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Communication No. 2474/2014

Views adopted by the Committee at its 115th session (19 October-6 November 2015)

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| <i>Submitted by:</i> | X (represented by counsels Terje Einarsen and Arild Humlen) |
| <i>Alleged victim:</i> | X |
| <i>State party:</i> | Norway |
| <i>Date of communication:</i> | 28 October 2014 (initial submission) |
| <i>Document references:</i> | Special Rapporteur's rules 92 and 97 decision, transmitted to the State party on 10 November 2014 (not issued in document form) |
| <i>Date of adoption of Views:</i> | 5 November 2015 |
| <i>Subject matter:</i> | Deportation of author to Afghanistan |
| <i>Procedural issues:</i> | Admissibility – same matter; admissibility – other procedure; admissibility – <i>ratione materiae</i> |
| <i>Substantive issues:</i> | Effective remedy; non-refoulement; refugee status; torture |
| <i>Articles of the Covenant:</i> | 2 (3) and 7 |
| <i>Articles of the Optional Protocol:</i> | 2 and 5 (2) (a) |



Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (115th session)

concerning

Communication No. 2474/2014*

Submitted by: X (represented by counsels Terje Einarsen and Arild Humlen)
Alleged victim: X
State party: Norway
Date of communication: 28 October 2014 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 5 November 2015,

Having concluded its consideration of communication No. 2474/2014 submitted to it by X under the Optional Protocol to the Covenant,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1.1 The author of the communication is X, an Afghan national born in 1989 and currently residing in Norway. The author is subject to deportation following the rejection of his application for refugee status in Norway. He asserts that by removing him to Afghanistan, the State party would violate his rights under articles 2 (3) and 7 of the International Covenant on Civil and Political Rights. The first Optional Protocol to the Covenant entered into force for Norway on 13 September 1972. He is represented by counsels Terje Einarsen and Arild Humlen.¹

1.2 On 10 November 2014, pursuant to rules 92 and 97 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested that the State party not remove the author to Afghanistan while the

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

¹ The initial submission was made by counsel Erik Osvik, who was succeeded by Terje Einarsen and Arild Humlen.

communication is under consideration by the Committee. On 3 March 2015, the Committee denied the State party's request to lift interim measures.² The author remains in Norway.

Facts as presented by the author

2.1 The author submits that he was born in Kandahar, Afghanistan, but lived with his family in the Islamic Republic of Iran from 1993 until 2004, when they were forcibly returned to Kandahar.

2.2 On 15 November 2008, the author arrived in Norway and applied for asylum. In his asylum application, the author asserted that on an unspecified date, he was kidnapped by two men in Kandahar and held captive for several days before he managed to escape. His family told him that the kidnappers had requested a large ransom for him and they asked the author to find refuge elsewhere. The author maintained that he left Afghanistan as a result of this series of events. On 11 August 2009, the Norwegian Directorate of Immigration (UDI) rejected his application for refugee status, finding that the kidnapping "was a criminal relationship" that did not meet the requirements for refugee status. However, due to the presence of a general risk of ill-treatment, the Directorate recommended that the author should not be returned to Kandahar but relocated internally to Kabul.

2.3 On 8 September 2009, the author filed a complaint before the Directorate against its decision and simultaneously filed a request for a stay of removal. In his complaint, the author alleged that he had been in contact with his father two months earlier and had been told that the reason for the kidnapping was a 17-year-old dispute over land ownership between the author's grandfather and a neighbour, both of whom were killed as a result of the conflict. The author asserted that his family had fled to the Islamic Republic of Iran for that reason and lived there for the next 11 years. The author further submitted that after the family returned to Kandahar the conflict remained dormant for 3 and a half years, but after his departure for Norway his family was subjected to threats and vandalism and again sought refuge in the Islamic Republic. On 20 November 2009, finding no reason to reverse its decision, the Directorate referred the author's case to the Immigration Appeals Board (UNE) for appeal proceedings and granted the author's request for a stay of removal pending a final decision on the appeal.

2.4 In November 2009, the author began to attend religious services and prayer meetings at the Salstraumen church. On 6 February 2010, he was baptized. On 4 May 2010, he submitted a confirmation of his baptism to the Immigration Appeals Board. On 5 April 2011, the Board dismissed his appeal, as a majority of the judges did not accept that his conversion to Christianity was genuine. Specifically, the Board found that the author had not sufficiently considered the supposedly grave consequences of his conversion; that his understanding of the Christian religion was very superficial and seemed rehearsed; and that he had not reflected over the differences between Islam and Christianity.

2.5 In the fall of 2011, the author applied for and was granted free legal aid from the Norwegian Bar Association, which engaged a former senior priest of Oslo Cathedral who held several meetings with the author to examine his Christian faith and conviction. The

² Concerning its request to lift interim measures, in its observations on the admissibility and merits of the communication, the State party considers that the Committee's decision to grant these measures was made in 12 days, whereas three domestic courts reviewed the same issue in depth, with the benefit of being able to examine all the relevant evidence and having the author present. The State party observes that the European Court of Human Rights denied the author's request for interim measures after all of the documentation presented by him in Norwegian had been studied by Norwegian-speaking lawyers. The State party also notes that the author's location is not known to the Norwegian authorities and therefore he cannot be deported immediately.

author filed two applications to have the Board's negative decision on his appeal reversed. On 22 July and 15 December 2011, the Board determined that there were no grounds for reversal. On 26 December 2012, the author filed an appeal before the Oslo District Court. As a witness in the proceedings before the Court, the former senior priest testified that he was impressed by the author's broad and profound commitment to Christianity. On 21 June 2012, the Court granted the author's appeal, finding that he had developed a deeper knowledge of Christianity after the issuance of the Board's decision and that his conversion was therefore genuine. The Court also granted the author's motion for an "interlocutory injunction" to stay his removal until the conclusion of domestic proceedings.

2.6 On an unspecified date, the Board appealed the judgement of the Oslo District Court before the Borgarting Court of Appeals. On 12 March 2014, the Court of Appeals dismissed the decision of the Oslo District Court. On 15 April 2014, the author appealed the decision of the Court of Appeals before the Norwegian Supreme Court, which dismissed the appeal on 24 June 2014.

2.7 The author submits that, in the light of the decisions of the Court of Appeals and the Supreme Court, he has exhausted all available and effective domestic remedies. He asserts that he cannot be required to provide so-called new information and to again go through domestic proceedings. Furthermore, he has no financial means to do so, and he is no longer receiving pro bono assistance. On 24 September 2014, the author submitted an application to the European Court of Human Rights concerning his deportation from Norway to Afghanistan. On 1 October 2014, the application was declared inadmissible; the European Court did not disclose the reasons for its decision.

The complaint

3.1 The author submits that Norway would violate his rights under articles 2 (3) and 7 of the Covenant by forcibly removing him to Afghanistan, where he fears a real risk of serious and irreversible harm, of being killed or subjected to ill-treatment. He maintains that the domestic courts that ruled against him erred in several respects. First, the Court of Appeals and the Supreme Court erred by failing to consider relevant facts that arose after the Immigration Appeals Board issued its second decision rejecting the author's application to reverse the asylum decision of the Directorate of Immigration. The author argues that the courts limited their assessment to a consideration of facts that existed at the time when the final domestic decision ordering the author's deportation was rendered. The author maintains that instead, the courts should have adhered to the approach of the European Court of Human Rights, which examines relevant facts existing at the time of the Court proceedings.

3.2 Second, the author submits that the domestic courts subjected his claim to a higher evidentiary threshold because he is an Afghan convert and emphasized that they focused in particular on his "personal reflection about the conversion" and the "consequences of the conversion". The author maintains that in assessing his credibility, the courts should have followed the approach of the European Court, which gives asylum seekers the benefit of the doubt because of the vulnerable position they are often in.³

3.3 Third, the author argues that the Court of Appeals and the Supreme Court erred in their evidentiary assessments and failed to recognize that his Christian belief is genuine, as he has consistently and expressly been considered a true Christian by senior representatives of the Church of Norway and no concrete evidence to the contrary has been put forward by any witnesses or Church representatives. To substantiate this claim, the author provides recent statements by the former senior priest at Oslo Cathedral dated 22 September 2014, a

³ The author cites European Court of Human Rights application No. 43611/11, *F.G. v. Sweden*, judgement of 16 January 2014, para. 34. The author states that this decision has not been finalized.

reverend at the Bodø city church dated 15 August 2014 and a bishop in Sør-Hålogaland dated 15 August 2014, and alleges that these individuals all clearly and unequivocally confirm his faith as being genuine and that he had a “broad and good understanding of Christianity” in November 2011.⁴

3.4 The author also claims that the State party violated his rights under article 2 (3) of the Covenant in that the letter issued by the Immigration Appeals Board on 28 August 2014 indicates that the State party is unwilling to provide him with the appropriate non-refoulement protection, even though they are aware of facts that substantiate his need for such protection. The author asserts that this letter seems to provide a way for the authority to choose whether or not to conduct a new review of the issues, thus making it impossible for the author to seek redress from the Committee by effectively putting him in a position whereby the State party can claim that he must again exhaust domestic remedies. The letter gives no indication of when a review can be conducted or what form it would take, putting the author in a very vulnerable position.

3.5 The author further submits that the decision of the European Court of Human Rights to declare his application inadmissible does not render his communication before the Committee inadmissible because the Court’s decision was issued by a single judge and did not provide a rationale.

State party’s observations on the merits

4.1 In its observations dated 26 January 2015, the State party does not challenge the admissibility of the communication. Regarding the author’s assertion that the communication is not manifestly ill-founded, the State party emphasizes that this admissibility criterion does not exist within the framework of the Covenant. The State party provides background information concerning Norwegian legislation on asylum and additional information concerning the author’s domestic asylum proceedings. The author’s initial asylum application, dated 11 August 2009, was based on the alleged kidnapping incident in 2008. It was rejected because the kidnapping was deemed not to qualify as a

⁴ The statement from the city church pastor, dated 15 August 2014, states that the author was baptized on 6 February 2010 and has “studied and practised his Christian faith in many different ways”, namely by attending Alpha courses that are designed for those who wish to know more about the Christian faith; studying at Bible school for two semesters; visiting several conferences focusing on prayer and evangelism at a prayer centre in Levanger, Norway; and attending “Encounter Festival,” a youth event designed to equip individuals for ministry. The statement from the bishop, dated 15 August 2014, states in full: “I have met [the author] several times during the last one and a half years. I have talked with him about his faith and his conversion to Christianity, and I have heard about his life as a Christian from people around him and from the congregation he is attending. On this basis, I can give [the author] my best recommendation as a sincere and committed believer and follower of Christ.” The statement from the former senior priest, dated 22 September 2014, states that he based his initial assessment of the author’s conversion on the minutes of the Board meeting on 22 March 2011. The priest states that based on the minutes, he was “struck by the extent of [the author’s] Christian commitment at that stage: personal prayer and Bible reading; activities in Saltstraumen parish (Tuesday meetings, Sunday services, Alfa-meetings (a very detailed educational programme); activities in Løding Bedehus [house of prayer]; prayer meetings; during a stay in Oslo also contact with an Iranian congregation. He has later been active in the charismatic Bykirka in Bodo. To me, these were indications of conviction and consequences dating back more than a year before the UNE meeting and interview of March 22, 2011, and proof of considerably more than what one would expect from a rank and file member of the Church of Norway. It was evidence of a deliberate choice. What more could he have done?” The priest further states that the author gave adequate answers to the questions asked of him at the Board meeting concerning his faith and that at a meeting of the subcommittee of the Lawyers’ Association in November 2011, it “quickly emerged that [the author] knew considerably more than the minutes of the previous UNE meeting and interview had conveyed”.

ground for refugee status. The author filed an appeal before the Board on 8 September 2009. In May 2010, the author informed the authorities that he had converted to Christianity and asked the Board to consider his statement that he would be persecuted and possibly killed upon return to Afghanistan if it became known that he is a Christian.

4.2 On 22 March 2011, the Board, consisting of three members, held a formal hearing on the complaint. The author and his counsel were present and had ample opportunity to respond to and comment on questions and other forms of intervention by the Board members. The Chair of the Board must be a lawyer by training and must also be qualified to serve as a judge in the public courts. Other Board members are lay persons recruited from a range of disciplines and are nominated by non-governmental organizations, among others. On 5 April 2011, the Board decided, by a vote of two to one, to deny the appeal. The majority, which included the Chair, found that it had not been established with the requisite degree of probability that the author had a genuine Christian belief and was therefore not in danger if returned to Afghanistan. The Board's majority reasoned that the author:

appeared to have a very low level of reflection about the reasons for his alleged conversion. ... [H]e was repeatedly asked to explain the background to his decision to convert from Islam to Christianity. As the reason for his conversion, the [author] stated that he was tired of his father nagging him to pray, fast and read the Koran, and that things are much freer in Christianity. In the majority's view, this reason for converting appears to be very superficial. The [author] was also asked to explain how he had assessed the consequences of converting. The [author's] statement that he had given his heart to Jesus and that he accepted that he could be killed does not, in the majority's opinion, give the impression that the [author] has actually considered the consequences of converting. Reference is made in this context to the above account of the status of Islam in Afghan society and what consequences the break with Islam that a conversion represents would actually have for a Muslim. That the [author] informed his father that he had converted to stop his father constantly nagging him to pray and read the Koran seems to be very superficial, in the majority's opinion. That the [author] has not thought about what consequences his conversion could have for his family, both practically and emotionally, strengthens the majority in its view that the appellant has not genuinely converted.

The minority found that the author did have some knowledge of Christianity and that the areas in which he lacked knowledge could be due to language issues and the fact that the author was a relatively new convert. The minority also noted that the author had enrolled in a course to learn more and that individuals in the Christian community could vouch for him. The minority further found that internal relocation in Afghanistan was not possible because the author would risk persecution anywhere in his home country because of his conversion.

4.3 At the author's request, the Board twice reviewed its decision in 2011 and concluded each time that there was no ground for reversal. In its decision dated 15 December 2011, the Board reasoned, in response to the author's claim that it had not applied the correct standard of proof, that the phrase "sufficiently substantiated" indicates that the assessment was not too stringent; a concrete assessment had been made of all the information in the case and a requirement for a preponderance of probability had not been applied in the Board's assessment.

4.4 Concerning domestic legal proceedings, the State party agrees with the decision of the Borgarting Court of Appeals to reverse the judgement of the Oslo District Court, which had found that the author was a genuine Christian. The State party cites the full reasoning of the Court of Appeals, which considered the testimony of country adviser G, who observed that Islam permeates Afghan society, including its legislation, judicial system,

politics and family life; that almost 100 per cent of Afghans are Muslims; that the idea of conversion would be completely alien to an overwhelming majority of Afghans; that a convert would be stigmatized in all regards and that a conversion would have major and serious consequences not only for the individual convert but also for the whole extended family, who lose “so much honour that they will be marginalized by the local community” to the point that family members would no longer be eligible marriage candidates; and that renouncing Islam and converting to Christianity was therefore an enormous step for an Afghan. The Court therefore considered that the important role Islam plays in the lives of Afghans gives reason to assess in-depth individual asylum seekers’ motives for converting and that there is also reason to expect that individual asylum seekers will have reflected on their motives for converting and the effects it would have on themselves and their families.

4.5 The Court of Appeals further considered that the history of Norway’s asylum practice is an important backdrop to the assessment of conversion cases. The Court relied on information provided by the Immigration Appeals Board stating that until August 2003, most Afghans were granted residence in Norway. From early 2005 to early 2007, however, Afghan asylum seekers were referred to Kabul as an internal flight alternative. The first 17 cases involving conversion were considered by the Board toward the end of 2005/beginning of 2006. Nine appeals succeeded. From that point until the first part of 2007, the Board received over 100 cases involving conversion, while the Directorate of Immigration received 20 such cases. In the majority of the cases received by the Board, conversion was invoked in the petition for reversal after a final negative decision by the Directorate. From the first part of 2007 to the same period in 2009, all Afghans without a connection to a stable area in the country were granted residence in Norway. During this period, when no referrals were made to an internal flight alternative, the immigration authorities received only five cases concerning Afghans who had converted. From the latter part of 2009 to March 2014 (the date of the Court of Appeals decision), the Board again referred asylum seekers to an internal flight alternative. During this period, the Board received more than 150 Afghan conversion cases. Since the end of 2005/beginning of 2006, a total of 300 Afghans applied for asylum in Norway on the basis of conversion after having arrived in Norway. The Court considered that this figure must be assessed in light of the fact that conversion among first-generation Muslim immigrants in Norway is practically unheard-of, and that almost all the cases of conversion occur among asylum seekers for whom renouncing Islam entails a risk of persecution, i.e., in Afghanistan and the Islamic Republic of Iran. History also shows that conversion is almost exclusively invoked as grounds for asylum during periods in which the immigration authorities are strict and do not grant Afghans residence on any other grounds, but refer them to the internal flight alternative. With reference to the Guidelines on International Protection: Religion-Based Refugee Claims under article 1 A (2) of the 1951 Convention relating to the Status of Refugees and/or the 1967 Protocol thereto, the Court of Appeals concluded that the “clear connection between the conversion cases and asylum practice gives reason to subject the new asylum grounds to a thorough assessment, and to focus in particular on personal reflections on the motive for and the consequences of converting, cf. UNHCR Guidelines, [para.] 35. In this assessment, the asylum seeker’s general credibility will be an important factor.” The Court cites paragraphs 34 and 35 of the Guidelines which state, inter alia:

Where individuals convert after their departure from the country of origin, this may have the effect of creating a *sur place* claim. In such situations, particular credibility concerns tend to arise and a rigorous and in-depth examination of the circumstances and genuineness of the conversion will be necessary....

Both the specific circumstances in the country of asylum and the individual case may justify additional probing into particular claims. Where, for example, systematic and organised conversions are carried out by local religious groups in the country of asylum for the purposes of accessing resettlement options, and/or where

“coaching” or “mentoring” of claimants is commonplace, testing of knowledge is of limited value. Rather, the interviewer needs to ask open questions and try to elicit the motivations for conversion and what effect the conversion has had on the claimant’s life.⁵

4.6 In evaluating the author’s credibility, the Court of Appeals considered that the three witnesses who testified in the author’s favour (the former senior priest at Oslo Cathedral, the reverend at the city church in Bodø and the bishop in Sør-Hålogaland) all regarded him as having a genuine Christian faith. The Court found that the author’s baptism and subsequent participation in Church activities were circumstances favoring the conclusion that “it is reasonably probable that his conversion to Christianity is genuine”. The Court also found that although the author demonstrated a lack of knowledge about some central aspects of Christianity at the Appeals Board hearing, he had “adequate basic knowledge about the Christian faith”.

4.7 However, the Court of Appeals also found that “formal baptism, participation in religious contexts and knowledge of Christianity are not in themselves capable of distinguishing between genuine converts and converts of convenience in a case like this”. The Court stated:

In an ongoing dispute about the right to asylum, in which this issue is decisive in relation to the asylum seeker’s prospects of being granted a residence permit in Norway, it cannot be ruled out that these actions may be strategic actions aimed at obtaining a desired good. For the same reason, the Court of Appeals finds that it cannot give decisive weight to the testimony of people who have met [the author] in Christian contexts or assessed his faith in the way [one of the witnesses] has done. Such people will also find it difficult to distinguish between people with a genuine Christian faith and people who behave strategically in order to be granted asylum.

4.8 In its consideration of other relevant evidence, the Court of Appeals noted that only three months had elapsed from the time of the author’s initial contact with Christianity until he formally converted. The Court observed that that was not decisive in itself, as religious faith is an individual experience that can be both the result of a short or a longer process characterized by reflection and doubt, or a sudden, momentous event. However, in view of the fact that conversion is a very big step and has significant consequences for an Afghan, the Court found it remarkable that the conversion took place after such a short time. The author was also baptized without receiving any formal training. The pastor of the church stated that he had held only one brief conversation with the author before he was baptized. The author testified that he took part in church services and prayer meetings. The Court assumed that this was a positive experience for him, but noted that he understood little Norwegian at the time, so that his participation cannot have led to his acquiring any significant knowledge of the Christian faith as a basis for his own reflection. The author also testified in the Court that he had read the Bible several times before he was baptized. The Court referred to the fact that the author, who, according to the available information, had seven years of schooling, had access at the time in question only to fellow asylum seeker P’s Bible in Farsi, which is not his first language. The Court therefore regarded it as unlikely that the author had read the Bible “several times” in such a short space of time and that that testimony contributed to undermining his credibility.

4.9 The Court of Appeals further noted that the parties agreed that the author’s original asylum statement could not constitute a basis for asylum and that the author stated that he first came into contact with Christianity around the time that the Directorate of Immigration rejected his petition for reversal of the Immigration Appeal Board’s negative decision on his asylum application. His conversion therefore took place shortly after his petition had

⁵ Sections 34, 35.

been rejected by the Directorate. The Court considered that the timing of his conversion gave a further reason for taking a critical view of his motives for converting.

4.10 The Court of Appeals also referred to the author's statement that he came into contact with Christianity through an Iranian asylum seeker, P, who was himself a convert. The author testified before the Court that he was unaware that conversion could constitute grounds for asylum when he was baptized. The Court stated that it did not believe the author on this issue, referring to the aforementioned discussion of conversion cases. The Court noted that conversion to Christianity has been invoked as a ground for asylum since the end of 2005/beginning of 2006 and exclusively by Muslim asylum seekers from the Islamic Republic of Iran and Afghanistan. The Court found it improbable that Norway's asylum practice was not generally known at the asylum reception centre and determined that the author learned about it during his stay in Norway, and certainly from P at the latest. On this point as well, the Court found that the author had testified in a manner that undermined his credibility.

4.11 The Court of Appeals considered "the fact that religious conversion can take place in several different ways". Specifically in the author's case, the Court stated that it "finds reason to point out that he has only attended school for seven years. It must therefore be expected that a religious development will be more of an emotional experience than an intellectual process". However the Court considered that the author's "low level of reflection is nevertheless striking. He has not been able to provide a well-thought-through explanation of his motives for converting or of the serious consequences conversion can have for himself and his family". The Court found that there were "several objective circumstances" indicating that the author's conversion was not genuine:

(a) Only a short time had elapsed from the author's first contact with Christianity until his baptism, and he had received no "formal training";

(b) The author had testified that although his family, and especially his father, had a devout Islamic lifestyle, he himself did not really believe in God, which rendered his "speedy conversion to Christianity" even more remarkable, as he went from a virtually non-religious starting point to suddenly having a strong need to believe in God;

(c) When the author was repeatedly asked before the Board to explain the background to his decision to convert from Islam to Christianity, he stated that he was tired of his father nagging him to pray, fast and read the Koran and that things are "much freer in Christianity"; the Board found this to be a superficial reason for conversion;

(d) When asked by the Board to explain the consequences of converting, the author stated that he had given his heart to Jesus and had accepted that he could be killed. Given the status of Islam in Afghan society and what a break with Islam means for a Muslim in Afghanistan, the Board determined that the author had not thought about the consequences, both practical and emotional, his conversion could have for his family;

(e) During the hearing before the Court of Appeals, the author's testimony was in all material respects identical to his testimony before the Board; he did not express a more reflective attitude, nor did he express any thoughts or concerns about the conversion having negative consequences for his family. The importance of Islam in Afghan society rendered it unlikely that the author would be "this superficial about his decision if his conversion were genuine";

(f) Elements in his original asylum statement further undermined his credibility, as he first explained that he had been kidnapped and that the kidnappers' motive was to obtain a ransom, whereas in his appeal, he modified that statement and claimed that his father had told him that his kidnapping was due to an old family feud over land that had caused his family to flee to the Islamic Republic of Iran;

(g) As noted by the Board, the author's explanation of the conflict over land contained elements that make it appear improbable, as it is unlikely that the victorious party in a land conflict would rekindle the conflict many years later by kidnapping a younger family member;

(h) The author has given different explanations about his contact with his father since he left Afghanistan, as he stated at his asylum interview in November 2008 that he had spoken to his father once since leaving Afghanistan and that his father stated that he was doing fine, whereas in the appeal of September 2009, he stated that his father had told him that the family had received threats and that all the windows in "the shop" had been smashed the day after the author left Afghanistan;

(i) In his statement to the Board dated 4 September 2010, the author stated that he had become acquainted with Christianity through a friend before arriving in Norway, whereas in his meeting with the Board, he stated that he first became acquainted with Christianity through P in Norway and had not previously had any information about Christianity;

(j) When asked about the latter conflict in his testimony, the author stated that he had on one occasion accompanied his friend to the home of an acquaintance where a Christian prayer meeting was taking place and that the attendees, whom the author did not know, "read books and prayed to God"; however, it is highly unlikely that an underground Christian church in Afghanistan would permit an unknown Afghan to participate in a prayer meeting, given the testimony of the country adviser that the process of gaining access to underground Christian churches in Afghanistan can often take several years due to the high risk involved in attending these services.

4.12 In concluding, in the light of the aforementioned elements, that the author's conversion was not genuine, the Court of Appeals stated that it had "carefully considered the elements that might indicate that [the author's] conversion is genuine – his baptism, his knowledge of the Christian faith, his participation in various Christian contexts and activities, and the testimony of witnesses who have met [the author] and regarded him as being a genuine Christian". The Court also stated that it had considered that "a more lenient standard of proof applies given that the consequences of an incorrect decision in a case of this kind would be serious". In its overall assessment, however, the Court concluded that "it is not reasonably probable that [the author] had a Christian faith at the cut-off point, 15 December 2011".

4.13 The Court of Appeals then proceeded to assess whether the author's allegation that he had converted in itself represented a basis for asylum. The Court considered the testimony of the country adviser on Afghanistan, who explained that, pursuant to the Islamic criminal code, which is based sharia, converts are given an opportunity to recant. The Court also considered the testimony of the Board's representative, who stated that there are no known cases among the more than 20 converts of convenience who have been returned from Norway to Afghanistan encountering problems after their return. On that basis, the Court found that the author had no real reason to fear persecution upon his return to Afghanistan.

4.14 In response to the author's claim that the Court of Appeals erred by requiring him to meet a stringent burden of proof, the State party notes that the Court applied a standard of proof according to which "it is sufficient that the invoked grounds for asylum are seen as being reasonably probable.... [The Court] does not find reason to apply a somewhat more stringent standard of proof, as argued by the State.... The Court of Appeals' assessment of evidence is also guided by the UNHCR's Guidelines."⁶

⁶ The Court of Appeals decision cites the full text of paragraphs 34 and 35 of the UNHCR Guidelines.

4.15 Concerning the merits of the communication, the State party considers that it has not violated article 7 of the Covenant and responds to each of the author's arguments in this regard. First, with regard to the author's claim that the Court of Appeals should not have deemed that the date of the last administrative decision should determine the relevant facts most central to its judicial review, the State party considers that the Court's position is a "logical consequence of the separation of powers in Norway's constitutional order". The State party recalls that article 7 of the Covenant is "not *per se* intended to supersede domestic constitutional constructs". Moreover, the State party cites the Court's statement that if the author wished to invoke new facts as a ground for a residence permit and protection against refoulement, he was able to do so by filing a petition for reversal to the immigration authorities. The State party notes that this procedure is common and that the Immigration Appeals Board is under an obligation to consider such requests. Furthermore, while the Court viewed 15 December 2011 as the "cut-off point for relevant facts", it simultaneously, in the very same sentence, made clear that "evidence submitted at a later date" was to be emphasized "if it sheds light on the actual situation at the time of the decision". Therefore, facts arising after 15 December 2011 were not excluded from the review of the Court of Appeals. In fact, the Court's judgement clearly shows that facts arising after 15 December 2011 were indeed taken into account. Concerning the author's reference to the judgement of the European Court of Human Rights in *Saadi v. Italy* (stating that the relevant time of examination of facts will be that of the proceedings before the Court), the State party observes that it is not aware of any similar reasoning adopted by the Committee. It further considers that the factual circumstances of the *Saadi* case are materially different from those of the present case. In the *Saadi* case, the domestic authorities had not considered the applicant's case relating to his potential refoulement when the European Court examined it. In a situation where domestic courts have not considered an individual's request not to be deported under the non-refoulement obligation at the time the case comes before an international tribunal, that tribunal obviously has to consider the individual's case as it is presented at the time of the tribunal's assessment, which is the only remedy available against deportation in violation of the non-refoulement obligation. In the present case, however, the domestic courts did assess the author's claim of a potential violation of the non-refoulement obligation. The State party further considers that although the author relies on the judgement of the European Court in *F.G. v. Sweden*, the judgement does not support the author's assertion that the European Court adheres to a general principle of giving asylum seekers the "benefit of the doubt".

4.16 Second, with regard to the author's claim that the Norwegian courts failed to "correctly apply the principle of the benefit of the doubt", the State party considers that there is no factual basis for this claim, inasmuch as domestic courts do not adhere to a higher evidentiary threshold for Afghan converts as compared to other asylum seekers. In the author's case, the Court of Appeal applied the standard of proof according to which it is "sufficient that the invoked grounds for asylum are seen as being reasonably probable". The State party disagrees with the author's suggestion that the Court adopted a higher evidentiary threshold.

4.17 Third, concerning the author's assertion that the Court of Appeals erred in its assessment of the genuineness of the author's conversion, the State party considers that there is no basis for the author's argument that the Court ascribed "decisive weight" to the author's personal reflection on his conversion and its consequences. In any case, the State party considers that any error in this regard does not constitute a violation of article 7 of the Covenant. The Committee has consistently held that it is for domestic courts to review and evaluate facts and evidence when assessing potential violations of article 7, unless it is

shown that the domestic courts' findings were "manifestly unreasonable".⁷ In its decision in *Z v. Australia*, in which the domestic authorities deemed that an alleged religious conversion was not credible, the Committee deferred to the judgement of the domestic authorities, noting that the author had not identified any irregularity in the Australian authorities' decision-making process or any risk factor that they had failed to take into account.⁸ In the light of such jurisprudence, the State party contests the author's claim that it is required to meet a higher threshold of proof in order to demonstrate that it has complied with article 7 of the Covenant in a case involving alleged religious conversion of an asylum seeker.

4.18 The State party also considers that it has not violated article 2 (3) of the Covenant. Concerning the author's claim that the domestic courts should have taken into consideration facts that arose after the final administrative decision was made in the author's case, the State party considers that administrative remedies also qualify as effective remedies for the purposes of article 2 (3). The Immigration Appeals Board in Norway is an independent administrative body and is mandated with the task of considering new complaints and assessing requests for the reversal of original decisions with regard to claims, relying on new information. All of the Board's decisions are based on an *ex nunc* assessment. A decision made by the Board on the basis of new information may form the basis of legal proceedings before domestic courts. Thus, the Board process clearly constituted an effective remedy for the author. The fact that this remedy, which in itself suffices to fulfil Norway's obligations under article 2 (3) of the Covenant, is also subject to judicial review serves to strengthen the State party's submission that there has been no violation of this provision.

4.19 With regard to the author's argument that the Board's letter dated 28 August 2014 constituted a violation of the State party's obligations under article 2 (3) of the Covenant, the State party provides a full translation of the letter, which reads in part as follows:

The Immigration Appeals Board wishes to be informed if new information has come to light subsequent to the Board's decision and subsequent decisions not to reverse the original decision which may give reason for the Board to reassess its former decisions. It should be observed that it is important for the Board to be in possession of all available facts in relation to a possible deportation to Afghanistan. This request should be responded to within three weeks from today.

The State party disagrees with the author's assertion that this letter prevented him from seeking redress before the Committee by putting him in a position where he would be unable to exhaust domestic remedies. The State party considers that the purpose of the Board's letter in such cases is to "enable the individual in question to furnish new evidence so as to ensure that the Board may assess the question of non-refoulement prior to deportation". If the individual does submit new evidence, the Board will have to make a formal reassessment of the applicant's complaint in light of that new evidence. The State party disagrees with the author's assertion that the Board was aware of facts substantiating the author's need for protection at the time it issued the letter. On the contrary, the Board was of the view at the time the letter was issued that the author was not in need of protection on the basis of facts to which it had access. The author has not subsequently presented any new facts that would lead to a change in this assessment.

4.20 Finally, concerning the author's request for compensation, the State party considers that the Committee does not have a mandate to make statements regarding compensation.

⁷ The State party cites, inter alia, communication No. 2186/2012, *X and X v. Denmark*, Views adopted on 22 October 2014, para. 7.3.

⁸ The State party cites communication No. 2049/2011, *Z v. Australia*, Views adopted 18 July 2014, para. 9.4.

Author's comments on the State party's observations

5.1 In his comments dated 27 February 2015, the author asserts that, in citing the Court of Appeals decision, the State party acknowledges that if his conversion is genuine he will have the right to asylum in Norway, as Afghans who convert to Christianity are at risk of persecution in Afghanistan. Moreover, the author maintains that in accordance with the concept of refugees *sur place* status, it is well established under international human rights law that an applicant's need for asylum may change depending on personal circumstances and/or country conditions. The author reiterates his claim that the State party did not comply with its obligations under article 7 because it did not consider relevant facts that arose after the Board's most recent decision dated 15 December 2011.

5.2 The author emphasizes that he "has been believed all the time and practically speaking at all levels of the Christian community [to] which he has comprehensively belonged in Norway". The author submits that the State party has not provided any material evidence to substantially undermine his conviction, apart from the "questionable inferences made from rather ... general assumptions that the majority of the Immigration Board and the Appeals Court relied upon". The author further maintains that the State party's authorities have not conducted any assessment of his religious beliefs by independent experts and asserts that the Board and the Norwegian court judges do not possess such religious expertise.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not the claim is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that under article 5 (2) (a) of the Optional Protocol, and Norway's reservation to this provision, the Committee is precluded from examining a matter that is being examined or has been examined under another procedure of international investigation or settlement. The Committee notes that on 1 October 2014, the European Court of Human Rights declared the author's application inadmissible.⁹ The Committee notes, however, that the Court's decision does not set forth a justification for the inadmissibility finding and that there is no clarification as to the basis of the decision.¹⁰ It

⁹ The author provides a letter from the European Court of Human Rights dated 1 October 2014 concerning his application No. 64743/14 against Norway to prevent his deportation to Afghanistan. In the letter, the Court states: "In light of the material in its possession and insofar as the matters complained of are within its competence, the Court found that the admissibility criteria set out in Articles 34 and 35 of the Convention had not been met." In a subsequent letter dated 10 October 2014, the Court recalls that the author's application was declared inadmissible and that the Convention for the Protection of Human Rights and Fundamental Freedoms does not contain any provision for appeal against a decision by which the Court has declared an application inadmissible.

¹⁰ See communication No. 1636/2007, *Onoufriou v. Cyprus*, decision of inadmissibility of 25 October 2010, para. 6.2 (communication inadmissible under article 5 (2) (a) of the Optional Protocol), note 15 ("Four decisions were adopted by the European Court of Human Rights in the author's case, three of which were declared inadmissible, while one was decided on the merits, regarding a different matter than the issues presented by the author before the Committee."); communication No. 1510/2006, *Vojnović v. Croatia*, Views of 30 March 2009 (communication inadmissible under article 5 (2) (a) of the Optional Protocol because although the European Court had considered the same matter, it had declared the application inadmissible *ratione temporis*); communication No. 168/1984, *V.O. v. Norway*, decision of inadmissibility of 17 July 1985, paras. 4.2-4.3 (communication inadmissible under article 5 (2) (a) of the Optional Protocol because the European Commission on Human Rights had already found the same matter to be inadmissible as manifestly ill-founded); communication No.

also notes that the State party did not challenge the author's argument concerning the non-preclusive effect of the decision of the European Court. The Committee therefore considers that it is not precluded by article 5 (2) (a) of the Optional Protocol from examining the communication.

6.3 The Committee takes note of the author's claim that the State party violated his rights under article 2 (3) of the Covenant when the Immigration Appeals Board issued a letter dated 28 August 2014 indicating that the State party is unwilling to provide him with non-refoulement protection despite knowledge of facts substantiating his need for such protection. The Committee recalls that article 2 (3) can be invoked by individuals only in conjunction with other articles of the Covenant and cannot, in and of itself, give rise to a claim under the Optional Protocol.¹¹ The Committee therefore considers that it is precluded by article 2 of the Optional Protocol from examining this part of the communication.

6.4 The Committee notes that the State party does not raise any issues concerning the admissibility of the author's claim under article 7. Accordingly, the Committee declares this claim admissible and proceeds to 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, as provided for under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claim that he would face ill-treatment if he were removed to Afghanistan due to his Christian beliefs. It also notes the State party's observations that the Borgarting Court of Appeals, while not disputing that Christians face persecution in Afghanistan, was not satisfied that the author had genuinely converted to Christianity as of 15 December 2011, when the Board denied the author's second request for reversal of the Board's decision rejecting his appeal of the decision of the Directorate of Immigration on his asylum application.

7.3 The Committee recalls its general comment No. 31 in which it refers 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.¹² The Committee has also indicated that the risk must be personal¹³ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.¹⁴ Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹⁵

452/1991, *Glaziou v. France*, decision of inadmissibility of 18 July 1994, para. 7.2 (communication inadmissible under article 5 (2) (a) of the Optional Protocol because the European Commission had already found the same matter to be inadmissible as manifestly ill-founded); communication No.

121/1982, *A.M. v. Denmark*, decision of inadmissibility of 23 July 1982, paras. 4 and 5 (communication inadmissible under article 5 (2) (a) of the Optional Protocol because the European Commission had already found the same matter to be inadmissible as manifestly ill-founded).

¹¹ See, inter alia, communication No. 1961/2010, *X v. Czech Republic*, decision of inadmissibility adopted on 2 April 2015, para. 6.6.

¹² See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

¹³ See, inter alia, communication No. 2393/2014, *K. v. Denmark*, Views adopted on 16 July 2015, para. 7.3; communications No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.2; and No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

¹⁴ See *X v. Denmark*, para. 9.2 and communication No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

¹⁵ See *X v. Denmark*, para. 9.2 and *X v. Sweden*, para. 5.18.

7.4 The Committee recalls its jurisprudence that important weight should be given to the assessment conducted by the State party and that it is generally for the organs of States parties to review or evaluate the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.¹⁶

7.5 The Committee notes the author's assertion that the Court of Appeals erred by assessing whether he had genuinely converted to Christianity by the date of the Board's last administrative decision on 15 December 2011 and not by the date on which the Court examined the author's appeal in 2014. The Committee further notes the author's claim that the Court of Appeals and the Supreme Court failed to examine testimony from Church officials that he had a broad understanding of Christianity in November 2011 and failed to engage an independent expert to assess the genuineness of his conversion. The Committee observes that although the author argues that the Court of Appeals should have considered facts arising after 15 December 2011, he does not specify which such facts the Court allegedly disregarded in its decision dated 12 March 2014. The Committee further notes that the author has not responded to the State party's argument that the Court of Appeals did not limit its assessment to facts that arose before 15 December 2011. The Committee observes that the Court of Appeals took into account the author's participation in courses, conferences, Bible schools and missionary trips since January 2013; his membership in the Bykirka Church since October 2013; and the fact that the author had participated in seven to eight "double" teaching sessions with a priest in spring 2012. The Court stated that it "has also taken into account the development in [the author's] knowledge and engagement after his baptism and also to a certain extent after the cut-off point of 15 December 2011". Concerning the statements provided by the author dated August and September 2014 from three Church officials attesting to the genuineness of the author's belief, the Committee notes that these statements postdate the decisions of the Court of Appeals and the Supreme Court and therefore could not have been considered by either of the courts during their examination of the author's claims. Moreover, the Committee notes that the Court of Appeals did take into account earlier testimony provided by each of the three Church officials and considered that their statements favoured the conclusion that the author's conversion was genuine as of 15 December 2011. The Committee notes that the Court of Appeals nevertheless identified numerous other factors disfavouring the same conclusion.¹⁷ The Committee also notes that the Court separately assessed whether the author's mere allegation that he had converted represented a basis for asylum in and of itself and notes that the author has not contested the Court's analysis on this issue.¹⁸ The Committee therefore considers that the author has not demonstrated that the Court failed to take into account relevant facts or risk factors in its assessment of whether he would be subject to a risk of treatment contrary to article 7 if returned to Afghanistan and has therefore not shown that the Court's assessment was arbitrary or amounted to a manifest error or a denial of justice in this regard.

7.6 The Committee also takes note of the author's argument that the Court of Appeals erred by using a more stringent evidentiary threshold for converts and by failing to apply the principle according to which asylum seekers should be given the "benefit of the doubt". The Committee observes that the Court, using historical data, drew a correlation between the State party's asylum policy of allowing internal relocation of Afghan asylum seekers and a rise in the number of Afghan asylum seekers claiming that they had converted to Christianity after arriving in Norway. The Committee further takes note that the Court, citing relevant guidelines proposed by UNHCR, concluded from this correlation that

¹⁶ See, inter alia, *K. v. Denmark*, para. 7.4 and communication No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

¹⁷ See paras. 4.8-4.11 above.

¹⁸ See para. 4.13 above.

asylum claims on the basis of conversion should be assessed with a particular focus on the asylum seeker's general credibility, and specifically on her or his "personal reflections on the motive for and the consequences of converting". The Committee also takes note that the Court applied a standard of proof according to which "it is sufficient that the invoked grounds for asylum are seen as being reasonably probable". The Committee notes the Court's reasoning finding that several factors weighed against the author's general credibility, including several alleged contradictory statements for which the author has not provided an explanation.¹⁹ The Committee also observes that although the Court considered that the fact that the author was baptized three months after the Board's final rejection of his initial asylum claim weighed against his credibility, the Court did not automatically discredit the author's conversion solely on the basis of its timing; rather, the Court noted that genuine religious conversions may be sudden. The Court further considered "the fact that religious conversion can take place in several different ways" and took into account the author's level of formal education. The Court also stated that there was "no reason to apply a more stringent standard of proof to the asylum statement in conversion cases", given that the consequences of an incorrect decision would be serious. The Committee considers that the Court did not subject the author's claim to a higher burden of proof by attaching disproportionate importance to his allegedly inadequate reflection on his reasons for converting. On the basis of the information before it, the Committee therefore cannot conclude that the Court's decision was arbitrary or amounted to a manifest error or denial of justice.

7.7 The Committee also notes the author's argument that the State party's authorities did not have the expertise to assess his religious belief and should have engaged independent experts to do so. The Committee refers to its reasoning in paragraphs 7.4 and 7.5 above and concludes that the author has not established that the State party's authorities lacked independence in evaluating his claims.

7.8 Finally, the Committee takes note of the author's claim that the letter issued by the Board on 28 August 2014 indicates that the State party was unwilling to provide him with non-refoulement protection despite having knowledge of facts substantiating his need for such protection. However, the Committee notes that the author has not clarified the basis of this allegation. Furthermore, the Committee also takes note of the State party's claim that if the author wished to invoke new facts as a ground for protection against non-refoulement, he was able to do so by filing a petition for reversal to the immigration authorities. In the circumstances, the Committee cannot conclude that the information before it shows that the assessment of the organs of the State party was arbitrary or amounted to a manifest error or denial of justice.

7.9 For the foregoing reasons, the Committee cannot conclude that the State party would violate article 7 of the Covenant if it removed the author to Afghanistan.

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the author's removal to Afghanistan would not violate his rights under article 7 of the Covenant.

¹⁹ See paras. 4.8-4.12 above.