



## 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. 3266/2018\*, \*\*

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| <i>Communication submitted by:</i>        | H.G. (represented by counsel, Charlotta Lagnander)   |
| <i>Alleged victim:</i>                    | The author   |
| <i>State party:</i>                       | Sweden   |
| <i>Date of communication:</i>             | 19 November 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 19 November 2018 (not issued in document form) |
| <i>Date of adoption of decision:</i>      | 23 July 2021   |
| <i>Subject matter:</i>                    | Deportation to Afghanistan   |
| <i>Procedural issues:</i>                 | Exhaustion of domestic remedies; level of substantiation of claims   |
| <i>Substantive issues:</i>                | Torture; cruel, inhuman or degrading treatment or punishment; right to family life   |
| <i>Articles of the Covenant:</i>          | 7 and 17   |
| <i>Articles of the Optional Protocol:</i> | 2 and 5 (2) (b)  |

1.1 The author of the communication is H.G., a national of Afghanistan born on 6 January 1999. He claims that by deporting him to Afghanistan, the State party would violate his rights under articles 7 and 17 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 19 November 2018, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the author to Afghanistan while his case was under consideration by the Committee.

\* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

\*\* 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, 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 is originally from Ghazni, Afghanistan, but he grew up in the Islamic Republic of Iran. He is homosexual and has converted to Christianity while in the State party. The author notes that, as he grew up in the Islamic Republic of Iran, he does not know Afghanistan and lacks a social network in that country. He claims to have left the Islamic Republic of Iran because of stigmatization and pressure due to his sexual orientation. He arrived in Sweden in 2015, where he applied for asylum. That application was denied. The author notes that he was too ashamed to mention his sexual orientation in his initial application for asylum.

2.2 The author has a boyfriend in the State party from whom he does not want to be separated. They have been together for over two years. The author has been threatened by his ex-boyfriend's family in Afghanistan, as they feel he has violated the family's honour. He met his ex-boyfriend in the Islamic Republic of Iran when he was 13 years old. They had a relationship for a year but their families found out about it and a conflict ensued between the families. The author was beaten by his family, threatened with a knife by his boyfriend's brother and faced harassment in the Islamic Republic of Iran. His mother took him to see a doctor to "cure him". As the doctor told his mother that there was nothing to cure, his mother took him to a "community leader" who told her the author had to cure himself of his sins by praying and studying the Qur'an. The fact that his mother saw his homosexuality as a disease affected the author's self-esteem and made him ashamed of himself. He was therefore unable to mention his sexual orientation in his initial application for asylum.

2.3 The author submitted an application for impediment to enforcement of the deportation decision against him on 30 January 2018 on the basis of his sexual orientation. The application was denied by the Migration Agency on 28 February 2018. The Agency noted that he had not mentioned his sexual orientation in his first asylum interview, despite the fact that at that point, he had already been in Sweden for two years. Nor did he invoke it during the appeals proceedings or during the conversation with the Agency about his return to Afghanistan after the expulsion order had gained legal force. The Agency noted that it did not question that a person with a background in a country with negative views of homosexuality might have difficulty in openly telling someone about their sexual orientation. It noted, however, that at the time of the discussion about his return to Afghanistan, the author had been in Sweden for almost two years and would have known that views about homosexuality were more permissive in Sweden and could be invoked as grounds for asylum.

2.4 The author subsequently submitted a baptism certificate and invoked his conversion and baptism on 12 June 2018 as a ground for impediment to enforcement of the deportation decision against him. The Migration Agency rejected that application on 16 July 2018. It found that the reasons provided by the author for his conversion were general in nature, and that he had not made it probable that he had converted based on genuine religious conviction. The decision was upheld by the Migration Court on 31 August 2018. The Court also found the author to be vague and not credible in his account of events and unable to express his feelings about his sexual orientation and conversion in a reliable way. The author's application for leave to appeal was denied by the Migration Court of Appeal on 9 October 2018. The author argues that the domestic authorities did not take into account his young age and cultural background in assessing his asylum claims. He also argues that the domestic authorities failed to understand that his choice to convert was linked to his sexual orientation and to the severe harassment he was subjected to because of it while in the Islamic Republic of Iran. The author notes that he has previously made one suicide attempt and will do so again if he is deported to Afghanistan, as he refuses to relive the treatment to which he was subjected while in the Islamic Republic of Iran.

**Complaint**

3. The author claims that his deportation to Afghanistan would expose him to a real risk of treatment contrary to article 7 of the Covenant because of his sexual orientation and conversion to Christianity. He claims that he would be at risk of violence if deported to Afghanistan, as his ex-boyfriend's family, who is powerful, have returned to Afghanistan, and as he has received threats on social media attributed to both his faith and sexual

orientation. He further claims that by separating him from his boyfriend the State party would violate his rights under article 17 of the Covenant.

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

4.1 On 2 September 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 for lack of sufficient substantiation of the author's claims. With regard to the author's claims under article 7 of the Covenant, the State party does not contest the fact that all available domestic remedies have been exhausted. However, with regard to the claims raised under article 17, the State party notes that the author has not at any point during the domestic proceedings raised these claims before domestic authorities. It therefore submits that his claims under article 17 should be declared inadmissible for failure to exhaust all available domestic remedies. Should the Committee find the communication to be admissible, the State party submits that it is without merits.

4.2 The State party notes that the author initially applied for asylum in Sweden on 5 November 2015. The Migration Agency rejected his application on 3 February 2017. The decision was appealed to the Migration Court, which rejected the appeal on 6 July 2017. On 17 August 2017, the Migration Court of Appeal refused leave to appeal and the decision to expel the author became final. On 4 December 2017, the author was apprehended and placed in a detention centre.

4.3 The author subsequently submitted an application to the Migration Agency for a residence permit pursuant to chapter 12, section 18, of the Aliens Act or a new examination of the issue of a residence permit pursuant to chapter 12, section 19, of the Aliens Act, citing impediments to the enforcement of the expulsion order. On 28 February 2018, after conducting a new examination of the author's cited need for protection, the Migration Agency rejected the application. The decision was appealed to the Migration Court, which on 18 June 2018 referred the case to the Migration Agency for further examination. After another investigative interview, the Agency again, on 16 July 2018, decided to reject the application. The decision was appealed to the Migration Court, which rejected the appeal on 31 August 2018. The Migration Court of Appeal decided on 9 October 2018 not to grant the author leave to appeal and the decision to reject the application became final.

4.4 As to the merits of the complaint, the State party notes that the Migration Agency held an introductory interview with the author in connection with his asylum application on 8 November 2015. On 29 November 2016, an extensive asylum investigation that lasted three hours was held in the presence of the public counsel. The minutes from the interview and the investigation were communicated to the public counsel. Both the interview and the investigation were also conducted with the assistance of interpreters, whom the author confirmed that he understood well. After the initial grounds claimed by the author for asylum had been investigated and examined by the domestic migration authorities and the decision to expel him had become final, the author was granted a new examination of the issue of a residence permit based on newly invoked grounds for international protection. The Migration Agency held a new asylum investigation with the author on 12 February 2018, lasting more than four hours and focusing primarily on his alleged sexual orientation. On 14 February 2018, a supplementary investigation was held, lasting one hour and still focusing on the author's alleged sexual orientation. The minutes from the investigations were subsequently communicated to the public counsel. Upon appeal, the Migration Court held an oral hearing with the author on 5 June 2018.

4.5 On 18 June 2018, the Migration Court referred the case to the Migration Agency for further investigation regarding the author's cited conversion to Christianity. The Agency consequently held another asylum investigation with the author on 28 June 2018, lasting more than two hours, and focusing primarily on his alleged conversion. The minutes from the investigations were subsequently communicated to the public counsel. Upon appeal, the Migration Court held an oral hearing with the complainant on 13 August 2018. The investigations and the hearings were all conducted in the presence of the author's public counsel and with the assistance of interpreters, whom the author confirmed that he understood well. Through his public counsel, the author has been invited to scrutinize and submit written observations on the minutes from the interviews conducted, and to make written submissions

and appeals. It follows from this background that he has had ample opportunities to explain the relevant facts and circumstances in support of his claims and to argue his case, both orally and in writing, before the Migration Agency and the Migration Court. The State party therefore submits that it must be considered that the Migration Agency and the Migration Court have had sufficient information, together with the facts and documentation in the case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the author's need for protection in the State party. In view of the fact that the Migration Agency and the migration courts are specialized bodies with particular expertise in the field of asylum law and practice, the State party argues that 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. It submits that returning the author to Afghanistan would therefore not entail a violation of his rights under article 7 of the Covenant.

4.6 The State party notes that in his initial application for asylum, the author stated that a forced return to Afghanistan would put him at risk of being killed or subjected to violence since he was a Hazara and due to the general security situation there. He also claimed that he was at risk of being forced to become a suicide bomber. The domestic authorities considered that he had not plausibly demonstrated that there was a threat against him in Afghanistan because he was a Hazara or because of the general security situation in Afghanistan. Furthermore, there was nothing to suggest that he would be forced to become a suicide bomber.

4.7 The State party notes that it was only while the author was placed in detention on 4 December 2017 and awaiting expulsion that he first claimed that he was homosexual and that he had converted from Islam to Christianity. It notes that pursuant to chapter 4, section 1, of the Aliens Act, a risk of persecution due to sexual orientation can constitute a ground for protection. On 2 October 2015, the Swedish Migration Agency adopted a general legal position paper concerning the method for a forward-looking risk assessment of a cited need for protection on grounds of sexual orientation, transgender identity or expression. According to that paper, an applicant must first plausibly demonstrate that he or she belongs to or is perceived in his or her country of origin as belonging to, a group that risks persecution on those grounds. It is furthermore emphasized that the task of the Agency is not to determine an applicant's sexual orientation but to assess whether an asylum seeker has plausibly demonstrated that he or she belongs to such a group.

4.8 The State party also refers to the judgment of the European Court of Human Rights in *M.K.N. v. Sweden*,<sup>1</sup> in which the Court assessed the credibility of the applicant's claim that he would be subjected to treatment contrary to article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) owing to an alleged homosexual relationship. The Court found that the applicant had not presented a reasonable explanation for not having invoked his claim regarding his sexual orientation until the appeal against the Migration Agency's expulsion order, more than one year after his arrival in Sweden. With regard to the circumstances of that case, the Court considered that the applicant's claim concerning the cited homosexual relationship was not credible.

4.9 The State party reiterates that the Migration Agency held two separate investigations with the author lasting a total of five hours and focusing on his alleged sexual orientation. A specialist also took part in the assessment. Despite the author being given ample opportunities to explain his cited need for protection, both orally and in writing, the Agency, inter alia, considered his account to be vague and lacking in detail regarding his personal perception of and feelings related to his alleged sexual orientation. During the asylum investigations, he was given the opportunity to describe his alleged relationship in the Islamic Republic of Iran and to explain how he perceived his sexual orientation during his childhood. The author stated that he had felt ashamed after he was discovered together with the boy by his mother, and afterwards felt different since his mother had become upset. However, the Agency noted that he had been unable to explain how his alleged shame was expressed in his daily life or

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<sup>1</sup> European Court of Human Rights, *M.K.N. v. Sweden*, Application No. 72413/10, Judgment, 27 June 2013.

to explain what he was thinking when he realized that he was attracted to people of the same sex. The Agency further considered that his personal reflections were of a general nature without any real connection to events as perceived by him. He was moreover unable to describe in a detailed way how he experienced his alleged relationship in Sweden, even though he claimed that that relationship was an essential part of his life. In an overall assessment, the Agency concluded that the complainant had not been able to plausibly demonstrate that he belonged to a group that was at risk of persecution in Afghanistan owing to sexual orientation or ascribed sexual orientation.

4.10 The State party notes that on appeal, the Migration Court held an oral hearing to give the author the opportunity to again describe his cited need for protection owing to sexual orientation. The Court initially noted that it had been more than two years after arriving in Sweden and after his expulsion order had become final that he first cited that he was homosexual, while he claimed to have known the Swedish authorities' view about homosexuality before arriving in Sweden. That fact had a negative impact on his credibility. Furthermore, the Court considered his account relating to his thoughts and feelings about his sexuality to be remarkably vague, even considering his cultural background. During the hearing, he was given the opportunity to develop his personal perception of and feelings regarding the alleged relationship in the Islamic Republic of Iran. He stated, inter alia, that he did not have any thoughts or feelings about being different and stated that everything had felt good and natural. He further claimed that he had lacked knowledge about the view of homosexuality in the Islamic Republic of Iran and about the different attitudes towards heterosexual and homosexual relationships. The Court noted in that regard that peoples' thoughts and feelings relating to those kinds of questions were highly personal and individual. However, it was not deemed credible that the author lacked knowledge about views on homosexuality in the Islamic Republic of Iran. Moreover, the Court considered the complainant's replies regarding his feelings of shame and fear after his mother had allegedly apprehended him with the boy in the Islamic Republic of Iran to be mechanical and without nuance. Taking into account all the events the author claimed to have experienced and the context in which he grew up, the Court considered that he should have been able to give a more detailed account. Consequently, the Court considered that he had not plausibly demonstrated that he belonged to a group that, owing to sexual orientation or ascribed sexual orientation, was at risk of persecution in Afghanistan.

4.11 The State party further notes that the author claimed before the Committee that he had been subjected to threats from people in Afghanistan who were relatives of the boy he had allegedly had a relationship with in the Islamic Republic of Iran when he was 13 years old. It notes that he has not submitted any evidence in support of that claim, either before the Committee or before the domestic authorities. It argues that he has not provided any reasonable explanation as to why these people would contact him several years later or by which means they could have contacted him. It submits that the author's claims in this regard lack credibility and any corroborating evidence.

4.12 Regarding the author's conversion from Islam to Christianity, the State party notes that when examining whether he had plausibly demonstrated that his conversion was genuine, the migration authorities made an individual assessment in accordance with the Office of the United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees as well as a guiding judgment from the Migration Court of Appeal (case No. MIG 2011:29). An overall assessment was made of the circumstances in which the conversion took place and of whether the author could be expected to live as a convert upon his return to Afghanistan. It was taken into account that the alleged conversion to Christianity had taken place in Sweden after his expulsion order had become final, and while he was being held in detention awaiting the enforcement of his expulsion order. Since the conversion was not a continuation of religious views held before his arrival in Sweden, particular attention was paid to the credibility of the author's cited conversion. The Migration Agency conducted an extensive asylum investigation with the author and the Migration Court held an oral hearing in order to examine the author's faith, how he came to know about Christianity, the nature of and connection between any religious convictions held before the conversion and those he had since held, as well as any possible disaffection with the previously held religion. The Migration Agency

found that the author's account lacked the in-depth reasoning that could be expected from a person with a genuine and personal religious conviction who had decided to convert. The Agency noted, inter alia, that the complainant had been baptised at the detention centre on 12 May 2018. However, he was not able to reflect on the importance of the baptism relating to his own personal conviction as a Christian. Instead, his replies were considered to be about baptism in general. The author was also given the opportunity to expand on his thoughts regarding the risks of converting from Islam to Christianity in connection with a subsequent expulsion. Even though he was asked several questions in that regard, the Agency found that he could only reply in general terms about Christianity and not his own personal perceptions. He stated, inter alia, that he had chosen the right path, that he would recognize Jesus and that he had no regrets. In an overall assessment, the Agency concluded that the author should have been able to expand on his thoughts and feelings concerning his decision to convert in greater detail. Upon appeal, the Migration Court found that the author, during the oral hearing, had considerable difficulties recounting in any depth the internal process in his mind, which must have preceded the conversion and his choice to convert to Christianity. The Court noted that he did indeed have some knowledge about Christianity and about the Bible. However, the Court considered his account regarding his alleged Christian faith and its personal meaning to be vague and lacking in detail. The migration authorities therefore found that the author had not plausibly demonstrated that his conversion to Christianity was based on a genuine and personal religious conviction or that he would live as a Christian convert upon his return to Afghanistan. Neither was he found to have plausibly demonstrated that he risked being subjected to treatment constituting grounds for protection owing to an ascribed religious belief. 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.

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

5.1 On 16 April 2020, the author submitted his comments on the State party's observations. He maintains that the communication is admissible.

5.2 The author refers to his initial submission of 19 November 2018 and maintains that his removal to Afghanistan would amount to a violation of his rights under article 7 of the Covenant.

5.3 The author submits that it is not possible to exhaust his claims under article 17 of the Covenant in the State party. First, it is impossible for him to apply for a residence permit based on his connection with his boyfriend, when the authorities refuse to believe that he has one. Second, there are no remedies available. The only extraordinary remedy would be to apply for impediment to enforcement of the deportation decision owing to a connection to a person in Sweden. However, in order for the authorities to grant a residence permit on that ground, it must be a connection such as that to a child, and even then the applicant must have an approved passport, which the author does not have.

5.4 The author reiterates the claims raised in his initial complaint. Regarding the State party's referral to *M.K.N. v. Sweden*, the author notes that the circumstances in said complaint were very different from his situation. The applicant in *M.K.N. v. Sweden* was an adult married man with two children who wished to stay with his wife and had no intention of living as a homosexual. The author argues that in his case, his claims have been assessed with a negative bias and without a human rights perspective, with a burden of proof impossible to attain. He argues that his refugee claims were not assessed in a rational and objective manner but were biased and based on subjectivity.

5.5 The author notes the State party's argument that his claims were not found credible as he did not invoke them until the deportation order against him had become final. He argues that this is unreasonable as he was only 16 years old when he came to Sweden. He had suffered from harassment and violence for three years in the Islamic Republic of Iran because of his sexuality. He was beaten by his family who regarded him as sick. In those circumstances, he could not be expected to invoke his sexuality at an early stage. He notes the State party's argument that the domestic authorities found his account to be vague and that he was unable to express his feelings. He argues that it was difficult for him to talk about his sexual orientation owing to his previous experience in the Islamic Republic of Iran and

to the fact that he grew up in a homophobic country. When he started a relationship in Sweden, he was at first afraid that the situation in the Islamic Republic of Iran would repeat itself, that is, that people would treat him the way he was treated in that country. He has explained that he was afraid that rumours would spread. Furthermore, he argues that no consideration was made for the fact that he was not used to talking about his sexuality, or for cultural differences between Sweden and Afghanistan. Sweden is an individualistic society and Afghanistan is not. Citizens of Afghanistan often do not have the experience to reflect on questions involving oneself, and questions relating to one's personality. It is especially hard to reflect on issues that are taboo.

5.6 The author reiterates his arguments that he would be at risk of treatment contrary to article 7 of the Covenant owing to his conversion to Christianity. He argues that he has clearly expressed his reasons for converting and that the conversion is genuine. He further argues that in cases such as his, it is important to assess the cumulative effect of the risks when an asylum seeker belongs to several vulnerable groups or risk profiles. The needs for protection (apostasy and sexuality) are intertwined and together they constitute a great part of his identity. In his case, his religion and sexuality are intertwined and his choice to convert and to leave Islam is linked to his sexuality and the severe harassment that he has previously faced.

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

#### *Consideration of admissibility*

6.1 Before considering any claims 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.

6.2 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.

6.3 The Committee notes the State party's submission that the author's claims under article 17 of the Covenant should be declared inadmissible for failure to exhaust all available domestic remedies as the author has not raised those claims before the domestic authorities. The Committee notes the author's argument that he cannot exhaust his claims under article 17 of the Covenant in the State party as residence permits are usually only granted to applicants based on family connection such as that to a child, which is not the case in his situation. The Committee recalls its jurisprudence that, although there is no obligation to exhaust domestic remedies if they have no prospect of being successful, authors of communications must exercise due diligence in the pursuit of available remedies and that mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them.<sup>2</sup> The Committee observes that, in the present case, the author has not made any attempt to raise his claims under article 17 of the Covenant before the domestic authorities. The Committee therefore finds his claims under article 17 of the Covenant to be inadmissible under article 5 (2) (b) of the Optional Protocol.

6.4 The Committee notes the author's claims that his deportation to Afghanistan would expose him to a real risk of treatment contrary to article 7 of the Covenant because of his sexual orientation and his conversion to Christianity. The Committee notes the State party's submission that the author has failed to substantiate his claims for the purposes of admissibility. It notes the State party's argument 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. It notes the State party's argument that the Migration Agency held two separate investigations with the author lasting a total of five hours and focusing on his alleged sexual orientation, in which a specialist took part, but that the author's account was found to be vague and lacking in detail and personal perception. The Committee further notes the State party's argument that the

<sup>2</sup> See, inter alia, *V.S. v. New Zealand* (CCPR/C/115/D/2072/2011), para. 6.3; *García Perea v. Spain* (CCPR/C/95/D/1511/2006), para. 6.2; and *Vargay v. Canada* (CCPR/C/96/D/1639/2007), para. 7.3.

Migration Court also held an oral hearing to give the author the opportunity to again describe his cited need for protection owing to sexual orientation and the Court's finding that his claims were not credible, given, among other factors, that it had been more than two years after his arrival in Sweden and after his expulsion order had become final that he first cited that he was homosexual, while he claimed to have known the Swedish authorities' view about homosexuality before arriving in Sweden. The Committee also notes the State party's argument that the author has not submitted any evidence in support of his claim that he has received threats from persons in Afghanistan, either before the Committee or before the domestic authorities. It also notes the State party's argument that the author's conversion was found to not be genuine by the domestic authorities as it took place after his expulsion order had become final, while he was being held in detention awaiting the enforcement of the expulsion order, and as his account was found to be vague and lacking in detail and personal conviction.

6.5 The Committee notes the author's argument that the domestic authorities did not take into account his young age and cultural background in assessing his asylum claims and his claim that he initially was too ashamed to raise his claims based on his sexual orientation before the domestic authorities. It notes his argument that his claims were assessed with a negative bias by the domestic authorities and with a burden of proof impossible to attain. It also notes his argument that it was difficult for him to talk about his sexual orientation owing to his previous experience in the Islamic Republic of Iran and owing to his having grown up in a country with negative views on homosexuality. The Committee also notes his argument that the domestic authorities had failed to understand that his choice to convert was linked to his sexual orientation and his argument that he clearly expressed his reasons for converting.

6.6 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 were substantial grounds for believing that there was 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 personal<sup>3</sup> and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>4</sup> All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>5</sup> 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,<sup>6</sup> unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>7</sup>

6.7 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. In the present case and as concerns the author's claims that he would be at risk of persecution if returned to Afghanistan owing to his sexual orientation, the Committee notes that the author states that he came to the realization about his sexual orientation at a young age. It notes that he arrived in Sweden in 2015 but did not invoke his protection claims on the basis of his sexual orientation until January 2018, after the rejection of his initial application for asylum had become final and while he was in detention facing removal to Afghanistan. The Committee further notes the domestic authorities' findings that the author's account was

<sup>3</sup> *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; and *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.

<sup>4</sup> *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.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4; and *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

<sup>7</sup> See, for example, *K. v. Denmark*, para. 7.4; *Y.A.A. and F.H.M. v. Denmark* (CCPR/C/119/D/2681/2015), para. 7.3; *Rezaiifar 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.

found to be vague and lacking in detail regarding his personal perception of and feelings related to his alleged sexual orientation. It also notes the Migration Court's finding that the author's claims were not considered credible, given that he invoked them more than two years after his arrival in Sweden, even though he had stated during the asylum proceedings that he had knowledge about the State party authorities' view of homosexuality before arriving in Sweden. The Committee considers that the author's allegations regarding the examination of his claims related to his sexual orientation mainly reflects his disagreement with the factual conclusions drawn by the State party's authorities about the credibility of his claims. The Committee, however, notes that the domestic authorities considered all the claims raised by the author and it finds 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.<sup>8</sup>

6.8 Concerning the author's claims that he would be at risk of persecution if returned to Afghanistan owing to his conversion, the Committee recalls its jurisprudence 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.<sup>9</sup>

6.9 In the present case, the Committee notes that the author claims that his allegation regarding his conversion was not adequately examined by the migration authorities. It notes the State party's argument that the domestic authorities found the author's account to be vague and lacking in reflection and his conversion not to be genuine. It further notes that the author has not provided any substantiation as to how his conversion would be known to Afghan authorities or others in his country of origin. The Committee considers the author's claims about the risk to which he would be exposed in Afghanistan as a recent convert to be of a general and vague nature, and that his claim regarding the examination of his conversion mainly reflects his disagreement with the factual conclusions drawn by the State party's authorities about the credibility of his claims. The Committee also considers that the State party's authorities conducted an extensive asylum investigation with the author in this regard and the Migration Court held an oral hearing in order to examine the author's faith and the motive for conversion. 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.

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

7. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol;
- (b) That the decision shall be transmitted to the State party and to the author.

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<sup>8</sup> See, for example, *I.K. v. Denmark* (CCPR/C/125/D/2373/2014), para. 9.7; *M.P. et al. v. Denmark* (CCPR/C/121/D/2643/2015), para. 8.7; and *A.E. v. Sweden*, para. 9.7.

<sup>9</sup> *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.