm Migration Court quashed the decision of the Agency. The Court considered that, while the complainant had not plausibly demonstrated his age, the Agency had not investigated thoroughly enough to conclude with a probability of 95 per cent that he was an adult. The complainant's dental X-ray was deemed insufficient in that regard; a skeletal X-ray was also considered necessary. The case was therefore referred back to the Agency.

2.5 On 22 January 2014, the complainant informed the Agency that he had converted to Christianity and attached a baptism certificate dated 6 December 2013 and a membership certificate from the Church of Jesus Christ of Latter-day Saints (also known as the Mormon Church).

2.6 On 7 May 2014, the Agency again rejected the complainant's application. The Agency found that the complainant's description of his reasons for converting to Christianity was very vague and that, despite being a literate man, he was unable to identify any difference between the two religions or to compare how he lived as a Christian with how he had lived as a Muslim. The Agency therefore concluded that his conversion had not been for genuine religious reasons, but formed part of an attempt to obtain a residence permit. The Agency also considered that there was no reason to suggest that the complainant's conversion had been brought to the attention of the Afghan authorities or that he would otherwise face a risk of religious persecution upon return. While noting that the complainant's province in Afghanistan was affected by an internal armed conflict, the Agency concluded that the complainant had not demonstrated the existence of an individual threat in his home village. With regard to the determination of the complainant's age, the Agency requested X-rays of the complainant's wrists from the Västmanland County

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<sup>2</sup> According to the decision of the Swedish Migration Agency dated 30 September 2013, when the complainant had returned to his village, his close friend had come to his house and informed him that villagers had gathered in the mosque; the imam, who was related to the complainant, had stated that what the complainant had done was insulting to Islam and that he had to be captured and punished. The complainant had then travelled to Kabul and asked Ramin (the Iranian man who had contacted him) to go to Jangalak to explain that the complainant was working for him. Ramin had "sent some people to Jangalak to find out what was happening". Those people had informed the complainant that "someone with the same name as the complainant's father had been taken away by local authorities and that the situation was not good". Ramin had then taken the complainant to a smuggler and paid for him to be "taken to a safe place".

<sup>3</sup> According to the decision of the Swedish Migration Agency dated 30 September 2013, the complainant had travelled for six months before arriving in Sweden.

<sup>4</sup> According to the decision of the Swedish Migration Agency dated 30 September 2013.

Council. However, this institution responded that it would not issue referrals for age determination, as it was awaiting new instructions from the National Board of Health and Welfare. In January 2014, the contract for medical age evaluations was signed by the National Board of Health and Welfare. However, the institution had no appointment available. The Agency considered that it was not in the complainant's interests to await this process. Additionally, the time elapsed since the dental test — 10 months — had to be added to the complainant's estimated age. The Agency considered that it had applied due diligence to determine the complainant's age and that, even according to his identity document, he was an adult.

2.7 The complainant appealed the decision by the Agency, reiterating his previous submissions and adding that "some individuals, who had previously threatened him in Sweden due to his newly acquired faith, had now returned to Afghanistan and therefore, his conversion had become known to Afghan authorities". On 4 September 2014, the Stockholm Migration Court rejected the complainant's appeal. The Court considered that no circumstances had emerged to suggest that anyone having returned to Afghanistan had shared any information about the complainant with provincial Afghan authorities, and concluded that the complainant's new allegations were not sufficient to consider that he had plausibly demonstrated his need for international protection. On 29 October 2014, the Migration Court of Appeal rejected the complainant's request for leave to appeal.

### **The complaint**

3. The complainant claims that, if returned to Afghanistan, he would risk being killed or tortured in violation of article 3 of the Convention owing to his conversion to Christianity. He submits that returnees who have converted from Islam are persecuted upon return to Afghanistan and that the Afghan authorities are unable to offer any reasonable protection. He challenges the manner in which the authenticity of his religious beliefs was assessed by the Swedish authorities and notes the difficulty of determining the genuineness of a person's belief. He notes that, since his conversion on 30 November 2013, he has been a practising Christian; he has attended religious services every Sunday and participated in Bible studies two days a week. He adds that he was already interested in religious issues before leaving Afghanistan and that, while in Sweden, he learned more about Christianity and developed his faith.

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

4.1 In its submission dated 23 October 2015, the State party claims that the complaint is manifestly unfounded and therefore inadmissible under article 22 (2) of the Convention.

4.2 The State party also contends that the complaint is without merit. With regard to the complainant's alleged activities in Afghanistan, the State party notes that domestic proceedings concluded that his allegations of his activities in distributing biblical material in his home village were vague and generic. The complainant had also failed to justify why he had agreed to distribute the material, in the light of the existing conflicts between Islam and other religions in his province and throughout Afghanistan. Additionally, domestic courts found it implausible that the complainant had distributed the biblical material in his home village without anyone reacting negatively and that, on the contrary, the complainant had asked his contact for more material to distribute. The State party finds it implausible that there would be a demand for biblical material in the complainant's home village, given the serious risk run by any person in possession of biblical writings of being identified as a Christian. The State party further notes the discrepancy in the complainant's account relating to whether he had watched the DVDs with biblical content that he had distributed. In his submission to the Migration Board of 22 August 2013, he stated that he had not been able to watch the DVDs because his family had no electricity at home whereas, in his request for leave to appeal filed on 1 October 2014, he submitted that he had watched the DVDs. The State party concludes that there are serious reasons to question the complainant's credibility concerning his alleged activities in distributing religious material in Afghanistan. Therefore, the State party submits that the complainant has failed to demonstrate the existence of a threat against him in Afghanistan.

4.3 As to the complainant's conversion to Christianity in Sweden, the State party notes that, in assessing whether conversions are genuine, migration courts resort to the Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, published by the Office of the United Nations High Commissioner for Refugees in 2011. According to the Handbook and Guidelines, the question of determining whether events occurring after the individual's departure from the country of origin are sufficient to justify a well-founded fear of persecution must be decided on the basis of a diligent examination of the facts of the case, paying particular attention to the possibility that the conversion may come to the attention of the authorities of the country of origin. In cases where the conversion is invoked shortly after the asylum decision becomes final, particular attention is paid to the credibility of the statements concerning the conversion.

4.4 In the present case, both the Agency and the Migration Court diligently assessed whether the complainant's alleged conversion was genuine and reached the conclusion that the complainant lacked credibility on this issue. The State party notes that the complainant did not mention that he had an interest in Christianity, either during the asylum investigation on 18 June 2013 or in his written submission to the Agency dated 27 August 2013 or even in his appeal on 29 October 2013. It was not until 22 January 2014 that the complainant brought his conversion to the Agency's attention and attached a certificate dated 6 December 2013. Also, it was not until his appeal against the Migration Court judgment lodged on 1 October 2014 that the complainant stated that he had questioned Islam as early as the age of 14, even though he had had numerous opportunities to raise the issue before. The State party also notes that, even though the complainant is a literate man, his answers were very vague, both when he was asked about the reasons for his conversion and when he was asked about the effects of this conversion on his life. Finally, the Agency and Court concluded that there were no grounds or evidence to support the assertion that the complainant's conversion to Christianity in Sweden would have been brought to the attention of the Afghan authorities or anyone else in Afghanistan. On the contrary, the complainant's fears that "people who had returned to Afghanistan would have shared information about his conversion with Afghan authorities" were mere speculations.

#### **Complainant's comments on the State party's observations**

5.1 In his submission dated 29 January 2016, the complainant notes that, although neither the Afghan Constitution nor the Criminal Code make specific references to religious conversion, under some interpretations of Islamic law converting from Islam is deemed apostasy, and converts could be given three days to recant or might face, among other punishments, the death sentence.<sup>5</sup> The complainant notes that the Swedish migration authorities have acknowledged that the complainant has converted and that conversions from Islam may entail a death sentence in Afghanistan. In that regard, the complainant argues that his conversion is, in itself, enough for the Afghan authorities to issue a death sentence and that it is highly unlikely that these authorities will make any assessment to determine whether the conversion was genuine or not.

5.2 As to the assessment of the genuine nature of his conversion, the complainant notes that he has submitted as evidence strong testimonials from two senior representatives of the Mormon Church, who confirmed the sincerity of his conversion. However, this was not duly taken into account by national authorities, who focused on determining his age rather than on the reasons for his asylum application. He notes that his answers to the Swedish authorities were clear in stating that he understood Islam as "war and hate" and Christianity as "love" and that the new faith brought him "calmness in his life", which is a very clear and positive answer from a religious perspective. However, he cannot be sure how the interpreters translated the questions addressed to him, in particular where interpreters might have a different religious background. In this regard, the Swedish authorities should have used sworn interpreters. Also, no oral proceeding was held before the Migration Court; it is very difficult for this court to assess the seriousness of his conversion without hearing him.

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<sup>5</sup> The complainant cites the *International Religious Freedom Report for 2013* of the Department of State of the United States of America.

As to the timing of his conversion, he claims that he was baptized on 30 November 2013, namely, five months before the adoption of the final decision of the Migration Court ordering his expulsion. The first opportunity he had to inform the Swedish authorities about his conversion was through his submission of 22 January 2014. Finally, the complainant asserts that the argument by Swedish authorities that the complainant's conversion has not been brought to the attention of the Afghan authorities is not well-founded. He notes that he was held with other Afghans who have subsequently been returned to Afghanistan. Since a conversion is a major event in Afghan culture, a rumour is likely to spread.

5.3 As to the complainant's activities in Afghanistan, he notes that he was very young when he was offered the job of distributing biblical material, and he had only attended school for two years. He had thought that the activity would go unnoticed, even though it was contrary to Islam.

#### **State party's additional observations**

6.1 In its submission dated 7 March 2016, the State party challenged the assertion that the complainant's conversion was enough to entail a risk of death upon his return without needing to determine the genuineness of his conversion. The State party notes that the question of determining whether the complainant's conversion is based on a genuine religious conviction is linked to the assessment of his intention of living in Afghanistan as a convert. In this regard, the complainant has failed to establish that he has the intention of living as a convert in Afghanistan or that his religious activities in Sweden have come to the attention of the Afghan authorities.

6.2 The State party notes that the complainant has not substantiated the assertion that domestic proceedings were flawed in such a manner that it could have affected the assessment of his need for protection. On the contrary, his claims were thoroughly examined.

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

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

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it 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 the State party has not contested that all available domestic remedies have been exhausted in the present case and concludes that this requirement has been met.

7.3 The Committee takes note of the fact that the State party questions the complainant's credibility concerning his activities in Afghanistan, as well as the genuineness of his conversion to Christianity while in Sweden, and the fact that the State party argues that the complaint is insufficiently substantiated and therefore inadmissible.

7.4 The Committee notes the complainant's argument that he would face a risk of torture or death if returned to Afghanistan based on his conversion to Christianity in November 2013. The complainant has also challenged the assessment by Swedish authorities of the genuine nature of his conversion, and the relevance of such assessment for determining the risk of an article 3 violation. The Committee observes, however, that the complainant's grounds for seeking asylum were initially based on his past activities in Afghanistan, namely distributing biblical material, and that his conversion to Christianity was only raised before Swedish authorities in January 2014. In this regard, the Committee notes the State party's argument that determining the genuine nature of the complainant's conversion was necessary to determine the complainant's intention of living in Afghanistan as a convert, and therefore, the risk of persecution upon return. That determination was particularly relevant in the light of the circumstances in which the conversion occurred, namely, in the context of asylum proceedings.

7.5 The Committee notes the State party's statement that it was not until the complainant's appeal against the Migration Court judgment lodged on 1 October 2014 that he stated that he had questioned Islam as early as at age 14, even though he had had various opportunities to raise the issue earlier; that, even though the complainant is a literate man, his answers were very vague as to the reasons for his conversion and the effects of the conversion on his life; that he did not express his intention of living in Afghanistan as a convert; and that there were no grounds or evidence to support the complainant's allegations that his conversion would have been brought to the attention of Afghan authorities. The Committee further notes that the author argued, *inter alia*, that he had not appeared in person before the Migration Court; and that he had been living with other Afghans, now returned to Afghanistan, who had learned about his conversion.

7.6 The Committee observes that the Swedish Migration Court thoroughly examined the complainant's allegations and evidence regarding his conversion and the general situation of converts in Afghanistan, but concluded that the complainant lacked credibility with regard to the genuine nature of his conversion and that there was no evidence that such conversion would have come to the attention of the Afghan authorities. The Committee observes that the complainant has failed to submit convincing arguments to show that the assessment by the Swedish authorities of the facts and evidence he presented was arbitrary. Furthermore, the complainant's claim that his conversion in Sweden would have come to the attention of the Afghan authorities is speculative, as it is not based on specific facts. Therefore, the Committee considers that, for the purpose of admissibility, the complainant has failed to substantiate the existence of a personal risk of violation of article 3 of the Convention in the case of his return to Afghanistan.

7.7 The Committee concludes, in accordance with article 22 of the Convention and rule 113 (b) of its rules of procedure, that the complaint is manifestly unfounded.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22 of the Convention;
- (b) That the present decision shall be transmitted to the State party and to the complainant.

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