



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. 1000/2020* **

<i>Communication submitted by:</i>	P.S. (represented by counsel, Stig-Ake Petersson)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	23 February 2020 (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 24 April 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	12 November 2021
<i>Subject matter:</i>	Deportation to Uganda
<i>Procedural issue:</i>	Admissibility – manifestly ill-founded
<i>Substantive issue:</i>	Risk of torture or other cruel, inhuman or degrading treatment or punishment, if deported to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is P.S., a national of Uganda born in 1998. His request for asylum in the State party was rejected and he risks forcible removal to Uganda. He claims that the State party would violate his rights under article 3 of the Convention if it removed him to Uganda. 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 24 April 2020, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to issue a request for interim measures under rule 114 of the Committee's rules of procedure.

Factual background

2.1 The complainant applied for asylum in Sweden on 14 August 2014. As his grounds for asylum, he cited his sexual orientation.¹ It appears from the court documents that he claimed that his uncle, with whom the complainant stated he had grown up after his parents

* Adopted by the Committee at its seventy-second session (8 November–3 December 2021).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Erdoğan İşcan, Liu Huawen, Ilvija Pūce, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.

¹ The complainant failed to submit more information regarding his circumstances in Uganda or the reasons for his flight to Sweden.



had allegedly died, had caught the complainant having sex with another man. The complainant stated that on that occasion, his uncle and several bystanders who had gathered around their home had beaten him and threatened to kill him, but that he had managed to escape the mob before the police arrived. The complainant submits that after this incident, he travelled to Sweden with the help of his partner's friend.² On 14 March 2017, the Swedish Migration Agency rejected his application for lack of credibility and decided to return him to Uganda. The decision was appealed to the Migration Court, which rejected the appeal on 2 October 2017. On 19 December 2017, the Migration Court of Appeal refused leave to appeal and the decision to return the complainant became final and non-appealable.

2.2 The complainant subsequently applied to the Swedish Migration Agency for a residence permit, citing impediments to the enforcement of the expulsion order. He was allegedly informed by an acquaintance that he had appeared in a newspaper article dated 6 May 2017 with his name and picture, in which it was reported that he had had a homosexual relationship. He stated that he was wanted in Uganda. He had received two copies of the newspaper that he submitted to the Swedish Migration Agency. On 5 December 2018, the Agency decided not to grant the complainant a residence permit pursuant to chapter 12, section 18, of the Aliens Act, or a new examination under chapter 12, section 19. That decision was appealed to the Migration Court, which on 16 January 2019 decided to grant the complainant's request for a fresh examination and referred the case back to the Swedish Migration Agency. On 30 April 2019, the Agency decided not to grant the complainant a residence permit, as the newspaper article had been found to have been fabricated. The decision was appealed to the Migration Court, which rejected the appeal on 28 November 2019. On 2 January 2020, the Migration Court of Appeal refused leave to appeal.

Complaint

3.1 The complainant alleges that his deportation by the State party to Uganda would amount to a violation of his rights under article 3 of the Convention. In Uganda, he would face a risk of torture or inhumane and degrading treatment on the ground of his sexual orientation, which is widely known in his country of origin owing to the publication of the newspaper article. He submits that the newspaper, *Red Pepper*, is the "official persecutor" of the gay community in Uganda and regularly publishes pictures of homosexual individuals in order to expose them to the public.

3.2 He argues that in Uganda, disclosing someone's sexual orientation has severe consequences such as persecution, violence, expulsion from villages and torture. Sections 145 to 147 of the Criminal Code criminalize "unnatural offences", which encompass sexual relations between same-sex individuals, which carry a maximum penalty of life imprisonment. He alleges that he faces a risk of ill-treatment, contrary to article 3 of the Convention, by the authorities, his father and other relatives.³

State party's observations on admissibility and the merits

4.1 On 11 December 2020, the State party submitted its observation on admissibility and the merits of the communication. The State party refers to its relevant domestic legislation and points out that the authorities considered the complainant's case in accordance with the Aliens Act of 2005 and article 3 of the Convention. It recalls the facts on which the communication is based, as well as the complainant's claims.

4.2 The State party does not contest that the complainant has exhausted domestic remedies. It submits that the communication should be declared inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure, because the complainant's claim that his expulsion to Uganda would amount to a breach of article 3 of the Convention fails to achieve the minimum level of substantiation. In the event that the

² Details of the circumstances of the complainant's arrival in Sweden are provided in the State party's submission (para. 4.5 below).

³ The complainant does not provide information about his parents in his complaint. Nevertheless, given that he refers to fearing ill-treatment by his father because of his homosexuality, he seems to contradict the narrative he presented in the domestic proceedings regarding his parents' death.

Committee declares the communication admissible, it should find that the complainant's expulsion to Uganda would not constitute a breach of the Convention.

4.3 According to the State party, the assessments by the Swedish Migration Agency and the Migration Court reveal that they thoroughly examined the complainant's oral and written submissions. The State party recalls that the Committee has previously held that it is for the courts of States parties, rather than for the Committee, to evaluate facts and evidence, unless the courts' evaluation is clearly arbitrary or amounts to a denial of justice. In the case at hand, there is no reason to conclude that the assessments made by the State party's authorities of the complainant's claim for international protection were arbitrary or amounted to a denial of justice. The assessments must therefore be accorded considerable weight.

4.4 Regarding domestic procedures, the State party submits additional information, noting that the complainant also applied for a residence permit on the grounds of his secondary school studies. Nevertheless, both of his applications were rejected by the Swedish Migration Agency, on 25 January 2018 and 1 December 2018, respectively.

4.5 The State party submits that the complainant has not shown that he personally faces a real risk of ill-treatment contrary to article 3 of the Convention upon his return to Uganda since the domestic authorities found that he had not substantiated his claim regarding his sexual orientation. Although he was given the opportunity to respond to questions regarding his feelings and thoughts about his cited homosexuality, his replies were deemed scant and contained contradictory information. In particular, during his asylum interview, the complainant stated that his parents had died in a car accident when he was 4 years old and that he had never had any identity documents. However, the visa materials obtained by the Swedish Migration Agency indicate that the complainant holds a passport that was issued prior to him starting the alleged relationship with his partner. It also appears from those documents that he applied for and was granted a Schengen visa to take part in football tournaments in Denmark and Norway. Both his parents signed his visa application and consented to him travelling to Europe with Kent Sports Academy. According to an itinerary, he landed in Denmark on 20 July 2014, but applied for asylum only three weeks later in Sweden. The migration authorities therefore deemed that his oral account was incompatible with the information in the visa materials and considered that he had not been able to explain the contradictions in a satisfactory manner. Furthermore, he provided contradictory information about his alleged sexual relationship with his partner. It appears from the court documents that the complainant stated during his interview that his uncle knew about the alleged relationship and was grateful to the complainant's partner for financing his nephew's schooling. The authorities therefore held it unlikely that the complainant's uncle would have reacted with such anger in the situation cited in paragraph 2.1 above. Likewise, it was deemed implausible that his trip had been paid for by his partner's friend, whom he hardly knew, while his partner was left behind without any support. The authorities also questioned why, despite being wanted by the police, the complainant was able to leave Uganda legally, using his own identity documents.

4.6 Regarding the second set of proceedings, the State party recalls that the newspaper article containing information about the complainant's alleged sexual orientation was considered to be a new circumstance, which required a new examination of the complainant's case. Furthermore, since the complainant was a minor at the time of the first asylum hearing, the Swedish Migration Agency gave him another opportunity to account for his thoughts, feelings and reflections with regard to his sexual orientation during a new interview held on 21 March 2019. However, the domestic authorities found that the complainant failed to express his reflections regarding his sexual orientation in a way that would suggest that he had experienced them himself. The migration authorities found that the inaccuracies and discrepancies that appeared in the submitted copies of the newspaper article were such that they called into question the article's authenticity. Furthermore, the complainant failed to explain why the article had been published three years after the alleged incident. The information he provided on how he had obtained the newspaper from his acquaintance was vague and he failed to share an online link or verify in any way that the article was genuine. Therefore, its probative value was deemed extremely low and it was not accepted in support of the complainant's claim regarding his sexual orientation or the newly submitted information that his alleged homosexuality has been made public in Uganda.

4.7 In the light of the foregoing, the State party finds no reason to question the conclusions reached by the domestic authorities. It holds that the complainant's substantiation of his claims is insufficient to conclude that he faces a foreseeable, personal, present and real risk of ill-treatment upon his return to Uganda, contrary to article 3 of the Convention.

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

5.1 On 15 April 2021, the complainant commented on the State party's observations. He underlines that he was a minor when he first sought asylum and that the migration authorities failed to take due account of his young age, the lack of social acceptance of homosexuality in his country of origin and the lack of available psychological support both in Uganda and in the asylum camps in Sweden. Although the assessment of an asylum seeker's credibility regarding sexual orientation should be performed on an individual basis,⁴ the Swedish authorities have applied stereotypical expectations with regard to how homosexual persons should express themselves in order to be deemed credible.

5.2 The complainant further submits that, as stated in the domestic procedures, it was not him who arranged for his visa, and that the inclusion of information therein was necessary for him to obtain the visa. As for the inconsistency of the information contained in the newspaper article, namely that he was an orphan, the complainant submits that he cannot be held responsible for the inaccuracy of statements made by a third person in a newspaper. Regardless of such mistakes, his name and photograph were published, putting him at risk of persecution, at least because of his perceived sexual orientation.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 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 both sets of proceedings, the complainant appealed the negative decision concerning his asylum application to the Migration Court and that he sought leave to appeal to the Migration Court of Appeal, which denied his requests on 19 December 2017 and 2 January 2020. 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 examining the communication under article 22 (5) (b) of the Convention.

6.3 The State party submits that the communication is inadmissible as it is manifestly unfounded. The Committee considers, however, that the claims put forward by the complainant raise substantive issues that should be examined on the merits. Given that the Committee finds no obstacles to admissibility, it declares the communication admissible 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 made available to it by the parties, in accordance with article 22 (4) of the Convention.

⁴ The complainant refers to the 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).

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

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Uganda. 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 such 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.⁵

7.4 The Committee recalls its general comment No. 4 (2017), according to which the Committee will assess "substantial grounds" and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of his or her deportation. Indications of personal risk may include, but are not limited to: (a) the complainant's ethnic background; (b) political affiliation or political activities of the complainant or his or her family members; (c) arrest or detention without guarantee of a fair trial and treatment; (d) sentence in absentia; and (e) previous torture (para. 45). With respect to the merits of a communication submitted under article 22 of the Convention, the burden of proof is upon the author of the communication, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real (para. 38). The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned, however, it is not bound by such findings, as it can 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 (para. 50).

7.5 In assessing the risk of torture in the present case, the Committee notes the complainant's claim that he would face a risk of treatment contrary to article 3 of the Convention if he were returned to Uganda on the ground of his homosexuality, which is widely known in his country of origin owing to the publication of a newspaper article. The Committee is mindful of the information brought before it regarding the alleged criminalization of homosexuality in Uganda. It also notes the complainant's claim that the Swedish asylum authorities were wrong to determine that his submissions were not credible, as his narrative corresponds to what he had experienced and should have been considered in the light of his age and the absence of social and psychological support both in his country of origin and in the asylum camps in Sweden.

7.6 Nevertheless, the Committee observes that the State party's authorities considered that the complainant's narrative was not credible because he provided inconsistent and vague statements concerning essential elements of his account. In this respect, the Committee notes the State party's assertion that the complainant's narrative contradicted the information in the visa materials, including the circumstances of his arrival, whether he possesses identity documents and whether his parents are alive, and that he was not able to explain these contradictions in a satisfactory manner. In addition, his statements as to whether his uncle knew about his relationship with his partner and regarding the support he received from his partner's friend were also considered implausible. The Committee also notes the State party's

⁵ 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.

submission regarding the migration authorities' concerns about the authenticity of the submitted copies of the newspaper article owing to several discrepancies detected in its format and content. Furthermore, the complainant failed to provide a reasonable explanation for its late publication or to find other ways to prove that the article was genuine.

7.7 In its assessment, the Committee notes that the complaint brought before it lacks important information regarding the facts of the case and that it had to rely heavily on the supporting court documents to explore the background of the case. It also notes that the migration authorities pointed to substantial contradictions in the complainant's accounts of the facts, which have not been satisfactorily explained. In particular, the complainant did not deny that he arrived in Denmark first, but failed to provide details about his stay there and to explain the delay in submitting his asylum application in Sweden. The Committee notes that, when confronted with the contradictions between his travel documentation and his narrative, the complainant submitted that he did not apply for his visa documents, but failed to provide details about the procedure to the extent that would have been reasonable even if a third person arranged for his visa. Notably, he did not explain whether he was present at the Embassy of Norway in Uganda when his visa was issued, whether the supporting documents submitted to the Embassy were all forged or whether his parents are indeed alive and did indeed support his allegedly illegal flight from Uganda, and whether he had any relationship with the sports organization mentioned in his visa application. His explanation does therefore appear scant in this regard. The Committee notes the doubts expressed by the migration authorities regarding the late publication of the article submitted by the complainant and other discrepancies that were detected in this connection. However, the Committee notes that the complainant was granted a new examination of his case, during which he was heard again as an adult, which gave him a new opportunity to better describe his circumstances and claims.

7.8 The Committee is aware of reports concerning the appalling situation of lesbian, gay, bisexual, transgender and intersex persons in Uganda, where homophobic views are widespread and societal discrimination, hate crimes and anti-homosexual campaigns are regularly reported by human rights organizations.⁶ Nevertheless, the Committee considers that the information in the file does not allow it to conclude that the complainant would run a real, foreseeable, personal, present and real risk of being subjected to torture upon his return to Uganda.

8. In the light of the foregoing, the Committee, acting under article 22 (7) of the Convention, concludes that the return of the complainant to Uganda by the State party would not constitute a violation of article 3 of the Convention.

⁶ See, e.g., the European Parliament resolution of 24 October 2019 on the situation of LGBTI people in Uganda, available at https://www.europarl.europa.eu/doceo/document/TA-9-2019-0042_EN.html; and Human Rights Watch, *World Report 2021: Events of 2020, 2021*; and *Nakawunde v. Canada* (CAT/C/64/D/615/2014), para. 6.9, and *J.K. v. Canada* (CAT/C/56/D/562/2013), para. 10.5.