Committee on the Rights of Persons with Disabilities

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 86/2021*, **

Communication submitted by: R.M.H. (represented by counsel, Elin Edin)
Alleged victim: The author
State party: Sweden
Date of communication: 6 October 2020 (initial submission)
Date of adoption of decision: 25 August 2023
Substantive issue: Removal to Afghanistan

1. The author of the communication is R.M.H., a national of Afghanistan born in 1999. He claims to be the victim of violations by the State party of articles 10 and 15 of the Convention. The Optional Protocol entered into force for the State party on 14 January 2009. The author is represented by counsel.

2. The author left Afghanistan with his family between the ages of 2 and 3 and grew up as an unregistered refugee in the Islamic Republic of Iran. He was diagnosed with infantile autism at an early age. In 2014, the author was deported to Afghanistan, where the Taliban detained and sexually abused him. He escaped and returned to the Islamic Republic of Iran, where he required support to avoid death by suicide. He then met a Christian, obtained a copy of the Bible and started attending a church. His cousins beat and threatened him owing to his disapproval of Islam. His family decided to flee, but the author and his brother were separated from their parents on their way to Sweden. On 22 December 2015, the author and his brother applied for asylum in Sweden, where the author was diagnosed with post-traumatic stress disorder. He was baptized in November 2016.

3. On 17 November 2017, the Swedish Migration Agency rejected the author’s application for asylum. The Agency did not find the author’s account to be credible, even though it was unaware of his autism. On 19 December 2019, the Migration Court confirmed the Agency’s decision. On 25 March 2020, the Migration Court of Appeal rejected the author’s appeal.

4. The author claims that his removal to Afghanistan would breach his rights under articles 10 and 15 of the Convention. According to the author, his Christian faith would expose him to a risk of being perceived as an apostate in Afghanistan, which is punishable by death. His disability, his lack of knowledge of Afghanistan, his lack of a social network and his being Hazara would compound his vulnerability, resulting in a risk of torture.

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* Adopted by the Committee at its twenty-ninth session (14 August–8 September 2023).
** The following members of the Committee participated in the examination of the communication: Muhammad Salah Al-Azzeh, Rosa Idalia Aldana Salguero, Rehab Mohammed Boresli, Gerel Dondovdorj, Gertrude Oforiwa Fefoame, Vivian Fernández de Torrijos, Odelia Fitoussi, Amalia Eva Gamio Ríos, Laverne Jacobs, Samuel Njuguna Kabue, Rosemary Kayess, Alfred Kouadio Kouassi, Abdelmajid Makni, Sir Robert Martin, Markus Schefer and Saowalak Thongkuay.
The author claims that the State party’s authorities failed to understand how his disability affected his ability to recount and express his religious beliefs, which resulted in the erroneous conclusion that his faith was not genuine. The fact that the State party’s authorities were not aware of his autism rendered communication difficult during the interview and meant that reasonable accommodation was not provided in the procedure. The authorities also failed to consider his disability in their assessment of his protection needs in relation to Afghanistan. The author argues that he was therefore not provided with access to protection on an equal basis with others. He submits that neuropsychiatric and psychosocial disabilities are rarely considered during the asylum procedure in the State party. According to the author, the Convention is not part of the legal framework by which asylum applications are considered.

5. On 11 February 2021, the Committee, acting through its Special Rapporteur on Communications under the Optional Protocol, decided to register the communication but not to grant the author’s request for interim measures.

6. In its observations of 11 October 2021, the State party informed the Committee that on 16 July 2021, the Migration Agency had decided to suspend the enforcement of all deportation orders to Afghanistan owing to the prevailing security situation in that country. The State party submitted that part of the communication was inadmissible given that the author has not exhausted domestic remedies. The State party also submitted that the communication was without merit. In its observations of 21 December 2021, the State party informed the Committee that, in a position paper dated 30 November 2021, the Migration Agency had decided to lift the suspension of the enforcement of deportation orders to Afghanistan. On 13 June 2022, the State party informed the Committee of a revision of the Migration Agency’s position paper, according to which the changed circumstances in Afghanistan might, in individual cases, constitute an impediment to enforcement of a deportation order and justify granting a residence permit.

7. On 20 October 2022, the author informed the Committee that he had been granted a residence permit and requested the Committee to discontinue its consideration of the communication.

8. At a meeting on 25 August 2023, the Committee, having been informed that the author had been granted a residence permit in the State party and thus no longer risked being removed to Afghanistan, concluded that the subject matter of the communication had become moot and decided to discontinue the consideration of communication No. 86/2021.