



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. 2936/2017^{*, **}

<i>Communication submitted by:</i>	J, represented by counsel, Roberto Malini, of EveryOne Group, and, subsequently, Erik Roshagen
<i>Alleged victims:</i>	J, K, L and M
<i>State party:</i>	Sweden
<i>Date of communication:</i>	6 December 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 94 of the Committee's rules of procedure, transmitted to the State party on 13 January 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	28 March 2024
<i>Subject matter:</i>	Deportation to Afghanistan with alleged risk of persecution and risk to mental health
<i>Procedural issue:</i>	Substantiation of claims
<i>Substantive issues:</i>	Arbitrary detention; arbitrary/unlawful interference; health; non-refoulement; refugees; right to life; torture; freedom of religion; freedom of opinion or expression
<i>Articles of the Covenant:</i>	6, 7, 9, 17, 18 and 19
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is J, a national of Afghanistan born in 1988. He submits the communication in his own name and on behalf of his father, K, born in 1950; his mother, L, born in 1950; and his aunt, M, born in 1946. K, L and M are also nationals of Afghanistan. The author submits that, by deporting them to Afghanistan, the State party would violate their rights under articles 6, 7, 9, 17, 18 and 19 of the Covenant. The Optional Protocol entered into force for Sweden on 23 March 1976. The author is represented by counsel.

1.2 On 13 January 2017, the Committee, acting through its Special Rapporteurs on new communications and interim measures, requested the State party to refrain from deporting J,

* Adopted by the Committee at its 140th session (4–28 March 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



K, L and M to Afghanistan while their case was under consideration by the Committee. On the same day, the Swedish Migration Agency suspended their deportation.

1.3 On 16 February 2017, the Committee, acting through its Special Rapporteurs on new communications and interim measures, denied the author's request for interim measures in the form of moving him and his family to different accommodation in Sweden or relocating them to another country. In 2018, the author informed the Committee that his aunt, M, had a serious illness.

1.4 In 2019, the removal orders to which the authors were subject became statute-barred and were thus no longer enforceable. On 28 February 2019, the author filed a new application for asylum in Sweden. His father, mother and aunt also filed new asylum applications. On 28 June 2019, the State party requested the discontinuance of the communication. On 22 September 2019, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided to suspend its consideration of the communication pending the outcome of the renewed asylum proceedings.

1.5 Thereafter, M passed away in Sweden, and the State party granted residence permits to the author's parents, who then withdrew from the present communication. The author, who is pursuing the communication, was not granted asylum. He remains in Sweden. On 22 August 2023, following the conclusion of the author's renewed asylum proceedings, the suspension of the consideration of the communication was lifted.

Factual background¹

2.1 The author and his family resided in the Province of Ghazni. The author's father worked for a logistics company that was known to support the forces of the United States of America and the North Atlantic Treaty Organization (NATO) in Afghanistan. Ghazni was one of the most dangerous provinces in the country. The Taliban had de facto control over the area and often engaged in criminal activities. The author and his father were asked to join the Taliban. They refused to do so. Members of the Taliban beat the author's father, who was then hospitalized for several days. Members of the Taliban set fire to the office where the author's father worked. They also set the family's home on fire. The author and his family managed to escape before the Taliban killed them. The Taliban publicly stated that the family were traitors for supporting the armed forces of the United States and ordered their followers throughout the country to kill the author, his parents and his aunt. If the family returns to the country, they will be killed by the Taliban or Da'esh.²

2.2 On 28 March 2013, the author applied for asylum in Sweden for the first time. On 2 April 2013, he had an asylum interview with the immigration authorities in Sweden. During the interview, he stated that he had left Afghanistan because of the Taliban and an increasing number of suicide attacks in the country. When asked whether he had personally had any encounters with the Taliban, he stated that he had not had anything to do with the Taliban. He also stated that he suffered from headaches, had difficulty sleeping and had trouble with his back and feet after a fall. He further stated that he had understood the interpreter during the interview.

2.3 During a further interview, on 15 May 2013, the author stated that he had been born in the Province of Ghazni. While the family resided there, his father had worked for a construction company, and the author had sold fruit on the street. He had left Afghanistan because the Taliban was recruiting young boys to fight for them, which caused his parents concern. One day, when he had been selling fruit on the street, the Taliban had urged him to fight in the war. They destroyed his fruit stand, which had landed on his legs and injured him. The Taliban had never threatened him personally on any other occasion. When asked why the Taliban were interested in him specifically, he stated that all young people had problems with the Taliban. His family had not been able to escape the Taliban by moving to another province, because they had sold everything to pay for their journey to Sweden and because

¹ For the sake of clarity, the present section concerns the domestic proceedings relating to the author's various applications, both before and after the registration of the present communication.

² These assertions were made in a statement submitted with the communication. The dates of the incidents in question were not specified.

they had had no work or housing in, or local knowledge of, any other province. Regarding his health, he stated that he suffered from headaches and had problems with his legs after being injured during the incident with the Taliban. He stated that he had invoked all his reasons for seeking asylum and that he had understood the interpreter during the asylum interview.

2.4 On 18 February 2014, the Migration Agency rejected the author's asylum application, finding that he had not demonstrated that there was a personal and concrete threat against him in Afghanistan and that he did not suffer from any serious health problems. On 26 November 2014, the Migration Court rejected his appeal against that decision. On 18 February 2015, the Migration Court of Appeal rejected his application for leave to appeal against the decision of the Migration Court, and the deportation decision became final.

2.5 On 8 April 2015, the author applied for a residence permit, citing impediments to his deportation. He also applied for re-examination of his asylum claim, citing new facts. He alleged that his mental health had deteriorated because members of the Taliban had raped him at the fruit stand where he had worked near his house in Afghanistan; that he had not previously disclosed the sexual assault because of feelings of shame; that he had been referred to an adult psychiatric clinic in 2014 owing to hallucinations and suicidal ideation; that he had been diagnosed with post-traumatic stress disorder and depression; and that he had tried to take his own life in Afghanistan. He submitted medical documentation with his applications.

2.6 On 23 March 2015, the Migration Agency rejected the author's applications, finding that there were no grounds impeding his deportation. On 27 May 2015, the Migration Court rejected his appeal against that decision. On 1 June 2015, the Migration Agency transferred the author's case to the police for the enforcement of his expulsion.

2.7 On 5 June 2015, the author submitted a document attesting to the fact that he had been treated as an inpatient at a psychiatric clinic between 8 January and 29 May 2015 owing to a severe depressive episode with psychotic symptoms. On 9 June 2015, the Migration Agency, having reassessed the author's case, decided not to grant him a residence permit. It considered that no circumstances justified a deviation from its previous decision.

2.8 On 25 August 2015, the author applied again for re-examination of his asylum claim. He alleged that he was from one of the most dangerous provinces in Afghanistan; that he had been threatened by the Taliban because of his father's employment; that the Taliban suspected him of being a spy for the United States; and that he suffered from post-traumatic stress disorder and had been hospitalized for five months.

2.9 On 9 October 2015, the Migration Agency rejected the author's application, finding that no new circumstances had emerged that could constitute a basis for finding that there was an impediment to his expulsion. On 10 November 2015, the Migration Court rejected his appeal against that decision.

2.10 On 3 December 2015, the State party's authorities detained the author on the basis of circumstances indicating that he would attempt to evade deportation. On 27 January 2016, the author was taken by police and detention personnel to receive emergency psychiatric services because he had reported suicidal ideation and had partially formed plans to die by suicide. The physician who examined the author did not find any evidence of clinical depression or psychosis.

2.11 On 2 February 2016, the author was deported to Kabul. On 3 February 2016, the Swedish police informed the Swedish Migration Agency that the author had been refused entry to Afghanistan because the authorities in Afghanistan were accepting only voluntary returnees. On 4 February 2016, the State party's authorities brought the author back to Sweden.

2.12 On 6 July 2016, the author again applied for a residence permit, citing impediments to his deportation. He based his application on his previous claim of ill health and his concern about what would happen to him and his family in Afghanistan. He submitted a statement from a psychologist who had examined him on 22 March 2016. On 18 October 2016, the Migration Agency rejected the author's application, citing the reasons invoked in its previous decision.

2.13 Thereafter, the author applied for reconsideration of his previous application for a residence permit. On 28 October 2016, the Migration Agency rejected the application. The author maintains that he did not appeal that decision because he considered that, given the outcome of his previous applications and the fact that he could not afford to hire a lawyer to represent him, an appeal would not have been successful. The author acknowledges that legal representation is not required by law.

2.14 On 13 January 2017, the communication was registered. On an unspecified date, the author applied again for a residence permit, citing impediments to his deportation. On 27 September 2017, the Migration Agency rejected his application, finding that none of the criteria for the granting of such a permit had been met, as no new circumstances had emerged in the case.

2.15 On 18 February 2019, the decision to deport the author became statute-barred and no longer enforceable.

2.16 On 28 February 2019, the author filed another application for asylum in Sweden. In his application and during his interview, he invoked his previous arguments relating to protection and mental health. In addition, he stated that he had become an atheist in or around 2014. Although he had been a practicing Muslim in Afghanistan, the religion had been forced upon him. He had begun to doubt Islam after being sexually assaulted. Apart from his parents, closest friend and girlfriend, no one knew about his atheism. If deported to Afghanistan, he would be refused entry to the country and would be persecuted by the Taliban because of the aforementioned threats and because he had renounced Islam.

2.17 On 21 February 2021, the Migration Agency rejected the author's asylum application. In its decision, the Migration Agency examined whether the author had the right to protection in Sweden. It observed that the author had not submitted any documentation with his new application but took note of the documentation that he had previously submitted. The Migration Agency noted its previous finding that the author had not provided sufficient or reliable information about the threat posed by the Taliban and found no reason to make a different assessment. The Migration Agency also found that, throughout the asylum interview, the author's answers regarding Islam had been repetitive and he had not elaborated on his answers, despite having been asked numerous questions. His account had lacked deep theological reasoning. He had been asked on several occasions to explain how he had arrived at the conclusion that God did not exist, especially considering that he had previously been a devout Muslim. He had responded that he had questioned God's existence before coming to Sweden and had not wanted to be forced to pray five times a day, fast or go to a place of worship but had wanted to feel free. He had repeated his statements regarding the coercion that occurred in Afghanistan and had stated that, in Sweden, the practice of religion was more modern. He had stated that he had not told anyone about his atheism during the previous protection proceedings because no one had asked him about it. In the view of the Migration Agency, the author had not been able to explain his individual thought process or connect it to atheism. In the overall view of the Migration Agency, the author had not plausibly demonstrated that his atheism was based on a genuine and personal conviction, nor had he plausibly demonstrated that it had come to anyone's knowledge in Afghanistan. Moreover, he had not given an acceptable explanation as to why he had waited so long to inform the asylum authorities that he was an atheist. While there was an internal armed conflict in the Province of Ghazni, it had not been judged to be so serious that all persons were at risk of being affected by indiscriminate violence. It had not been shown that there was a personal and concrete threat against the author in Afghanistan or that he would be particularly vulnerable owing to the conflict in the Province of Ghazni. The security situation in Kabul was not such that all individuals were at risk of being affected by indiscriminate violence.

2.18 The Migration Agency proceeded to assess whether there were exceptionally distressing circumstances in the author's case and whether the State party would violate its international obligations by deporting him. The Migration Agency noted that the author's mental health condition had not been deemed to be life-threatening during the first round of asylum proceedings and that he had not submitted any new medical certificates in connection with the second round of asylum proceedings. Furthermore, the author had stated that he previously received help from a psychologist in Sweden, as well as medication. He had stated that he was no longer taking medication and had not seen a doctor for some time, owing to

the coronavirus disease (COVID-19) pandemic. The author had also stated that his psychological well-being was entirely dependent on being granted a residence permit. In its overall assessment, the Migration Agency concluded that the conditions for granting a residence permit on the basis of exceptionally distressing circumstances relating to the author's health condition had not been met. Nor was his adaptation to Sweden or the situation in Afghanistan such that the granting of a residence permit was required.

2.19 On 16 July 2021, the Migration Agency issued a legal position paper pursuant to which it suspended all deportations to Afghanistan owing to the security situation in the country. On 30 November 2021, the Migration Agency issued a new legal position paper on the need for protection in cases involving Afghanistan.³ It lifted the general suspension on deportations to Afghanistan. It stated that individuals facing deportation to Afghanistan would be permitted to file new asylum applications on grounds linked to the Taliban regime. If, on the other hand, the grounds were not linked to the Taliban regime, assessments would be made on a case-by-case basis as to whether the new circumstances raised constituted lasting impediments to deportation.

2.20 The author filed an appeal against the negative decision of the Migration Agency of 21 February 2021. The Migration Court held an oral appeal hearing during which the author was heard. On 12 September 2022, the Migration Court rejected the appeal, stating in its decision that the author had significantly modified his submissions on multiple occasions during the various proceedings, to such an extent that they could not be considered reliable. In the first interview, the author had stated that he had not had anything to do with the Taliban. In the next interview, he had stated that the Taliban had approached him and had asked him to join them, but had also stated that they had not threatened him personally. During the appeal proceedings in 2014, he had stated that the Taliban had tried to recruit him, that he had gone into hiding and that the Taliban had been searching for him on a weekly basis. After his expulsion order had become legally binding, he had stated, in 2015, that he had been sexually assaulted by members of the Taliban, who had threatened to kill him. During the subsequent oral hearing, he had stated that he had been sexually assaulted three times but had not been able to explain in further detail the threat posed by the Taliban.

2.21 Regarding the author's alleged atheism and renunciation of Islam, the Migration Court did not dispute that the author had stopped praying and fasting but considered that he had not been able to account for the personal process that he had undergone to reach the conclusion that God did not exist. Nor had he been able to describe in concrete terms the thoughts and reflections that had led him to adopt atheism. He had provided conflicting information about the decisive factor in his renunciation of Islam (alternately stating that his girlfriend and a priest had been the decisive factor). His statements regarding atheism had been considered to reflect his adaptation to a different culture and lifestyle. The author did not express his beliefs in a distinctive way in his everyday life. It had been only in 2019 that he mentioned his distancing from Islam for the first time, even though he allegedly renounced Islam in 2014. In its overall assessment, the Migration Court found that he had not submitted reliable information to indicate that he had genuine and personal atheist convictions. He had not plausibly demonstrated that he required protection owing to values and opinions that he had acquired in Sweden. Thus, he did not belong to a group that risked persecution in Afghanistan on the basis of actual or ascribed religious or political conviction.

2.22 Regarding his health condition, the Migration Court noted that the author had previously been diagnosed with post-traumatic stress disorder and had been hospitalized. However, no new medical certificates had been submitted, and no other factors justified the granting of a residence permit on health-related grounds. With respect to his family circumstances, the author had come to Sweden as an adult and had spent more time in Afghanistan than in Sweden. While he had spent a long time in Sweden, his connection to Afghanistan was considered stronger than his connection to Sweden. He would be able to work and re-establish himself in his home country. Although the author had adjusted to conditions in Sweden, his expulsion would not be disproportionate in view of article 8 of the

³ Revisions were made to the position paper in April and December 2022 and in January 2023. Legal position papers are internally binding general recommendations of the Migration Agency regarding the application of relevant laws and practice.

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which protects the right to private and family life. Lastly, the general security situation in the Province of Ghazni was not such that any individual returning to the area was at risk. The author had not plausibly demonstrated that there was a personal and concrete threat against him.

2.23 On 17 February 2023, the Migration Court of Appeal rejected the author's request for leave to appeal the decision of the Migration Court. The author maintains that he has exhausted domestic remedies and has not applied to another body for consideration of the same matter.

Complaint

3.1 The author submits that, by deporting him to Afghanistan, the State party would violate his rights under articles 6, 9, 17, 18 and 19 of the Covenant. The author is from the Province of Ghazni, a dangerous area. The Taliban attempted to recruit him, but he refused to join. He was sexually assaulted by members of the Taliban near his house. The author's father used to work for a logistics company with ties to the United States and NATO. Members of the Taliban set fire to the office where the author's father worked and the family's house. They also attacked the author's father, resulting in his hospitalization. The Taliban instructed its followers throughout the country to kill the author and his family. If the author were to return to Afghanistan, the Taliban would torture and kill him.⁴

3.2 The author suffers from post-traumatic stress disorder. He also suffers from severe depression with psychotic features and provided medical documentation to the State party's authorities during the asylum proceedings. His mental ill health constitutes a disability or a grave health issue. He would be unable to access adequate medical care or medication in Afghanistan. He needs to be close to his parents, who have been granted residence permits in Sweden.

3.3 The author became an atheist in or around 2014, after arriving in Sweden, and would be persecuted by the Taliban for having renounced Islam. The author was prohibited from re-entering Afghanistan in February 2016.

3.4 The author questions the quality and fairness of the domestic proceedings. The asylum authorities disregarded the documentation that the author had provided to them.⁵ Moreover, while they considered that the author was young and would be able to earn a living in Afghanistan, his youth and ability to work would render him attractive for recruitment by the Taliban. The situation in Afghanistan worsens every day. The author wants to be in a safe environment where he can work and live a stable life without a risk of being killed.

State party's observations on admissibility and the merits

4.1 In its submission of 13 July 2017, the State party does not contest that the author has exhausted domestic remedies. It maintains that the communication is without merit and is inadmissible because it is manifestly unfounded. The author has not demonstrated that he faces a personal risk of being subjected to treatment contrary to the Covenant if deported to Afghanistan. Moreover, the asylum proceedings were thorough and included several interviews, the first of which occurred in 2013. According to the author's statements during his second asylum interview, the Taliban attempted to recruit him on only one occasion. The State party acknowledges the problem of coercive recruitment by the Taliban. However,

⁴ Article 7 of the Covenant is not formally invoked in the complaint but is invoked in the author's comments.

⁵ The author provides a translation of a report issued by a psychologist, dated 13 January 2016. In the report, the psychologist stated that she had been treating the author for depression and post-traumatic stress disorder; that he had fallen into a deep depression in January 2015; that he had had to stay in a psychiatric hospital from 10 February to 15 March 2023, because there had been a real risk that he would have died by suicide; that he still suffered from anxiety and depression; that his placement in custody had worsened his health; that he needed to feel trust and security to be able to recover; and that he felt a great responsibility towards his parents and his aunt.

according to updated reports, the situation in Afghanistan is not such that all young men in general can be considered to require protection from coercive recruitment by the Taliban.

4.2 Regarding the alleged violence against him, the author changed his account during the asylum proceedings. During his second asylum interview, he stated that the Taliban had destroyed his fruit stand, which had landed on his legs and injured him, but had not threatened him personally on other occasions. Later in the asylum proceedings, he stated that the Taliban had been looking for him on several occasions. He subsequently alleged that he had been sexually assaulted by the Taliban during the incident when his fruit stand had been destroyed. His allegations do not suffice to support the conclusion that he would risk ill-treatment by the Taliban upon return to Afghanistan.

4.3 The author's mental health deteriorated in connection with his concern about the asylum process. In medical documents dated 23 January, 5 February and 10 February 2015, it was mentioned that his statements of suicidal intent were an expression of disappointment and desperation about not being allowed to stay in Sweden. His mental ill health was in any case not deemed to be life-threatening or to constitute a particularly serious disability. The State party refers to reports dated 2016 and 2017 in which it was indicated that medical care and medication were available and accessible in Afghanistan.⁶

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

5.1 In his comments of 28 September 2017, the author rejects the State party's position and states that he suffers from post-traumatic stress disorder, grave depression and temporary but recurring periods of psychosis of life-threatening severity. He engages in acts of self-harm when he is not with his family. Post-traumatic stress disorder requires specialized care and would not be available in Afghanistan. Indeed, the author would not be able to access adequate health care in Afghanistan and would face treatment contrary to article 7 of the Covenant at the hands of the Taliban, who tried to recruit him. The Taliban perceive the author to be a threat owing to his father's former employment with a logistics company that has connections to NATO and the United States.

5.2 In addition, the Taliban set the house of the author's family on fire. The Taliban searched for the author at the house of his father's brother-in-law. The local population was told that, if the author returned, the Taliban should be informed. The author could not live anywhere in Afghanistan because the Taliban would be able to find him.⁷

5.3 The author was refused entry to Afghanistan when the State party deported him in 2016 because the authorities of Afghanistan knew that he would be harmed if he were returned to the Province of Ghazni. The author disagrees with the finding of a physician that there was no evidence of clinical depression or psychosis. His health circumstances are well documented. If he is alone, he will hurt himself. To preserve his health, he requires close contact with his parents and aunt. He reiterates his position regarding a lack of access to adequate medical care in Afghanistan.

State party's additional observations

6.1 In its additional observations of 19 June 2018, the State party responds to the new information provided by the author concerning conditions in Afghanistan and notes that his health-related claims have been examined by the domestic authorities.⁸ The European Court

⁶ For example, International Organization for Migration, "Country fact sheet: Afghanistan (2016)", (2017), available from https://web.archive.org/web/20170315062838/http://germany.iom.int/sites/default/files/ZIRF_downloads/2016/Afghanistan_CFS_2016_EN.pdf.

⁷ Regarding conditions in Afghanistan, the author cites, inter alia, Stichting Landelijk Ongedocumenteerden Steunpunt, "Post-deportation risks: a country catalogue of existing references" (Rotterdam, Kingdom of the Netherlands, 2017).

⁸ In its additional observations of 28 June 2019, in which it requested the discontinuance of the communication, the State party maintained that the communication was inadmissible under articles 1 and 5 (2) (b) of the Optional Protocol because the removal order against the author had become statute-barred and the author had the opportunity to submit a new asylum request. Subsequently, the author did so.

of Human Rights considers that the fact that an applicant's circumstances (including with respect to life expectancy) would be significantly reduced upon removal from a contracting State does not suffice, in and of itself, to give rise to a breach of article 3 of the European Convention on Human Rights. Such a breach arises only in very exceptional circumstances, where applicants are seriously ill and have shown substantial grounds for believing that they would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in their state of health resulting in intense suffering or to a significant reduction in life expectancy.⁹ The author's circumstances do not meet that standard.

6.2 In its observations of 23 October 2023, the State party maintains its position and recounts the findings of the Migration Agency in its decision of 21 February 2021 (see paras. 2.17 and 2.18 above), and of the Migration Court in its decision of 12 September 2022 (see paras. 2.20–2.22 above). A State party's authorities are in a very good position to assess the information submitted by asylum-seekers and to appraise the credibility of their statements. Both the Migration Agency and the Migration Court thoroughly examined the author's claims during the second round of asylum proceedings. The Migration Agency held an introductory interview, an asylum investigation and a complementary asylum investigation with the author. The investigations were held in the presence of the author's appointed public counsel and interpreters, whom, as the author confirmed, he had understood. Thereafter, the minutes of the investigations were transmitted to the author's public counsel. During the appeal proceedings, the Migration Court held a three-hour hearing with the author, in the presence of his public counsel and an interpreter.

6.3 Through his appointed public counsel, the author was invited to scrutinize and submit written observations on the minutes of the investigations and to make written submissions and appeals. He has thus been given ample opportunities to explain the relevant facts and circumstances in support of his asylum claim and to argue his case orally and in writing. Having considered the facts and documentation relating to the case, the Migration Agency and Migration Court had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the author's claim for protection in Sweden. There is no reason to conclude that the domestic decisions were inadequate or that the outcome of the proceedings was arbitrary or amounted to a denial of justice. The author has not shown that, if returned to Afghanistan, he would be at risk of treatment constituting grounds for protection in Sweden.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol and the State party's reservation to article 5 (2) thereof, that the same matter is not being examined, and has not been examined, under any other procedure of international investigation or settlement.

7.3 The Committee notes the author's claim that, as required by article 5 (2) (b) of the Optional Protocol, he availed himself of all effective and available domestic remedies before submitting the communication to the Committee.¹⁰ The Committee observes that the author received negative decisions from the State party's migration authorities on, inter alia, his two asylum applications and the related appeals. In the absence of any pertinent objection by the State party, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

7.4 The Committee notes the State party's position that the communication is inadmissible because it is insufficiently substantiated. The Committee observes that the

⁹ *Paposhvili v. Belgium*, application No. 41738/10, Judgment of 13 December 2016, para. 183.

¹⁰ *Gilber v. Germany* (CCPR/C/87/D/1403/2005), para. 6.5.

author has invoked the substance of articles 6, 7, 9, 17, 18 and 19 of the Covenant and alleges that his deportation to Afghanistan would expose him to a risk of treatment contrary to articles 6 and 7 of the Covenant because of his prior adverse contact with the Taliban, his father's former employment with a logistics company with ties to Western armed forces, threats made against him by the Taliban after he refused to join them and his renunciation of Islam and adoption of atheism.

7.5 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, 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 (para. 12). According to the jurisprudence of the Committee, the risk must be personal, and there is a high threshold for providing substantial grounds to establish the existence of a real risk of irreparable harm. All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin. Considerable weight should be given to the assessment conducted by the State party, unless it was clearly arbitrary or amounted to a denial of justice. It is generally for organs of States parties to the Covenant to review or evaluate facts and evidence to determine whether a risk of irreparable harm exists.¹¹

7.6 The Committee notes that the author's claims for protection were evaluated through several sets of domestic proceedings, namely, two rounds of asylum proceedings (in 2013–2015 and 2019–2023) and several applications by the author for re-examination of his asylum claim and for a residence permit. During the asylum proceedings, the author was appointed public counsel and was interviewed and heard several times by the migration authorities, with interpretation services and with the assistance of counsel. In written decisions, the Migration Agency and, subsequently, the Migration Court examined the substance of his allegations.

7.7 The Committee notes the author's claim under article 17 of the Covenant that his deportation to Afghanistan would separate him from his parents, which would cause him hardship, including because of his mental state. The Committee also notes the author's apparent claim that his deportation would violate articles 6 and 7 of the Covenant because of the state of his mental health. The Committee notes that the author is approximately 35 years of age and that, as noted by the State party's migration authorities, he came to Sweden as an adult and has lived for longer in Afghanistan than in Sweden. The migration authorities also reviewed the author's arguments regarding his mental health and the medical documentation that he submitted in 2015 and 2016. Before returning the author to Afghanistan in 2016, the State party's authorities took him to a medical facility when he reported suicidal ideation. There, a physician examined the author and found that there was no evidence of clinical depression or psychosis. The author disputes that finding and notes that, in 2015, he stayed in a psychiatric clinic for several months. However, the migration authorities observed that the medical documentation provided by the author contained his statement that his mental distress had arisen from the prospect of an unsuccessful outcome on his asylum application. The migration authorities also cited reports in which it was indicated that medical care and medication would be available in Afghanistan. During the second round of asylum proceedings, in 2019–2023, the author did not submit new documentation (including medical documentation) to the migration authorities, which also noted the author's statement that his psychological well-being was entirely dependent on being granted a residence permit. The Committee considers that the information before it does not substantiate a finding that the assessment by the State party's authorities was clearly arbitrary or erroneous or amounted to a denial of justice with respect to the risk that the author would face upon return to Afghanistan owing to separation from his parents or to an underlying mental disability or grave mental health risk. The Committee notes that the author has not provided any information to substantiate the claim that he would face a personal risk of irreparable harm from Da'esh. The Committee considers that the author has not provided any details regarding his claims under articles 9 and 19 of the Covenant. The Committee therefore finds that the

¹¹ *B.R. and M.G. v. Denmark* (CCPR/C/138/D/2342/2014), para. 12.6.

foregoing claims under articles 6, 7, 9, 17 and 19 are inadmissible under article 2 of the Optional Protocol, owing to insufficient substantiation.

7.8 With respect to the alleged risk of harm by the Taliban, the Committee notes the reports cited by the author regarding the overall security situation in Afghanistan. The Committee observes that the situation in Afghanistan has changed since the author submitted the communication and that, in 2021, the Taliban assumed political control in the country. The final decisions of the State party's migration authorities were issued subsequently, in 2023. The Committee observes that the author has not denied that his allegations regarding a personal risk of harm by the Taliban have evolved and escalated in significant ways. In its decision of 12 September 2022, the Migration Court considered that the author's changing account of his interaction with the Taliban was not reliable. The decisions of the migration authorities indicate that, during his first interview with them, the author stated that he had left Afghanistan because of the Taliban and because of the increasing number of suicide attacks in the country but had not had any personal encounters with the Taliban. He did not raise allegations of mental distress and indicated that he had understood the interpreter during the interview. In a later interview, he stated that the Taliban had asked him to join them but had not threatened him personally. During the appeal proceedings in 2014, he stated that the Taliban had tried to recruit him, that he had gone into hiding and that the Taliban had been searching for him on a weekly basis. In 2015, after his expulsion order had become legally binding, he applied for re-examination of his asylum claim, on the ground that he had post-traumatic stress disorder and severe depression, in connection with an act of rape to which members of the Taliban had subjected him when he was younger. The Committee notes his assertion that, owing to feelings of shame, he had not previously raised that allegation. During the subsequent oral hearing, he stated that he had been sexually assaulted three times but was not able to explain in further detail the threat posed by the Taliban. After the rejection of that claim, the author applied again for re-examination of his asylum claim and alleged that he had been threatened by the Taliban because of his father's employment; was suspected by the Taliban of being a spy for the United States; and continued to suffer from post-traumatic stress disorder. The Committee considers that the author has not provided an adequate explanation for the significant shifts in the nature of the foregoing claims and that he has therefore not substantiated that the assessment of the State party's authorities with respect to his past encounters with the Taliban was clearly arbitrary or erroneous or amounted to a denial of justice.

7.9 The Committee notes that, in his asylum application of 2019, the author alleged that he had become an atheist in 2014 and would face a risk of persecution in Afghanistan on that basis. The Committee takes note of the author's statement, made in the context of his asylum claim of 2019, that he had not realized that his atheism, which he had adopted in 2014, was relevant to his asylum claim. 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.¹² In the present case, the Committee considers that the author has not adequately justified his failure to raise his atheism at an earlier stage of the asylum proceedings. The Committee also considers that, regardless of the sincerity of the author's atheism, while he disagrees with the factual conclusions of the migration authorities, he has not provided elements to indicate that he engages in behaviour or activities in connection with his atheism that would expose him to a real and personal risk of treatment contrary to articles 6 or 7 if he were deported to Afghanistan. Nor has he provided sufficient elements to indicate, for the purpose of admissibility, how the migration authorities clearly erred in assessing the risk that he would face in that regard. Accordingly, the Committee considers that the author's claims under articles 6, 7 and 18 of the Covenant in relation to his atheism are insufficiently substantiated and are therefore inadmissible under article 2 of the Optional Protocol.

¹² *M.L.A. v. Sweden* (CCPR/C/135/D/3216/2018), para. 7.6.

8. The Committee therefore decides:
- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
 - (b) That the present decision shall be transmitted to the State party and to the author.
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