



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3216/2018*, **

<i>Communication submitted by:</i>	M.L.A. (represented by counsel, Stefan Åhlander)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Sweden
<i>Date of communication:</i>	11 July 2018 (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 6 August 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	27 July 2022
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Procedural issues:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Right to life; torture; cruel, inhuman or degrading treatment or punishment
<i>Articles of the Covenant:</i>	6 and 7
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is M.L.A., a national of Afghanistan born in 1998. His application for asylum has been denied in the State party and he claims that his removal to Afghanistan amounts to a violation of his rights under articles 6 and 7 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 6 August 2018, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided not to issue a request for interim measures. The expulsion order was enforced on 4 September 2018.

* Adopted by the Committee at its 135th session (27 June–27 July 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



Facts as presented by the author

2.1 The author is of Hazara ethnicity. He initially applied for asylum in the State party in November 2015. The application was rejected by the Swedish Migration Agency on 9 December 2016 and the decision was upheld by the Migration Court on 30 June 2017. After the rejection of his asylum application, the author left Sweden and applied for asylum in Germany. However, as he had made his initial application for asylum in Sweden, he was transferred back to Sweden under Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 (the Dublin III Regulation).

2.2 On 6 June 2018, the author made an application for impediment to enforcement of the deportation decision against him. He claimed that he had been interested in Christianity for a long period of time and that that interest had led him to convert from Islam to Christianity. He was baptized on 5 July 2018. He notes that conversion from Islam is considered apostasy in Afghanistan and that it is punishable by death. He claims that he would not be able to express his religious views openly if deported to Afghanistan, as he would risk sanctions or violence. He notes that he wishes to live openly as a Christian and to practise his religion.

2.3 The author's application for impediment to enforcement of the deportation decision against him was rejected by the Swedish Migration Agency on 7 June 2018. In its decision, the Agency noted that it was only after he came into contact with another refugee in May or June 2017 that he had discovered his interest in Christianity. In support of his claim before the Agency, the author submitted several affidavits by friends and one from a support person from the social services. An employee from the asylum centre where he was living also confirmed that he had expressed interest in conversion. In its decision, the Agency noted that the author had not submitted a certificate of baptism in support of his claim. It found the affidavits submitted by him to be of lower evidentiary value than a certificate. It also found the affidavits to be general statements that, in themselves, did not support the author's claim of a genuine conversion. It further found that the timing of the conversion claim called for special attention. It noted that the author had not mentioned having an interest in the Christian faith during the initial asylum proceedings. The Agency concluded that it was unlikely that the author had converted to Christianity in a genuine act of faith, and that he would therefore not be likely, upon return to Afghanistan, to live as a convert, thus not attracting the interest of Afghan authorities or other individuals. The decision of the Agency was upheld by the Migration Court on 20 June 2018. The Court noted that an oral hearing concerning the author's initial application for asylum had been held before the Migration Court on 26 June 2017, during which the author had not mentioned any interest in Christianity. It found that the author had thus not presented a legitimate excuse for not raising his claim earlier in the proceedings. The decision was upheld by the Migration Court of Appeal on 29 June 2018.

Complaint

3. The author claims that his deportation to Afghanistan would expose him to a real risk of treatment contrary to articles 6 and 7 of the Covenant. He submits that he would face a real and foreseeable risk of torture, persecution or death if deported to Afghanistan because of his conversion to Christianity, taking into consideration the situation of Christian minorities in Afghanistan. He also submits that the State party authorities did not fully consider his claim that he would be at risk of persecution because of his conversion.

State party's observations on admissibility and the merits

4.1 On 18 April 2019, the State party submitted its observations on the admissibility and the merits of the communication. It submits that the communication should be found inadmissible as being manifestly ill-founded.

4.2 The State party notes that the Swedish Migration Agency held an introductory interview with the author in connection with his asylum application on 25 November 2015. On 27 December 2016, an extensive asylum interview that lasted for more than two hours took place. The minutes from the interview were communicated to the author's public counsel. Upon appeal, the Migration Court held an oral hearing with the author on 26 June 2017. Both the asylum interviews and the Court hearing were conducted in the presence of a public counsel and interpreters, whom the author confirmed that he understood well. The

State party argues that, through his public counsel, the author has thus been invited to scrutinize and submit written observations on the minutes from the interviews conducted, and to make written submissions and appeals. He therefore had several opportunities to explain the relevant facts and circumstances in support of his claim and to argue his case, orally and in writing, before the Agency and before the Migration Court. The State party submits that, consequently, there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice.

4.3 The State party notes that, upon return to Sweden in accordance with the Dublin III Regulation, and when the decision to expel him had become final and non-appealable, the author filed an application to be granted a new examination and cited impediments to the enforcement of the expulsion order owing to his conversion to Christianity. In his application, he claimed that his interest in Christianity had begun quite soon after his arrival in Sweden, at the end of 2015. He had allegedly attended church in Germany, where he wanted to be baptised. He stated that he had expressed his faith to several people in Sweden after his return from Germany and had submitted documents in support of that claim.

4.4 The State party notes that the issue of a residence permit may be examined at the enforcement stage of an asylum proceeding if the applicant submits new circumstances that can be assumed to constitute a lasting impediment to enforcement under chapter 12, section 1, 2 or 3, of the Aliens Act, namely, if there is a risk of the applicant being subjected to the death penalty, torture or persecution. A new examination requires that the applicant could not previously have cited these circumstances, or that he or she shows a valid excuse for not having done so. The expression “new circumstances” means that it cannot be a matter of only modifications or additions to the circumstances originally cited. In the author’s case, the Swedish Migration Agency noted that his claim of having converted to Christianity was a new circumstance that had not previously been examined in his case. However, the Agency pointed to the fact that the author had not submitted a baptism certificate in support of his alleged conversion but had instead submitted a number of testimonials concerning his Christian faith. The Agency held that general statements about a person being a Christian could not be afforded any decisive probative value. Hence, the Agency did not consider the testimonials to support the author’s claim that he had converted to Christianity out of genuine conviction. Further, the Agency found that the time when the author’s cited conversion took place called for particular attention, as the circumstance was cited shortly after the expulsion order became final. Given that the author claimed that he had discovered his interest in Christianity shortly after he arrived in Sweden, at the end of 2015, an interest he later further developed in May or June 2017, the Agency considered it remarkable that he had not previously cited his interest in Christianity as an impediment to him returning to Afghanistan. Moreover, despite having had the opportunity to invoke these circumstances to the domestic authorities on several occasions, he did not do so. The Agency concluded that the author had not plausibly demonstrated that he had converted to Christianity out of genuine conviction. Nor had he plausibly demonstrated that he intended to live as a convert, thus risking attracting the interest of the Afghan authorities or individuals upon a forced return to Afghanistan. The Agency considered that the author had not plausibly demonstrated, based on what had emerged in the case, that he was at risk of being ascribed any Christian convictions. The State party notes that in the appeal before the Migration Court, the Court noted that only in exceptional cases could an asylum-seeker be considered to have a valid excuse for not accounting for all relevant circumstances in an examination before a final and non-appealable decision is taken. In this regard, the Court noted that the author had stated that he had become interested in Christianity shortly after arriving in Sweden, at the end of 2015, and that he had discovered his longing for Jesus in May or June 2017. As the Migration Court had held an oral hearing on 26 June 2017, during which the author did not mention any interest in Christianity, although it must have been possible for him to do so, the Court concluded that he did not have a valid excuse for not invoking it during the initial asylum proceedings.

4.5 The State party submits that there is no reason to conclude that the rulings by the domestic authorities were inadequate, or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. It argues that the author has failed to plausibly demonstrate that his cited conversion to Christianity is based on genuine personal religious conviction or that, upon return to Afghanistan, he intends to practise Christianity

and thus faces a foreseeable, personal and real risk of being subjected to treatment in breach of the Covenant. Consequently, the enforcement of the expulsion order does not constitute a violation of the State party's obligations under the Covenant.

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

5.1 On 25 July 2019, the author submitted his comments on the State party's observations. He maintains that the communication is admissible.

5.2 The author argues that the assessment by the State party authorities of his asylum claims in terms of his conversion was arbitrary and amounted to a denial of justice, as no oral hearing was held in connection with his application and as the affidavits submitted by him were considered of low probative value. Regarding the fact that he did not submit a baptism certificate with his application for impediment to enforcement of the expulsion decision against him, the author claims that he had taken steps to be baptized before travelling to Germany. He also wanted to be baptized in Germany but, as he did not speak German, he could not complete the pre-baptism studies before being transferred to Sweden. He was subsequently baptized while in immigration detention. He claims that he did not raise his interest in Christianity before the domestic authorities during his initial application for asylum as he was not yet baptized at that point, and would therefore not have been granted international protection on the grounds of conversion. He submits that the State party authorities cannot be considered to have thoroughly examined his claims as they dismissed his written evidence as being of low evidentiary value and as no oral hearing was held to allow him to argue his case. He claims that he had to move from Herat to Kabul after being deported to Afghanistan because residents there, after noticing him not practising Islam, found a Bible in his shop, assaulted him and threatened to kill him.

State party's additional observations

6. On 10 December 2019, the State party submitted additional observations on the admissibility and the merits of the communication. It reiterates its submission that the author had several opportunities during the ordinary asylum proceedings to explain the relevant facts and circumstances in support of his claims and to argue his case both orally and in writing. He also had the opportunity to cite his interest in Christianity during the ordinary proceedings but did not raise this claim until May 2018, when he was held in detention awaiting expulsion. It reiterates its argument that the author was unable to provide a reasonable explanation for not having cited his interest in Christianity at a much earlier stage and that he has failed to demonstrate that he converted on the basis of a genuine and personal religious conviction.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 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.

7.3 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 the requirements of article 5 (2) (b) of the Optional Protocol have been met.

7.4 The Committee also notes the author's claim that his deportation to Afghanistan would expose him to a real risk of treatment contrary to articles 6 and 7 of the Covenant because of his conversion to Christianity. It notes the State party's submission that the author has failed to substantiate his claims for the purposes of admissibility and that there is no reason to conclude that the decisions of the domestic authorities were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice.

7.5 The Committee recalls that, in paragraph 12 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, it referred 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. The Committee has also indicated that the risk must be personal¹ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.² All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.³ 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,⁴ unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.⁵ The Committee also recalls that, in cases in which a person has been expelled prior to the consideration of the complaint, the Committee assesses what the State party knew or should have known at the time of expulsion.⁶

7.6 The Committee recalls its jurisprudence that an author carries the burden of proof to support the allegations of a personal and real risk of irreparable harm if deported, including the obligation to submit evidence sufficiently in advance of the decisions of the national domestic authorities, unless the information could not have been presented before.⁷ The Committee also recalls its jurisprudence concerning conversion cases that, regardless of the sincerity of the conversion, the test remains whether there are substantial grounds for believing that such a conversion may have serious adverse consequences in the country of origin such as to create a real risk of irreparable harm as that contemplated by articles 6 and 7 of the Covenant. Therefore, even when it is found that the reported conversion is not sincere, the authorities should proceed to assess whether, in the circumstances of the case, the behaviour and activities of the asylum-seeker in connection with his or her conversion or convictions could have serious adverse consequences in the country of origin so as to put him or her at risk of irreparable harm.⁸

7.7 In the present case, the Committee notes the author's submission that the assessment by the State party authorities of his asylum claims in terms of his conversion was arbitrary and amounted to a denial of justice, as no oral hearing was held in connection with his application for impediment to enforcement of the expulsion decision against him and as the affidavits submitted by him were held to be of low probative value. At the same time, it notes the State party's argument that the author had several opportunities during the ordinary asylum proceedings to explain the relevant facts and circumstances in support of his claims and to argue his case, including to cite his interest in Christianity, both orally and in writing, but that he failed to do so. The Committee also notes the State party's argument that the author was unable to provide a reasonable explanation for not having cited his interest in Christianity at a much earlier stage in the proceedings and its argument that the migration

¹ *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; *Q.A. v. Sweden* (CCPR/C/127/D/3070/2017), para. 9.3; and *A.E. v. Sweden* (CCPR/C/128/D/3300/2019), para. 9.3.

² *X v. Denmark*, para. 9.2; *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18; *Q.A. v. Sweden*, para. 9.3; and *A.E. v. Sweden*, para. 9.3.

³ *Ibid.*

⁴ *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.2; and *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

⁵ *K. v. Denmark*, para. 7.4; *Y.A.A. and F.H.M. v. Denmark* (CCPR/C/119/D/2681/2015), para. 7.3; *Rezaifar v. Denmark* (CCPR/C/119/D/2512/2014), para. 9.3; *Q.A. v. Sweden*, para. 9.3; and *A.E. v. Sweden*, para. 9.3.

⁶ *Singh Sogi v. Canada* (CAT/C/39/D/297/2006), para. 10.8; *Tebourski v. France* (CAT/C/38/D/300/2006), para. 8.1; *Agiza v. Sweden* (CAT/C/34/D/233/2003), para. 13.2; *Kalinichenko v. Morocco* (CAT/C/47/D/428/2010), para. 15.2; *L.M. v. Canada* (CAT/C/63/D/488/2012), para. 11.2; and *J.M. v. the Netherlands* (CAT/C/66/D/768/2016), para. 10.2.

⁷ *A.E. v. Sweden*, para. 9.7; and *H.G. v. Sweden* (CCPR/C/132/D/3266/2018), para. 6.7.

⁸ *S.A.H. v. Denmark* (CCPR/C/121/D/2419/2014), para. 11.8; *Q.A. v. Sweden*, para. 9.5; and *J.I. v. Sweden* (CCPR/C/128/D/3032/2017), para. 7.5. See also European Court of Human Rights, *F.G. v. Sweden*, Application No. 43611/11, Judgment, 23 March 2016, para. 156.

authorities found that he had failed to demonstrate that he had converted on the basis of a genuine and personal religious conviction. The Committee further notes that an oral hearing was held by the Migration Court on 26 June 2017, during which the author did not mention his interest in Christianity, despite stating later that it was at this point that his interest in Christianity had deepened. The Committee notes the State party's information that the Court hearing was conducted in the presence of a public counsel and an interpreter. The Committee also notes that the author did not raise his alleged conversion until the decision to remove him to Afghanistan had become final and he was in immigration detention facing removal to Afghanistan. It further notes that, at the time he submitted his application for impediment to enforcement of the expulsion decision against him, he had not yet been baptized. The Committee notes the author's claim that, upon return to Afghanistan, he was attacked in Herat for being in possession of a Bible. It also notes, however, that his claims in this regard are vague and that he has not submitted any specific information or substantiating evidence pertaining to said claims and it recalls that, in any event, the relevant time frame for the assessment of the author's claims is what the State party knew or should have known at the time of expulsion.

7.8 The Committee considers that the author's claims regarding the examination of his application for a residence permit on the grounds of conversion mainly reflects his disagreement with the factual conclusions drawn by the State party authorities about the credibility and timing of his claims. The Committee notes that the author had several opportunities to raise his claims of conversion before the domestic authorities, including during the oral hearing held in June 2017, but that he did not present his claims until the expulsion order against him had become enforceable. It finds that the author has not adequately explained why he did not raise his claims earlier in the proceedings, despite having had the opportunity to do so, in particular as he claims to have begun to follow the Christian faith relatively soon after arriving in Sweden and that he had wanted to be baptized in Germany but could not complete the pre-baptism studies before being transferred back to Sweden. It considers, accordingly, that the author has not demonstrated that the conclusions of the domestic authorities were clearly arbitrary or amounted to a manifest error or denial of justice.

7.9 The Committee therefore concludes that the author has failed to substantiate, for the purposes of admissibility, his claims under articles 6 and 7 of the Covenant and declares the communication inadmissible under article 2 of the Optional Protocol.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
 - (b) That the present decision shall be communicated to the State party and to the author.
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