



International Covenant on Civil and Political Rights

Distr.: General
19 September 2025

Original: English

Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2971/2017*, **

<i>Communication submitted by:</i>	W.K.D. (represented by counsel, Elin Edin)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Sweden
<i>Date of communication:</i>	12 March 2017 (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 31 March 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	25 March 2025
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Procedural issues:</i>	Exhaustion of domestic remedies; level of substantiation of claims
<i>Substantive issues:</i>	Right to life; torture, cruel, inhuman or degrading treatment or punishment
<i>Articles of the Covenant:</i>	6 and 7
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author of the communication is W.K.D., a national of Afghanistan born in 1987. His application for asylum has been denied by the State Party and he claims that his removal to Afghanistan would amount to a violation of his rights under articles 6 and 7 of the Covenant. The Optional Protocol entered into force for the State Party on 23 March 1976. The author is represented by counsel.

1.2 On 31 March 2017, 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 to refrain from removing the author to Afghanistan while his case was under consideration by the Committee.

* Adopted by the Committee at its 143rd session (3–28 March 2025).

** 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 Ramón Fernández Liesa, Laurence R. Helfer, Konstantin Korkelia, Dalia Leinarte, Bacre Waly Ndiaye, Hernán Quezada Cabrera, Akmal Saidov, Ivan Šimonović, Soh Changrok, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



Facts as presented by the author

2.1 The author is a national of Afghanistan of Pashtun ethnicity. He first arrived in the State Party in 2007. During his first stay in the State Party, he worked as a salesperson for a phone company. More importantly, he produced journalistic material by conducting interviews, writing articles and making videos within an Afghan context for two television channels – Zhwandoon TV, an Afghan channel, and Khyber TV, a Pakistani channel – as well as posting content on his own YouTube page. The programmes were broadcast in the State Party and in Afghanistan and had a large following on social media. The content was about dance and culture, but the author also published criticism of the Government of Afghanistan at that time and of the Taliban movement. The author resided in the State Party until September 2015, when he received a final expulsion decision on his application for asylum and was forced to return to Afghanistan, where he was reunited with his wife and their three children aged 9, 12 and 13 years old.

2.2 Upon return to Afghanistan, the author tried to create a new life for himself and his family but faced several obstacles. He opened a business in Mazar-e Sharif producing wedding videos. In October 2015, there was a break-in at his store and a wedding video that he had produced for a client was stolen and published on the Internet. His client accused him of having scandalized the families in the film as women were filmed dancing without hijabs. As a result of the harsh threats his client made to him, he had to flee the country. Once again, he tried to make his way to Sweden, but en route, was detained in Bulgaria, from where he was deported to Afghanistan.

2.3 After arriving back in Afghanistan, the author and his family lived in Paktiya, an area west of Kabul, and the author started working for Zhwandoon TV. He claims that due to his work for the television station, he and his family were subjected to discrimination, harassment and threats. During his stay in Paktiya, the area was dominated by the Taliban and the Afghan police lacked control. He claims that during that period in Afghanistan, he was subjected to severe threats and violence because of his journalistic work. There was nowhere in the country where he felt safe, as he was recognized throughout the entire country. He was accused of being an improper Muslim and of acting like a European, and his wife was subjected to stigmatization and pressure due to her marriage to a “bad man”.

2.4 On an undisclosed date, while he was driving, the author was stopped by several members of the Taliban who kidnapped him. He was taken to a Taliban camp where he was held overnight. The group showed him some of the videos he had posted on YouTube and beat him severely while screaming that he had violated Islam and disrespected the Taliban. Subsequently, the author overheard them discussing whether to kill him immediately, but they decided to try to blackmail his family for money first. Early in the morning, while his kidnappers were praying, the author managed to escape. He left Paktiya and travelled to Kandahar, from where he fled the country once again. He returned to Sweden on 14 May 2016.

2.5 Upon arrival in the State Party, the author was immediately detained by the Swedish border police and taken into custody. He intended to apply for asylum again, but was unable to do so as the State Party authorities considered the previous rejection of his asylum application, dated 8 October 2014, to be still valid. The author therefore had to submit an application for protection under the procedure for impediment of enforcement of his prior removal order.¹ He states that at that time, a radio programme in which he was interviewed was broadcast on the P4 Malmöhus station and was translated into several Afghan languages and dialects and shared extensively on social media. Thereafter, members of the Taliban attacked and beat the author’s wife, who was pregnant at the time, in Afghanistan. She suffered a miscarriage as a result of the attack. After that incident, she and their children fled to Pakistan, where they tried to seek refuge. As they lacked legal rights to reside in Pakistan and as a result of new policies there, they were forced to return to Afghanistan. After their

¹ After a removal order has been issued upon rejection of an asylum application, an applicant can, under chapter 12, sections 18 and 19, of the Aliens Act, apply for international protection and a residence permit in the State Party by invoking new circumstances.

return, the Taliban enquired about the whereabouts of the author's wife and sent her a threatening letter which included reference to the author's work as a journalist.

2.6 On 19 May 2016, the author submitted an application for impediment of enforcement of the previous removal order against him. On 27 May 2016, the Migration Agency rejected the application on the grounds that no new circumstances had emerged in the author's case and that the author's need for protection in Afghanistan had already been examined. The Migration Agency also found that the author has not been conducting journalistic work "in the traditional sense". The authorities noted that the author had cited new circumstances concerning the alleged threats he had received due to the stolen wedding video, but found the information he provided to be lacking in detail and not substantiated. They also found that the author had not submitted any evidence of having been under any threat in Afghanistan, and that the documents he had submitted did not substantiate that he had in fact returned to Afghanistan after they had denied his initial asylum application. They noted that a document referred to by the author to substantiate his stay in Bulgaria and his denied asylum application in that country referred to a person with a different name from that of the author.

2.7 On 1 June 2016, the author lodged an appeal before the Migration Court against the decision of the Migration Agency, while submitting documents to substantiate that he had travelled back to Afghanistan in the form of flight bookings from Istanbul to Kabul, from Kabul to Istanbul and from Istanbul to Copenhagen. He clarified in his appeal that he had been arrested by the Bulgarian authorities during a transit stop between Istanbul and Copenhagen and deported to Afghanistan in October 2015. He also noted that while his boarding pass had borne a family name different from his, that was the result of a misspelling of his family name, as transcribed from Pashto. He claims that upon arrival in Afghanistan, he was beaten by Afghan police. He also submitted an employment identity card issued in 2016 in his name by Zhwandoon TV and an expulsion order in his name issued by the Bulgarian authorities. On 16 June 2016, the Migration Court rejected his appeal, stating that the circumstances invoked had already been tried in his initial application for asylum. The Migration Court noted that the author had not been conducting journalistic work in the traditional sense and that his production of videos had not been of such reach to make it probable that he would be subjected to threats in Afghanistan. It found the new circumstances the author had invoked in his application for impediment of enforcement of the removal order against him to be vague and lacking in detail. On 30 June 2016, the Migration Court of Appeal upheld the rejection of the author's application.

2.8 On 27 June 2016, the author made a second application under the procedure for impediment of enforcement, without legal representation. In that application, he invoked the grounds that he had been kidnapped and beaten by the Taliban. He claims that that ground had "not been communicated" in his previous application due to language barriers. On 11 July 2016, the Migration Agency rejected his application stating that the author had not invoked any new circumstances that would warrant a reassessment of his asylum application and that he had not substantiated that he had faced threats in Afghanistan, nor that he had in fact travelled back to Afghanistan after his application for asylum was denied in 2014. His allegation that he would have been held by the Taliban was assessed to be an escalation of already examined circumstances. The decision was upheld on appeal by the Migration Court and the Migration Court of Appeal on 29 July and 7 September 2016, respectively.

2.9 On 22 August 2016, the author made a third application under the procedure for impediment of enforcement, again without legal representation. He stated that he risked persecution in Afghanistan due to his political opinions and because of the criticisms of the Government that he had been posting while he was in Sweden. On 24 August 2016, the Migration Agency again rejected the author's application, finding that the circumstances invoked by him were additions to his earlier invoked circumstances and not grounds for a re-assessment of his asylum application. The decision was upheld on appeal by the Migration Court and the Migration Court of Appeal on 12 September and 16 December 2016, respectively.

2.10 On 21 November 2016, the author made a fourth application under the procedure for impediment of enforcement, with legal representation, in which he submitted documents to establish that he had returned to Afghanistan in 2015, namely: (a) flight reservations to and from Afghanistan; (b) a deportation order from the Bulgarian authorities; (c) a boarding pass

from Istanbul to Afghanistan; (d) a money transaction to him in Afghanistan in November 2015; and (e) a photo of the author with his wife and children in Afghanistan. On 9 December 2016, the Migration Agency again rejected the application, confirming its previous decisions assessing that the author had not invoked any new circumstances that would necessitate a re-examination of his case. Regarding the author's information on his whereabouts, the Agency noted that the documents submitted were only in the form of a screenshot of a travel order from Istanbul to Kabul and a boarding pass, which were not in the author's name. Regarding the photo of the author and his family, the Agency noted that it was unclear who the persons in the photo were and where the photo had been taken. It found that the author had not substantiated that it was probable that he had returned to Afghanistan, and it assessed him to be lacking in credibility. The decision was upheld on appeal by the Migration Court and the Migration Court of Appeal on 16 December 2016 and 18 January 2017, respectively.

Complaint

3. The author claims that his removal to Afghanistan would amount to a violation of his rights under articles 6 and 7 of the Covenant. He claims that he was subjected to threats and persecution in Afghanistan due to his work as a journalist and his perceived westernization upon return to the country. He claims that due to those factors, he was kidnapped by members of the Taliban who took him to a camp and assaulted him. The likelihood that he would be able to hide from the Taliban if he was returned to Afghanistan is very small and he states that his fear of persecution if removed is well founded and would lead to him being subjected to irreparable harm.

State Party's observations on admissibility and the merits

4.1 On 27 October 2017, the State Party submitted its observations on admissibility and the merits of the communication. It submits that the communication should be found inadmissible for failure to exhaust domestic remedies as the author did not appeal the decision of the Migration Court of 16 December 2014 on his application for asylum to the Migration Court of Appeal, instead making a declaration of acceptance on 22 December 2014. The State Party also submits that the communication should be found inadmissible for lack of sufficient substantiation under article 2 of the Optional Protocol. Should the Committee find the author's claims to be admissible, the State Party submits that the claims lack merit.

4.2 The State Party indicates that the author first entered Sweden in February 2007 and applied for asylum. In his application, he claimed that he would be at risk of being killed by a powerful man, H.A., and his militia as revenge for the author's uncle's involvement in the killing of members of said militia, which had taken place 12 years earlier. He also claimed that his brother and his grandmother had been killed by the militia. His application was rejected by the Migration Agency on 3 December 2007, which found that some newspaper articles and photographs submitted by the author in support of his claims could not be linked to him and that his oral account was insufficient to substantiate that the militia in Afghanistan had threatened him. That decision was upheld on appeal by the Migration Court and the Migration Court of Appeal, on 10 September and 27 November 2008, respectively. On 4 May 2009, the Migration Agency handed the expulsion order over to the police authority for enforcement, since the author had gone into hiding. On 18 June 2009, the Migration Agency received a request from Iceland to transfer the author back to Sweden under Council Regulation (EC) No. 343/2003 of 18 February 2003 (the Dublin II Regulation), following the author's departure to Iceland on a fraudulent Swedish passport. No transfer was made, however, as the author had once again gone into hiding. On 4 February 2010, the Migration Agency received a request from Denmark to transfer the author to Sweden under the same Regulation. The Agency accepted the request and the author was transferred to Sweden on 29 March 2010.

4.3 Upon his return to Sweden, the author applied under the procedure for impediment of enforcement of his removal order, stating that while in Iceland, he had been informed that H.A.'s right-hand man had married the author's wife in Afghanistan. The author stated that he had then travelled to Afghanistan and contacted the police, who assaulted him instead of helping him. He had therefore sought assistance from the Taliban, who had killed the man who had married the author's wife in return for a promise that the author would join the

Taliban. On 23 March 2011, the Migration Agency denied the author's application, finding that several aspects of the author's account of events appeared improbable and calling his credibility into question. That decision was upheld on appeal by the Migration Court and the Migration Court of Appeal, on 7 and 15 August 2011, respectively. Following those decisions, the author again went into hiding and the removal order could not be enforced. On 24 September 2012, the author again submitted a renewed application for impediment of enforcement, stating that he had produced news reports critical of the Government of Afghanistan which had been broadcast on Afghan television and that thereafter, he had received threats on the Internet. On 19 November 2012, the Migration Agency rejected that application, finding that the evidence submitted by the author did not support the claims that he had been active as a journalist to any great extent or that threats had been made against him. Furthermore, it noted that any threats due to news reports would reasonably be directed at the television station that had broadcast the report, not the author.

4.4 The decision to expel the author became statute-barred on 27 November 2012 and the author reapplied for asylum in December 2012. He reiterated his claims from his first application for asylum and, in addition, stated that he had started working as a journalist at the end of 2011 or the beginning of 2012 and had, free of charge, sent several of his reports to the Zhwandoon and Khyber television channels since then. The reports, in which he interviewed people in Sweden, such as a political scientist from Afghanistan, had been broadcast in Afghanistan and Pakistan and posted on the Internet. He claimed that, as his interviewees had criticized the regime in Afghanistan, he would be at risk of ill-treatment by the persons mentioned in the interviews if returned to Afghanistan. On 8 October 2014, the author's second asylum application was denied by the Migration Agency. It found that the author had not substantiated the claim that he had been threatened by a militia while in Afghanistan. It also found that he had not shown that he had received threats due to the journalistic activities he mentioned. It stressed that, while the author had indeed interviewed dissidents and agreed with them in order to pose supplementary questions, he had not himself put forward dissident opinions. It noted that the author had stated that the main reason for his interest in journalism was that he wanted to tell Afghan people about Europe, which in the Agency's view was a reason that entirely lacked any connection with criticism of the Government of Afghanistan. It found that the author appeared to have begun his journalistic activities in an attempt to improve his chances of being granted a residence permit. It also emphasized the author's previous failure to cooperate with the expulsion order issued in 2008, instead going into hiding. It noted that in addition, the author had retracted his previous statement that he had returned to Afghanistan in 2009 or 2010, indicating that he had made that claim in order to improve his chances of being granted a residence permit in the State Party. The decision was upheld by the Migration Court on 16 December 2014 and became final on 22 December 2014, when the author made a declaration of acceptance.

4.5 On 1 December 2015, the author was registered as having absconded. On 14 May 2016, he arrived in Sweden on a ferry from Germany, and he again made several requests under the procedure for impediment of enforcement of his removal order, the first on 19 May 2016, in which he stated that he had returned to Afghanistan on 21 September 2015 and began filming weddings. During a break-in at his shop, images were stolen and posted on the Internet. The author then allegedly received threats from a client as the images showed women not wearing veils. The author claimed that he had fled Afghanistan but was arrested in Bulgaria and sent back to Afghanistan, where he began working for the Zhwandoon television channel. There he attracted attention because of his videos and the wedding films, and he was threatened and accused of having insulted Islam, and therefore again fled to Sweden. His application was denied by the Migration Agency on 27 May 2016. The Agency noted that: (a) the author's claims concerning his journalistic activities had already been examined during his previous applications; (b) his claims regarding the cited threats due to the stolen wedding film were not specific or detailed, nor supported by any evidence; (c) his account of the threats he claimed to have received, owing to his way of life and religious beliefs attributed to him, were "extraordinarily vague and general"; and (d) he had not substantiated that he had in fact returned to Afghanistan during the period specified. It concluded that he had not been able to plausibly demonstrate that there was a real and personal threat to him if returned to Afghanistan. The decision was upheld by the Migration Court on 16 June 2016, which concluded that the author had not conducted journalistic

activities in the traditional sense and that his video production was not sufficient, in either nature or scope, to give rise to concrete threats against him. On 30 June 2016, the Migration Court of Appeal decided to not grant leave to appeal.

4.6 On 26 June 2016, the author again submitted an impediment of enforcement application. In addition to his previous claims, he claimed to have been imprisoned by the police in Kabul and released only after paying a bribe, and that he had also been assaulted by the Taliban for “not being a good Muslim”. On 11 July 2016, the Agency denied his application, finding his claims to be escalations of previously invoked claims. That decision was upheld on appeal. A third impediment of enforcement application was rejected on 24 August 2016 on the grounds that the claims had already been examined in the author’s previous applications.

4.7 On 21 November 2016, the author again submitted an impediment of enforcement application claiming, in addition to his previous claims, that while in Sweden he had criticized the Taliban in several news reports, after which the Taliban had sought out his wife, assaulted her and sent her threatening letters. The threats became more serious after he was interviewed on the P4 Malmöhus radio station in Sweden. To substantiate his journey to Afghanistan, the author submitted a screenshot of an itinerary from Istanbul to Kabul on 21 September 2015 in one name, a boarding pass in a different name issued on 24 October – with the year missing – and the alleged threatening letter from the Taliban. On 9 December 2016, the Migration Agency rejected his application. It noted that the travel documents referred to bore different names to that of the author and that he had therefore failed to substantiate that he had returned to Afghanistan in 2015. It also noted that there were no stamps in the copy of his passport that the author had submitted. It further noted that in December 2015, an employer in Sweden had been in contact with the Agency to enquire whether the author had a permit to work in the State Party. The Agency considered it unlikely that an employer would have gone to that trouble had the author not been in Sweden at the time. Considering that information, it found that there were reasons to question the veracity of the author’s claims. It noted that the author’s claim about his journalistic activities had been assessed by the migration authorities in his previous applications. The decision was upheld by the Migration Court and the Migration Court of Appeal on 16 December 2016 and 18 January 2017, respectively.

4.8 The State Party notes the author’s claims that, owing to his alleged journalistic activities, he would be in danger of being killed or ill-treated by the Taliban if returned to Afghanistan. It submits that his claims were thoroughly assessed by the migration authorities, which held extensive asylum interviews with the author in the presence of an interpreter and public counsel. The author thus had several opportunities to explain the relevant facts and circumstances in support of his claims, both orally and in writing, before the Migration Agency and the Migration Court. The State Party notes that the author has submitted several applications under the procedure for impediment of enforcement of his removal order and argues that the migration authorities and courts have, on several occasions, rigorously examined the substance of all the grounds invoked. It submits that there is no reason to conclude that said assessments 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 the author has therefore not substantiated his claims that his removal to Afghanistan would amount to a violation of his rights under articles 6 and 7 of the Covenant. It notes that the migration authorities concluded that the author’s accounts contained several contradictory elements that made his overall credibility questionable. It notes in this regard that the author submitted false documents in the form of a driving licence that was found not to be genuine and he also knowingly made incorrect statements that, by his own admission, he made in order to improve his chances of being granted a residence permit in the State Party. Furthermore, he absconded and left the State Party, leading it to receive transfer requests from the authorities in Iceland and then Denmark.

4.9 As for the author’s claims of being at risk due to his alleged journalistic activities, the State Party notes that he did not invoke said claims until 2012. To substantiate his claims, the author submitted extracts from the Internet, a digital video disc containing clips from interviews and a letter from a television station. The migration authorities found that that material did not substantiate the author’s claims of having been active as a journalist to any

great extent, or that his claimed activities caused him to be exposed to threats in his country of origin. The State Party submits that the author has therefore not substantiated his claim that he would be at risk of ill-treatment because of his journalistic activities if removed to Afghanistan.

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

5.1 On 28 September 2018, the author submitted his comments on the State Party's observations. He maintains that the communication is admissible. He reiterates his claims that, due to the threats and incidents he faced upon his return to Afghanistan in 2015, he again had to flee the country and apply for asylum in the State Party.

5.2 The author notes that the State Party has argued that the communication is inadmissible for failure to exhaust domestic remedies as, on 22 December 2014, he made a declaration of acceptance of the decision of the Migration Court dated 16 December 2014, instead of appealing the decision to the Migration Court of Appeal. He argues that this part of the State Party's submission is irrelevant, as the complaint he brings before the Committee concerns events that took place after September 2015.

5.3 The author reiterates his claims that the journalistic material produced by him has been broadcast in Sweden and in Afghanistan and has been shared extensively on social media. He claims that the migration authorities failed to take these claims into account in the decisions on his applications for protection submitted upon his return to Sweden in 2016, instead dismissing those claims as having already been examined in the context of his previous asylum and impediment applications. He argues that the authorities failed to investigate the events that occurred after the decision to expel him in 2014, noting in that regard that no oral hearing was held in which he could be heard on the application for impediment of enforcement that he submitted upon return to Sweden in 2016.

Additional information and comments from the author

6.1 On 13 April 2024, the author submitted information on subsequent proceedings in the State Party. He notes that the expulsion order against him became statute barred on 18 December 2018. He then submitted a new application for asylum in the State Party, on 6 February 2019. The application was denied by the Migration Agency on 1 October 2020 and upheld on appeal by the Migration Court and the Migration Court of Appeal on 1 June and 23 June 2021, respectively.

6.2 The author submits that the claims invoked in his initial complaint would put him at risk of persecution if returned to Afghanistan. He reiterates that he has published work as a journalist and social media influencer for several years, reporting on cultural events that are controversial in the opinion of Islamists. He has also covered political topics, including in programmes criticizing the Taliban and other actors that are violating human rights in Afghanistan. He argues that his work now puts him in even more danger than before, due to the Taliban's seizure of power in Afghanistan. He notes, by way of example, that he received backlash on social media and was accused of promoting immorality after he reported on an international concert in Malmö, Sweden, where LGBTIQI-activists, among others, participated and performed. A video posted by him from the concert has had over 15,000 views on social media.

6.3 The author states that in the new examination of his asylum application submitted in 2019, the migration authorities confirmed and upheld their previous rejections of his asylum application, concluding that there were no reasons to make a different assessment to that concerning his initial asylum application.

6.4 The author notes that the Taliban seized power in Afghanistan in August 2021. The author invoked that fact in several applications for impediment of enforcement, but the migration authorities rejected them all. He argues that the migration authorities have not assessed his claims in relation to the current context in Afghanistan, resulting in clear deficiencies in the domestic proceedings. The refusal to grant him a new examination after the Taliban had seized power is a clear deficiency, given that a large part of the risk accounted for in the complaint is the risk of persecution by the Taliban. He states that he was refused a

new examination as his cited grounds for protection due to the Taliban's seizure of power were considered to be additions or modifications of previously invoked claims.

6.5 The author submits that he is at risk of treatment contrary to articles 6 and 7 of the Covenant if removed to Afghanistan. He argues that the State Party authorities failed to conduct an in-depth and up-to-date assessment of the risks he would face if removed to Afghanistan, especially regarding the Taliban's seizure of power and the implementation of extremist sharia laws. He reiterates that a large part of the risk he would face is a result of his extensive journalistic productions, which include content and in which he expresses views critical of the Taliban.

6.6 The author notes that in his subsequent applications in the State Party, he also invoked a claim that he would be at risk if returned to Afghanistan due to his current relationship in Sweden. He claims that he has been threatened by his partner's Afghan relatives, as he and his partner began their relationship before she was divorced. He also claims that his daughter has been subjected to a kidnapping attempt in Afghanistan by his partner's ex-husband. He notes that he and his partner have since had a child.

State Party's additional observations

7.1 On 7 August 2024, the State Party submitted further observations on the communication. It contends that, during the lengthy national asylum proceedings, the Migration Agency and the migration courts have assessed several times whether the author is to be considered a refugee or a person in need of subsidiary protection. The ties the author claims to have to Sweden have also been assessed, as has whether there are sufficiently distressing circumstances to render an expulsion contrary to the State Party's international commitments. It notes that in the author's most recent application for asylum, he maintained the reasons for asylum that he had previously stated and did not invoke any new circumstances. The Migration Agency and the Migration Court hence found no reason to depart from the previous assessments made.

7.2 The State Party notes that, during the domestic proceedings, the author also claimed that he had been threatened by his partner's ex-husband and cousins and that he risked being killed by his partner's clan, since he and his partner began their relationship while she was still married. The Migration Agency found the author's information in this regard to be vague, consisting of second-hand information that could not be regarded as reliable. The Migration Court found that the author had not plausibly demonstrated that there was a reliable, real and personal threat against him. Regarding the author's cited family ties, the Migration Court noted that the author has a wife and children in Afghanistan and thus a strong connection there. It was also noted that it did not appear that the author's partner in Sweden would be unable to care for her daughter on her own or that there would be any risk to the child's health and development from being in her mother's sole care. While considering the best interest of the child, the Migration Court found that the author could reasonably be required to travel to another country in order to submit an application for family reunification from there, in accordance with domestic legislation. The circumstances were not considered to be such that there was reason to make an exception to the main rule that a residence permit based on family ties must be applied for and granted before entering Sweden.

7.3 The State Party notes that, in his comments, the author has claimed that the domestic proceedings contain deficiencies, since the migration authorities did not assess his case in relation to the current context in Afghanistan after the takeover by the Taliban. It notes that in its examination of an application from the complainant on 4 October 2022, the Migration Agency made reference to its legal position paper containing an assessment of the need for protection for citizens from Afghanistan (RS/089/2021), which indicated that the general situation in the country, after the takeover by the Taliban and the enforcement of sharia law, could affect the assessment of invoked grounds for asylum. If the reasons for asylum were linked to the Taliban regime, a new examination was to be carried out under chapter 12, section 19, of the Aliens Act, since it could be assumed that the change constituted a permanent impediment to enforcement of expulsion. If, on the other hand, the invoked grounds for asylum were not linked to the Taliban regime, an assessment must be made as to whether it could be assumed in the individual case that the new circumstances constituted an impediment to enforcement of expulsion, referred to in chapter 12, sections 1 to 3, of the

Aliens Act. In the case of the author's cited need for protection, the Migration Agency noted that he had not previously been considered to have plausibly demonstrated that he had carried out journalistic activities in the traditional sense. Furthermore, he had not been considered to be in need of international protection due to his cited extramarital relationship in Sweden. The Migration Agency also found that he had not plausibly demonstrated that his posts on social media after the takeover by the Taliban had spread to such an extent that they had reached the authorities in Afghanistan. He was also not considered to have plausibly demonstrated that he, on account of any social media posts, had been threatened in such a way that would constitute an impediment to enforcement of the expulsion order.

7.4 The State Party further notes that, in examining the author's cited impediments to enforcement of the expulsion order in an application on 8 March 2023, the Migration Agency concluded that the author could not be considered to be in need of protection solely based on the prevailing general security situation in Afghanistan. The Agency assessed the author's claim that he personally, as a journalist, risked treatment warranting protection because the situation for journalists had become more threatening since the Taliban had seized power. It was noted that the author had not previously been considered to have plausibly demonstrated that he had performed journalistic activities in the traditional sense. The relatively scant information that the author had provided at the time was considered to constitute merely additions and modifications to previously considered circumstances and hence not a new circumstance that would constitute a permanent impediment to the enforcement of the expulsion order. In January 2024, when again examining an application by the author on cited impediments to enforcement of the expulsion order, the Migration Agency found that the prevailing security situation in Afghanistan had not changed since its previous examination to such a degree that it would constitute a permanent impediment to enforcement. The State Party argues that the author has thus clearly received adequate individual examinations of all his invoked claims, circumstances and evidence submitted. It submits that the author has consequently failed to demonstrate that the migration authorities and courts failed to take into account any relevant facts, country of origin information, evidence or risk factors in its assessments and that he has not shown that the assessments made were arbitrary or amounted to a manifest error or a denial of justice.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

8.2 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.

8.3 The Committee notes the State Party's submission that the communication should be found inadmissible for failure to exhaust domestic remedies as the author did not appeal the decision of the Migration Court of 16 December 2014 on his second application for asylum to the Migration Court of Appeal, instead making a declaration of acceptance on 22 December 2014. It notes the author's argument that this fact is irrelevant to the consideration of the admissibility of his complaint, as he is invoking only the claims raised in the domestic proceedings which took place after September 2015. In this connection, the Committee notes that the author initiated numerous proceedings in the State Party upon his return to Sweden in 2016, several of which were appealed to the Migration Court of Appeal and examined by it in decisions reached on 30 June, 7 September and 16 December 2016, 18 January 2017 and 23 June 2021. The Committee therefore considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

8.4 The Committee notes that the author has submitted several applications for asylum in the State Party, as well as numerous applications for impediment of enforcement of his removal orders. However, it also notes that he is not invoking his initial applications for asylum and the claims raised therein before the Committee, but only the facts and circumstances raised in his applications submitted upon his return to the State Party in 2016.

The Committee thus notes the author's claims that his removal to Afghanistan would amount to a violation of his rights under articles 6 and 7 of the Covenant. It also notes his claim that, upon returning to Afghanistan in 2015, he was subjected to threats and persecution due to his work as a journalist and his perceived westernization. It further notes his claims that he was kidnapped and assaulted by members of the Taliban in 2015 or 2016 and that the risk he would face if removed to Afghanistan increased in 2021 with the seizure of power by the Taliban. Moreover, the Committee notes the author's claims that the migration authorities did not assess his claims in relation to the current context in Afghanistan and that the refusal to grant him a new examination after the seizure of power by the Taliban is a clear deficiency, given that the risks he alleged during the domestic proceedings were, to a large extent, the risk of persecution by the Taliban.

8.5 The Committee also notes the State Party's submission that, in its assessments of the author's applications for asylum and impediment of enforcement of his removal order, the migration authorities found that several of the author's statements, such as his alleged return to Afghanistan in 2015 and the alleged attack and kidnapping by the Taliban, were found to be lacking in detail, not supported by evidence or lacking in credibility given that they had been raised only after previous applications had been rejected on appeal. It further notes the State Party's argument that the migration authorities concluded that the author had not conducted journalistic activities in the traditional sense and that his video production was not sufficient, in either nature or scope, to give rise to concrete threats against him, and that he had not substantiated that any such threat had been made. Moreover, the Committee notes the State Party's argument that the migration authorities found that the author had not plausibly demonstrated his need for protection based on his claim that, after the takeover by the Taliban in 2021, his posts on social media had spread to such an extent that they would have reached the authorities in Afghanistan.

8.6 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 referred to the obligation of States Parties not to extradite, deport, expel or otherwise remove a person from their territory, where 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). The Committee has indicated that the risk must be personal² and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.³ All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.⁴ 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,⁵ unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.⁶ The Committee also recalls its jurisprudence that an author carries the burden of proof to support the allegations of a personal and real risk of irreparable harm if deported, including the obligation to submit evidence sufficiently in advance of the decisions of the national domestic authorities, unless the information could not have been presented before.⁷

8.7 The Committee notes the author's submission that upon his return to Afghanistan, he was allegedly kidnapped and assaulted by the Taliban and would therefore be at risk of such treatment again if returned to the country. Nevertheless, the Committee also notes that the

² For example, *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3; *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2; *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; *Q.A. v. Sweden* (CCPR/C/127/D/3070/2017), para. 9.3; and *A.E. v. Sweden* (CCPR/C/128/D/3300/2019), para. 9.3.

³ For example, *X v. Denmark*, para. 9.2; *Q.A. v. Sweden*, para. 9.3; and *A.E. v. Sweden*, para. 9.3.

⁴ For example, *X v. Denmark*, para. 9.2; *Q.A. v. Sweden*, para. 9.3; and *A.E. v. Sweden*, para. 9.3.

⁵ For example, *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

⁶ 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; *Rezaifar et al. 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.

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

migration authorities found that claim to lack credibility as the author had not substantiated that he had travelled to Afghanistan in 2015 as the documents he submitted to prove he had taken that trip were not in his name, and as an employer in Sweden had made enquiries as to his residence status for employment purposes during the period he stated that he had resided in Afghanistan. The Committee further notes that the author did not raise the claim that he had been assaulted and kidnapped by the Taliban in his initial application for impediment of enforcement of the removal order upon return to Sweden in 2016, only raising that claim once the initial 2016 application had been rejected, and that the migration authorities thus found the claim to be lacking in credibility.

8.8 The Committee notes the author's claims that the journalistic material produced by him, which he states includes material critical of the Taliban, and his social media profile would put him at risk if returned to Afghanistan, especially considering the seizure of power in the country by the Taliban. It also notes his claim that the migration authorities failed to examine those claims in relation to the current context in Afghanistan. Nevertheless, the Committee notes that the author has not provided any specific information regarding his alleged journalistic activities, apart from referring to programmes produced in 2011 or 2012 and a social media post about a concert in 2015. It also notes the State Party's submission that the migration authorities found the material produced by the author to not be sufficient, in either nature or scope, to give rise to concrete threats against him, and that he had not substantiated that any such threat had been made. It further notes the State Party's information that, on 4 October 2022 and 8 March 2023, the Migration Agency considered the author's claims in the context of the current situation in Afghanistan and found that he had not plausibly demonstrated that his posts on social media after the takeover by the Taliban had spread to such an extent that they would have reached the authorities in Afghanistan or that he had been threatened in such a way that would constitute an impediment to enforcement of the expulsion order. The Committee notes that, while the author disagrees with the conclusion reached by the migration authorities, he has not provided any additional information on the applications for impediment of enforcement made by him in this connection or the claims raised therein. The Committee thus finds, based on the information on file, that the author has not substantiated that the conclusions of the domestic authorities were clearly arbitrary or amounted to a manifest error or denial of justice.

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

9. The Committee therefore decides:

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