The Principle of Non-refoulement and the Protection of Converts

A Case Study on Converts in International Human Rights Law

Author: Alexandra Tawaifi
Supervisor: Associate Professor Rebecca Thorburn Stern
Abstract

The aim of this thesis is to answer the questions: Is the principle of non-refoulement protecting converts under international law? Is there any difference in the determination of non-refoulement of converts depending on supervising body? And if so, is it considered discrimination against converts?

These questions are answered by examining three cases from the ECtHR and five from the HRC. The research is conducted with the help of two methods and one theory. First, the thesis establishes the applicable law by using the legal dogmatic method and then compares the cases from the respective supervising bodies with the comparative legal method. The discrimination theory is essential to answer the third question of the thesis.

With regards to the number of cases examined, research indicates that the principle of non-refoulement protects converts to a certain extent under international law but not fully. It also indicates that there is a difference in the assessment of non-refoulement of converts depending on the supervising body that assessed and that one of the supervising bodies is negatively treating converts despite the morally irrelevant characteristics of the genuineness of converts. This can be considered discrimination against converts.

Keywords: human rights, non-refoulement, international law, law, European Convention on Human Rights, European Court of Human Rights, International Covenant on Civil and Political Rights, Human Rights Committee, converts
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>CAT</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<td>ECHR</td>
<td>Convention for the Protection of Human Rights and Fundamental Freedoms</td>
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<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<td>EU</td>
<td>European Union</td>
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<td>HRC</td>
<td>United Nations Human Rights Committee</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>PRRA</td>
<td>Immigration, Refugees and Citizenship Canada</td>
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<td>SICJ</td>
<td>Statute of the International Court of Justice</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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Chapter 1

Introduction

Background
Over the last decade, a large number of people fled their countries and homes. According to UNHCR in 2018, there were 68.5 million forcibly displaced persons worldwide, whereof half of them are under 18 years of age.¹ Of all displaced persons, 85 % were being hosted by a developing State.² Some of the people who fled their countries did so due to religious persecution.

Sweden is one States that was criticized for not protecting converts to a greater extent by the ECtHR in the case *F.G v Sweden*, emphasizing on the importance of risk analysis before expelling Christians out of Sweden and back to their States of origin, otherwise such actions might violate human rights.³ *F.G v Sweden* is a case mostly focusing upon the *non-refoulement* principle.

*Non-refoulement* is well-established in international law. The principle of *non-refoulement* is established in international law through conventions and case law. It is a fundamental principle within international refugee law and is mentioned most famously in the 1951 Convention Relating to the Status of Refugees⁴, Article 33. Article 33.1 states that:

“No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”⁵

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¹ https://www.unhcr.org/figures-at-a-glance.html
² https://www.unhcr.org/figures-at-a-glance.html
⁴ Hereinafter Refugee Convention.
⁵ Refugee Convention 1951, Art 33.1.
The principle of non-refoulement is in human rights law defined in Article 3.1 in the Convention against Torture\(^6\) stating that:

“No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”\(^7\)

In the European Court of Human Rights\(^8\), and the Human Rights Committee\(^9\), there has developed a case-law regarding non-refoulement through respective conventions article mentioning torture.\(^10\) The same principle is included in Article 19(2) of the Charter of Fundamental Rights\(^11\) under the EU legal system.

In addition to being expressed in a few Conventions, the principle is a part of international customary law including being a *jus cogens* norm\(^12\), making it applicable to non-signatories and is rooted in jurisprudence and doctrines.

In international human rights law and in the Refugee Convention, non-refoulement principle should manage to capture individuals belonging to a religion. Should it also protect converts under the “religion” provision? This is a relevant question because before reaching the protection under the “religion” provision, the converts have to go through the test assessing credibility and genuineness of the conversion. The asylum process can be stopped there if the conversion is not considered as genuine, by the authorities, and thereby be under protection of the “religion” provision.

Sweden has been criticized by the ECtHR in the case of *F.G v Sweden* of not protecting converts from refouler. Therefore, the author of this dissertation wanted to examine if the principle of non-refoulement also protects converts under the framing of “religion” as ground to risk of serious harm since it is difficult to

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\(^6\) Hereinafter CAT.

\(^7\) UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol 1465, Art 3.

\(^8\) Hereinafter ECtHR.

\(^9\) Hereinafter HRC.

\(^10\) See: Art 3 ECHR and Art 7 ICCPR.

\(^11\) Hereinafter EU Charter.

assess if an individual has truly converted or not. More specifically the credibility assessment is examined and discussed.

**Aim/intent and Limitation**

The aim of this thesis is to examine if supervising bodies consider converts to be protected under the principle of *non-refoulement* and if not, if it can be considered discrimination under the category of “religion”. The reason why the thesis examines discrimination under the category of “religion” is because whilst individuals may have converted to another religion, this conversion can still be a barrier because of the credibility and the discussion regarding genuineness of the conversion.

This subject was chosen due to the criticism that Sweden received from the ECtHR and the topic’s relevance today. The case study focuses on two supervising bodies; the ECtHR and the HRC and their cases on converts as well as individuals belonging to the LGBTQ community.

It is necessary to understand the definition of “converts” for this thesis. References to converts in the thesis refer to individuals that have changed from one religion to another. Since the scope is only including converts, individuals who were “born” into Christianity as a religion without active participation will not be taken into account. Individuals who have converted to Christianity from other religions are not included in this thesis either. Because of the limited scope of the dissertation, and the fact that many converts flee from Muslim States, only individuals that have converted from Islam to Christianity are examined.

Under most interpretations of the Sharia law, a Muslim should not convert to Christianity. If he or she does, the individual is given one chance to repent and if they choose to refuse, the punishment could be execution.\(^\text{13}\) Even States that are recognized as being more “modern” and blending Islam with modern secular institutions have failed in accepting the individual’s religious freedom. In Malaysia, the highest court refused to recognize a Muslim woman’s conversion to

Christianity. Some Muslim clerics go further and compare conversion to treason, which is punishable by death.

In Sharia law, homosexuality is also strongly condemned and is punished by death if both persons commit a sexual act of free will. This does not mean that all Muslim States have Sharia law in their Constitution but the ones that have, punish homosexuality and conversion.

When a Muslim leaves Islam and converts to Christianity he or she is called an “apostate”. According to the Quran, apostates must be executed. Not all face execution when converting but many individuals who have converted to Christianity face discrimination, harassment, and torture in their homeland because of their decision to leave Islam. According to World Watch List provided by Open Doors in 2018, 9 out of 11 States, which severely persecuted Christians, are Muslim States. Hence, the focus on the principle of non-refoulement is regarding Muslim States.

To understand the discourse better, the author makes a small comparison to LGBTQ cases at the ECtHR. The author’s aim is not to equalize religion with sexuality but rather to highlight the struggle of proving an abstract aspect in persons’ private life and how the supervising bodies adapt to that in their reasoning. The comparison merely adds another dimension of comprehension when examining the assessments of the ECtHR and the HRC.

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16 ECtHR, F v United Kingdom, 22 June 2004, No. 17341/03, 3.
17 Quran 4:89.
This Master’s thesis focuses on the international level and will therefore not consider domestic laws nor domestic courts. It only focuses on the next step after exhausting all domestic remedies.

**Framing of Question(s)**

- Is the principle of *non-refoulement* protecting converts under international law?
- Is there any difference in the determination of *non-refoulement* of converts depending on supervising body?
- If so, is it considered discrimination against converts?

**Previous Research**

During the last decade much research has been conducted regarding the principle of *non-refoulement* and international refugee law. From what perspective and purpose these researches have been conducted are different. My research focuses on the principle’s definition in cases affecting converts.

Angela Barisic has researched credibility in his dissertation *Credibility Assessment of Testimony In Asylum Procedures: an Interdisciplinary Analysis*. In the dissertation, Barisic explains the legal standards of credibility and how consistency and coherence are indicators that are used synonymously. The term “internal consistency” is introduced to defend how credibility is assessed when applicants are consistent in all of their statements from the first meeting and through the last.

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21 Angela Barisic, *Credibility Assessment of Testimony In Asylum Procedures: an Interdisciplinary Analysis*, (Lund University, 2015).

It is a highly current issue in the society, especially in Europe and in Sweden as many have faced *refoulement* after converting to Christianity. Many of whom came from a Muslim background. This has been covered in news articles and by the Church of Sweden and organizations such as the Swedish Christian Council.

In the credibility assessments the Migration Board in Sweden conducted many difficult questions about Christianity are asked for the purpose of assessing whether these alleged converts have indeed converted. This has been criticized by several actors including the Swedish Church and the Swedish Christian Council.

A similar research on Christian converts has not previously been conducted and since it is a crucial topic in society I wanted to raise the question and research it.

**Methodology and Material**

This thesis uses the legal dogmatic method first to determine the applicable law. The starting point of the legal dogmatic method is to study the legal sources, in this case in the international law. The legal sources that the International Court of Justice uses are mentioned in Article 38 in the Statute of the International Court of Justice. The recognized international legal sources and the hierarchy of the legal sources when a dispute is submitted are as follows; international conventions, international customs, the general principles of laws, and judicial decisions and teachings of the most highly qualified publicists.

In international law, interpretation rules are of a central nature. The ECtHR applies a teleological and dynamic interpretation method in which the

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23 *F.G v Sweden.*
26 Sveriges Kristna Råd (SKR).
29 Hereinafter ICJ.
margin of appreciation plays a central part. Margin of appreciation is, according to the Council of Europe “the space of maneuver that Strasbourg organs are willing to grant national authorities, in fulfilling their obligations under the European Convention on Human Rights”\textsuperscript{30}.

Further on, the thesis uses comparative legal method. The comparative method stretches beyond the national dimension and according to W.J. Kamba in \textit{The International and Comparative Law Quarterly} it is “the study of, and research in, law by systematic comparison of two or more legal systems; or parts, branches or aspects of two or more legal systems”\textsuperscript{31}. The thesis compares two supervising international legal bodies; the ECtHR and the HRC. More specifically, a micro comparison is conducted since it is only a specific part of them, namely converts regarding non-refoulement. The ECtHR and the HRC are chosen because both submit to legal instruments that do not have an explicit article that defines \textit{non-refoulement} like the CAT for example. Because neither the European Convention on Human Rights\textsuperscript{32} nor the International Covenant on Civil and Political Rights\textsuperscript{33} have an explicit article that defines \textit{non-refoulement} it makes them equal when assessing the principle in the respective supervising body. The comparative method is also chosen to contribute to answer the question(s) of the thesis because it gives a more advanced knowledge to understand the principle of \textit{non-refoulement} with regards to converts.

Cases from the ECtHR and the HRC are examined since all supervising bodies have provided case-law applicable to the principle of \textit{non-refoulement} when it comes to Muslims who have converted to Christianity. Two cases from the ECtHR regarding LGBTQ are also examined with the purpose of adding a greater comprehension on the struggle of proving something as abstract as spirituality or sexuality.

Furthermore, both are international legal bodies although one is a Court and one is a Committee. That means that the judgments of the ECtHR are

\textsuperscript{31} W.J. Kamba, \textit{Comparative Law: A theoretical Framework}, \textit{The International and Comparative Law Quarterly} (British Institute of International and Comparative Law, 1974), 486.
\textsuperscript{32} Hereinafter ECHR.
\textsuperscript{33} Hereinafter ICCPR.
binding and the assessments of the HRC are non-binding. Committees like HRC are called quasi-legal bodies. These bodies are non-judicial but can still interpret law.\textsuperscript{34}

The author is mindful that this may have an effect on the outcome of the respective bodies. The author of this thesis has also chosen a regional and a global supervising body to also compare because it is interesting to see if cases are assessed differently because of that factor.

During the course of the thesis the comparative method is also used when a small comparison to the LGBTQ community is made, to give another dimension of problematization when it comes to defining something abstract as orientation or religion.

The principle of non-refoulement, as it is under international refugee law is examined. When analyzing what the principle has become in international human rights law, the ECtHR and the HRC case law is examined through specific articles in the ECHR and the ICCPR. Doctrines and other secondary sources are also used to help understand the principle further.

The thesis only has taken cases that the ECtHR have already passed a judgment on and that the HRC has given a decision on. No pending cases are included. The cases from the HRC were found on OHCHR and the cases from the ECtHR were found at HUDOC. Both OHCHR and HUDOC are the official databases for the respective supervising bodies. The key words that were used on when searching for relevant cases to help answering the questions of the thesis were:

Converts

Converts + Christianity

Christian Converts

Converts + non-refoulement

The cases that were found are presented chronologically starting from 2010 until 2018 at the HRC and at the ECtHR. The author chose this time frame because it had the most cases relevant to the questions of the thesis. There are five cases from the HRC and three cases from the ECHR. The decided cases that are examined in the thesis from the HRC are *K.H v Denmark*[^35], *W.K v Canada*[^36], *S.A.H v Denmark*[^37], *X v Norway*[^38], and *X v Republic of Korea*[^39]. The cases from the ECHR that are analyzed in the thesis are; *F.G v Sweden*[^40], *Ahmadpour v Turkey*[^41], and *M.B and others v Turkey*[^42].

The thesis is comparing the LGBTQ community with the converts because both are difficult to prove regarding credibility. A case concerning deportation of an individual and the *non-refoulement* was found at the HRC from 2016 regarding the LGBTQ community when searching “homosexual”, *M.K.H v Denmark*[^43]. No relevant case from the time limit was found at HU DOC. The time frame was only focused on 2016 because the author wanted a year in between 2010-2018, and this year was the only one with a relevant case from the HRC.

### Chapter 2

#### Theory

This chapter introduces the discrimination theory and how it is applied in the dissertation. This thesis applies the discrimination theory when examining how converts are assessed in the ECtHR and the HRC. The discrimination theory used is based on Roth’s book *Diskriminering* and explains different treatments that constitute discrimination and how they are determined.

[^39]: *X v Republic of Korea*, no 1908/2009, HRC 2014
[^40]: *F.G v Sweden*, no 43611/11, ECHR 2016.
[^41]: *Ahmadpour v Turkey*, no 12717/08, ECHR 2010.
[^42]: *M.B and Others v Turkey*, no 36009/08, ECHR 2010.
The theory that is used in this Master’s thesis is discrimination theory. I use this theory to examine if there is a difference in treatment of persons who have converted when assessing non-refoulement in the ECtHR and the HRC. This theory is solely relevant to the second and third questions and not the first.

Discrimination theory is a theory that is used to measure the existence and the extent of a specific form of discrimination, in this case discrimination due to “religion”. The theory is a “tested theory”, meaning that it is used to measure and explicitly test if discrimination occurs, by applying it to the chosen cases of the ECtHR and the HRC. More specifically, this is tested by examining the supervising bodies in which the applicants have applied to due to claims of alleged risk of ill-treatment if refouler to their States of origin. By examining these supervising bodies and being able to establish the discrimination they have against the said individuals or a group they belong to, one can establish if the principle of non-refoulement protects converts or not. The issue at hand is whether the converts have been discriminated in relation to individuals born into a religion or not and how that can affect the non-refoulement.

Discrimination theory is a wide and well-researched area. Discrimination is a distinction made in treatment because of a special category. When discussing discrimination in international law usually the categories are race, religion, sex, and sexual identity. This theory is used to measure how and what effects discrimination has in the chosen cases and thereby answer the third question of the thesis.

In daily language “discrimination” is used as a distinguisher or differential in treatment that is morally wrong. It was used as a negative meaning in Swedish lexicons in 1947, according to National Encyclopedia. However, a differential in treatment does not automatically make it “discrimination”.

45 Hans Ingvar Roth, Diskriminering, (SNS Förlag, 2008), 11.
46 Roth, Diskriminering, 9.
47 Roth, Diskriminering, 9.
Roth’s theory is examined further by the decomposition of characteristics that can make a treatment considered as discrimination. It starts by briefly introducing the terminology and then central terms and the different forms of discrimination. The theory is applied on the cases presented and examined in throughout the research, in the discussion chapter to be able to answer the dissertation question.

A central term that is used when characterizing discrimination is “adverse treatment”. Adverse or negative treatment doesn’t necessarily equal discrimination.\textsuperscript{48} For example, it is not discrimination against an individual if he or she has committed a crime and is sentenced to jail. According to Roth, what makes an adverse or negative treatment a discrimination is if the differential in the treatment of an individual based on morally irrelevant characteristics.\textsuperscript{49} If that individual was sentenced to jail because of his or her sex, religion, ethnicity or sexual orientation, then it is considered morally relevant. Other examples can be that an individual is treated badly at the workplace because of the color of their skin.\textsuperscript{50}

Some reasonable and less reasonable forms of negative differential treatment can also occur under “positive differential treatment”.\textsuperscript{51} This is used frequently in politics when favoring a group of people with regards to other groups in distribution policy. This does not necessarily have anything to do with morality.\textsuperscript{52} To favor a family member or friend over a stranger is nothing unusual that could be considered as discriminatory to a stranger.

In discrimination cases the positively differential treatment is usually towards a group that is generally disadvantaged in the society\textsuperscript{53} e.g. women or persons with a differing ethnic background. This is not seen as something bad, but if it is vice versa, that racists favor their own group in a positive differential

\textsuperscript{48} Roth, Diskriminering, 10
\textsuperscript{49} Roth, Diskriminering, 11.
\textsuperscript{50} Roth, Diskriminering, 11.
\textsuperscript{51} Roth, Diskriminering, 12.
\textsuperscript{52} Roth, Diskriminering, 12.
\textsuperscript{53} Roth, Diskriminering, 13.
treatment, then it can be seen discriminatory towards the less advantaged groups in the society.

Roth explains that it is assumed that discrimination is about unfairly favorable or unfavorable treatment regarding values. Discrimination does not only occur when persons are subjected to negative actions but also when it is about the distribution of positive values. The positive values are the freedoms to have something while negative are freedom from something including torture and ill-treatment. The thesis examines in the discussion chapter whether converts can be seen as having a negative differential treatment by the supervising bodies. Since the thesis does not have any chapter that introduces cases for non-converts when discussing religion, that section cannot fully be researched.

Deciding upon whether an individual is being discriminated against or being treated differently from another, is done by examining the “collective characteristics”. Roth gives the example of salary at a workplace. Some women that have the same merits and do the same amount and type of work as men still do not earn the same amount of money. Since high salary and promotion is valued positively by most, women are consequently downgraded. According to Roth however, it is not common that discrimination is actualized against individuals because of collective characteristics.

“Discrimination is actualized when we speak about comparable justice unlike the so called non-comparable justice”

When assessing if someone is discriminated it is necessary to evaluate if the situation is comparable. If the situations are not comparable then it cannot be foreseen that a discrimination may occur or examine if a discrimination can occur. In the discussion of this thesis, it is examined if one can see convert’s situation as

54 Roth, Diskriminering, 13.
55 ECHR, art 3.
56 Roth, Diskriminering, 13.
57 Roth, Diskriminering, 13.
58 Roth, Diskriminering, 16.
59 Roth, Diskriminering, 14.
comparable to the individuals born into Christianity and whether the results would amount to discrimination or not. To be able to do that, Roth also mentions identity grounds.\textsuperscript{60} He discusses identity and how groups that have a strong attachment to their identity can also have been intensively discriminated by an actor that has a position of power.\textsuperscript{61} These identity groups are the ones that legal instruments have mentioned in their discrimination clauses or laws and usually are sex, ethnicity, race, color, nationality, sexual orientation, age, and disabilities.\textsuperscript{62} Not all these groups are included in all legal instruments however.

There are different forms of discrimination. The discrimination forms that Roth has mentioned in his book Diskriminering are; direct and indirect discrimination, structural discrimination, and personal and impersonal discrimination. In the coming paragraphs the author introduces these different forms of discrimination with the purpose of utilizing them in the discussion of the results of the research.

Roth starts chapter 5 in Diskriminering with the discrimination forms direct and indirect discrimination. The direct discrimination is connected with concrete actions linked to specific individuals. The discrimination is applicable if two individuals have given different outcomes in comparable situations.\textsuperscript{63} An example can be if the employer gives higher salary to a man in the company whilst a woman employee works as hard and has the same merits as the man.

\textit{Indirect discrimination} has two forms; the aware and the “same rule in different situations”. The forms depend on the actor that has committed the discrimination. The knowing indirect discrimination is when the actor is aware of the fact that he or she is using objective criteria to preclude a group of persons.\textsuperscript{64} This can happen for example when the rhetoric of the actor in a hiring process. The actor can emphasize on characteristics are known not to be usual in a specific group. The example that Roth wrote was a specific height for women, and that if an

\textsuperscript{60} Roth, Diskriminering, 16.
\textsuperscript{61} Roth, Diskriminering, 16.
\textsuperscript{62} Roth, Diskriminering, 16.
\textsuperscript{63} Roth, Diskriminering, 30–31.
\textsuperscript{64} Roth, Diskriminering, 31.
The same rule in difference can also have discriminatory effects on a group. It can for example be when “neutral” rules, criteria, etc. are used. These can in theory sound good because they are neutral, but in practice they can discriminate a group that does not have the same prerequisites. Hearsay can be one factor that can contribute to indirect discrimination. It can be for example when an employer does not have many contacts that belong to a different ethnic group and his or her own. This can lead to the employer hiring more from his or her own group.

Structural discrimination is according to Roth associated with institutional discrimination. When discussing discrimination as structural, political philosophy debates can arise through the assumption that institutions are permeated by disproportionate patterns. This thesis does not discuss political philosophy in that sense but is touching upon structural discrimination since the aim of the thesis is to examine discrimination is present in the supervising bodies towards converts. If it is, then it might be structural and therefore, this is reviewed further in the discussion chapter.

The structural discrimination does not only have to do with political philosophy. Roth mentions that another meaning of structural discrimination is that it does not only have to do with a group of people but the fact that it is within the framework of an institution in the society e.g. the legislation. During the slave trade in the USA, people with dark skin did not obtain the same rights as the ones with white. Indigenous peoples in many parts of the world have also faced discrimination in a structural way through legislation as well as women because of their sex.

Personal and impersonal discrimination are the last forms of discriminations mentioned by Roth in Diskrimering. He explains that personal discrimination, also called informal is a form of discrimination that occurs between

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65 Roth, Diskrimering, 31.
66 Roth, Diskrimering, 32.
67 Roth, Diskrimering, 32.
68 Roth, Diskrimering, 33.
69 Roth, Diskrimering, 33.
family. If a son is treated less favorably or with a negative differential treatment by a parent, then it is considered as *personal or informal.*

In this thesis, *impersonal or formal* discrimination is more relevant. *Impersonal discrimination* occurs between persons who do not know each other. This kind of discrimination can take place on a working place between employer and employee. When discussing this kind of discrimination, the public arena is usually discussed e.g. the politics, education and work. It is important to emphasize that one discrimination does not exclude another. An individual can be subjected to both *personal and impersonal discrimination.* Roth gave the example of homosexuals. Homosexual have been affected by discrimination from family members when “coming out of the closet” and they have also sometimes been discriminated against in the working place or through legislation because of their sexual orientation.

In the thesis, the author gives a section in the discussion chapter to discuss the *personal and impersonal discrimination* and whether a link can be drawn to converts in this case as well.

**Disposition**

The second chapter introduces the theory that has been chosen and why. In the third chapter the thesis introduces Article 33 in the Refugee Convention and the principle of *non-refoulement.* It also examines the ECHR and the ICCPR more thoroughly, more specifically when analyzing the cases from the respective supervising bodies. It introduces the Refugee Convention with the purpose of defining who a “refugee” is and the term “persecution” with the purpose of putting a framework to understand how protection of individuals is understood and estimated.

In chapter four, the ECHR and the ICCPR are introduced and relevant cases from the supervising bodies the ECtHR and the HRC. The fifth chapter covers

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70 Roth, *Diskriminering,* 35.
71 Roth, *Diskriminering,* 35.
72 Roth, *Diskriminering,* 35.
73 Roth, *Diskriminering,* 35.
a discussion of the outcome of chapter two and three and the effect that the outcome has in practice. The fifth chapter summarizes the outcome and presents conclusions.

Chapter 3

Definition of Non-Refoulement

This chapter introduces the definition of non-refoulement by examining conventions as well as relevant research on the principle. The ECHR and the ICCPR do not have explicit Articles that define non-refoulement. Instead both have developed practice through interpretations in cases. These customs are developed in cases that establish a pattern.

The first Convention to refer to non-refoulement was the 1933 Convention Relating to the International Status of Refugees\textsuperscript{74} in Article 3 which states:

\begin{quote}
\textit{“Each of the Contracting Parties undertakes not to remove or keep from its territory by application of police measures, such as expulsions or non-admittance at the frontier (refoulement), refugees who have been authorized to reside there regularly, unless the said measures are dictated by reasons of national security or public order.”}\textsuperscript{75}
\end{quote}

When discussing non-refoulement many, rightfully so, think of the principle in the context of refugee law, because of the 1933 Convention. The main

\textsuperscript{74} Hereinafter 1933 Convention.
\textsuperscript{75} 1933 Convention Relating to the International Status of Refugee (adopted 28 October 1933 Art 3.
provision today however is the 1951 Convention Relating to the Status of Refugees76,77

**Refugee Convention**

This chapter introduces the *non-refoulement* principle from an international refugee law perspective. It focuses on the principle but also gives a brief presentation of who a refugee is and what is considered as “persecution” according to the Refugee Convention with the purpose of giving a framework on how protection for individuals are assessed.

According to UNHCR, the Refugee Convention is “both a status and rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and non-refoulement.”78

**Who is a Refugee?**

This section introduces the definition of a refugee with the purpose of understanding how the international refugee defines a person that has taken refuge.

Some may not know the difference between a refugee and a migrant and this in turn can create confusion. A refugee has fled from persecution and lack of protection from the State of origin, whilst a migrant has left his or her State of origin because of other factors not relating to persecution.79

To be considered for refugee status a person must fulfill several prerequisites.80 The person must for example be ‘outside’ of his or her country of origin. If a person has fled internally within the State of origin, he or she cannot be considered for refugee status according to the Refugee Convention and can therefore not apply for it. Some States may take care of internally displaced persons

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76 Hereinafter Refugee Convention.
79 Refugee Convention, 1951.
80 Refugee Convention, 1951, Art 12.
and bring a measure of protection for them, but this alters no basic right in the international rule.  

The Refugee Convention does not require a person to have fled from persecution nor that persecution has occurred in reality. A person can apply for refugee status when fear arises during an ordinary absence from the State of origin and the fear can be for something that might happen in the future rather than something in the past.

The preventative notion is also a central question in the principle of non-refoulement which is mentioned in Article 33 of the Refugee Convention. This is a central question because the principle of non-refoulement has a preventative notion, so ill-treatment would not occur. This makes each case very different from another because subjective and objective factors must be combined when assessing.

Even though it is still not clear how much of the subjective element that places a role in jurisprudence or commentary, it is expected to play a role in the determination of risk. According to Goodwin-Gill and McAdam, if the applicant can show consistency and credibility regarding his or her fear of persecution, then only a little more formal proof is required. It is difficult to assess cases that require applicants to prove fear because a person’s subjective aspect of fear, and if it is “well-founded”. This is done by taking facts into consideration as well to examine if the applicant indeed faces a possibility of persecution.

What is Considered as Persecution?

In international criminal law, persecution is defined in the Rome Statute but within human rights law there is no explicit definition of “persecution”. According to James C Hathaway the generally used definition of persecution is gross violations

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82 Goodwin-Gill, McAdam, The refugee in international law, 63.

83 Goodwin-Gill, McAdam, The refugee in international law, 63.

84 Goodwin-Gill, McAdam, The refugee in international law, 64.

of human rights.\textsuperscript{86} It is not defined in the Refugee Convention, but Article 33 refers persecution to when a life “was” or “would be” threatened.\textsuperscript{87} It furthermore states that it is forbidden to \textit{refouler} an individual whose life or freedom is threatened \textit{because} of race, religion and nationality etc.\textsuperscript{88}

Persecution and torture can be separable because if a person is persecuted it does not necessarily mean that he or she is tortured or the opposite. Hence, the Convention against Torture\textsuperscript{89} has a more thorough definition on \textit{non-refoulement} when defining torture. Some parts of persecution may for example be torture, inhuman and degrading treatment.\textsuperscript{90} In international criminal law for example, persecution is included in the three crimes mentioned in the Rome Statute. The three crimes in the Rome Statute are genocide, crimes against humanity and war crimes.\textsuperscript{91}

When discussing ways and means of actions against individuals regarding persecution there are many, but it depends also from case to case. One has to take into account an individual’s integrity and human dignity as well as the manner and amount or degree of the action taken against the individual.\textsuperscript{92}

Regarding perpetrators, neither the Refugee Convention nor the \textit{travaux préparatoires} mention much.\textsuperscript{93} What is known is that persecution does not have to be linked with the State. Also, it does not have to be a connection between the State’s obligation to protect and the individuals’ fear of persecution.\textsuperscript{94} Sometimes the fear of persecution is not from the State. The Refugee Convention does not serve the purpose of answering the punitive question and therefore it does not have a section about State responsibility.\textsuperscript{95} Instead, the Refugee Convention is focused on the potential refugee and whether he or she is unable or unwilling to be able to use the protection of the government.\textsuperscript{96}

\textsuperscript{87} Goodwin-Gill, McAdam, \textit{The refugee in international law}, 90.
\textsuperscript{88} Refugee Convention, 1951, Art 33.
\textsuperscript{89} Hereinafter CAT.
\textsuperscript{90} Goodwin-Gill, McAdam, \textit{The refugee in international law}, 90.
\textsuperscript{91} Rome Statute, 1998, Art 5.
\textsuperscript{92} Goodwin-Gill, McAdam, \textit{The refugee in international law}, 91.
\textsuperscript{93} Goodwin-Gill, McAdam, \textit{The refugee in international law}, 98.
\textsuperscript{94} Goodwin-Gill, McAdam, \textit{The refugee in international law}, 99.
\textsuperscript{95} Goodwin-Gill, McAdam, \textit{The refugee in international law}, 99.
\textsuperscript{96} Goodwin-Gill, McAdam, \textit{The refugee in international law}, 98-99.
In the Refugee Convention motive and intent of the State of origin or its authorities are not considered as a directing factor when determining an individual’s refugee status.\(^97\) Intent is important if the State of origin or its authorities have the intent to harm an individual because of his or her religious conviction and that the action falls within the scope of the protected interests (freedom or religion, freedom of expression etc.) and the harm amount to persecution, then there is a well-founded fear of persecution. It is a well-founded fear of persecution according to the Refugee Convention even if the harm has not happened (yet) but there is a fear of that degree of persecution.\(^98\)

Although travaux préparatoires are not official source of international law, it can be examined briefly when it comes to intent. According to the travaux préparatoires, the relevant intent depends on a refugee fear rather than personal convenience. This means that an individual must show clear signs of fear from claimed persecution.\(^99\) Also, if an individual has horrifying memories of previous persecution, he or she can have a continuous protection regardless of a change in the State of origin.\(^100\)

Because States are sovereign, and no one can interfere with their choice of drafting laws, it can be easy for laws to be discriminating against some citizens, or even to the extent of persecuting citizens. According to Goodwin-Gill and McAdam, many applications for refugee status are approved not because of active persecution of the applicant, but the fear of prosecution under law in the State of origin. However, the authors argue that de facto, law can be an instrument for persecution.\(^101\) This can be seen in States like Malaysia, which was previously mentioned\(^102\) that do not recognize converts or even States that prosecute individuals that have converted from Islam to Christianity.

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**Internal flight situation?**

This section focuses on internal flight because it is assessed after the protection needs and before granting asylum. The purpose of this chapter is to explain that

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\(^{97}\) Goodwin-Gill, McAdam, *The refugee in international law*, 100.

\(^{98}\) Goodwin-Gill, McAdam, *The refugee in international law*, 100-101.

\(^{99}\) UN doc. E/AC.32/L.4, para. B.

\(^{100}\) UN doc. E/AC.32/SR.18, paras 10-16; art 1C (5), (6) CSR51.

\(^{101}\) Goodwin-Gill, McAdam, *The refugee in international law*, 102.

\(^{102}\) See Aim/Intent and Limitation.
there is another dimension between the determination of protection needs and asylum and how it can affect the asylum seekers. It is not directly relevant to the questions of the thesis, but it gives another dimension to make it easier to understand the process when seeking asylum.

When assessing refugee status, an examination is conducted on the State of origin with the purpose of seeking if there is an alternative to fleeing internally within that State or if it is necessary to obtain refugee status. There are possibilities that individuals can seek protection in another region within the State without crossing the border and there is authority for that principle that the relocation is reasonable. This is called the internal flight alternative. When discriminatory laws that may persecute potential refugees in a State enter into force, it is unreasonable to relocate within the State if it is a national law and thus internal flight is not a reasonable alternative. If it, on the other hand, is a regional law, then a potential refugee may not be forced to cross an international frontier to seek protection if he or she can relocate to a region where the said law is not applicable.

The UK House of Lords examined the application of “reasonableness test” in the case Januzi v Secretary of State for the Home Department. Lord Bingham based his judgment on the Refugee Convention and argued that the requirement of refugee status is based on well-founded fear of persecution. He means that if there is a lack or no fear of persecution and protection is available in another region within the State of origin, then the claimant could “reasonably” relocate there.

When a group of people are affected by suppressive laws or practices, a question rises; can all individuals belonging to that group obtain refugee status if these laws and practices are reasons for a well-founded fear of persecution or does it have to be specific, singling out the individual? Goodwin-Gill and McAdam argue that if individual or collective measures are employed, merely belonging to that group is sufficient. This can include expropriation of property, restriction of language and restriction of culture. This is widely practiced for example in

103 Goodwin-Gill, McAdam, The refugee in international law, 124.
105 Goodwin-Gill, McAdam, The refugee in international law, 128.
106 Goodwin-Gill, McAdam, The refugee in international law, 129.
Turkey against Christian minorities such as the Armenians, Arameans and the Greeks. These clearly were not able to relocate in the Ottoman Empire which lead them to flee outside of the Ottoman territory.

To summarize, after the receiving State has assessed the protection needs of an asylum seeker, the authorities search for internal flight alternative. This is specifically done if the discrimination or persecution is not committed by the State authorities but by the family, village members or region. If internal flight is not an alternative, then the process continues.

Chapter 4

ECHR

This chapter focuses on international human rights law. It introduces the ECHR and relevant articles to the thesis. Furthermore, it examines the cases that have been chosen with, the purpose of answering the questions of the thesis. The ECHR is a regional Convention drafted in 1950. Currently, the ECHR has 47 Signatory States in Europe.108

This Convention does not have a specific article that defines the non-refoulement principle. Instead, the principle is imbedded in several articles. This chapter examines two articles; articles 2, and 3.

Prohibition of torture – Art 3

The ECHR observes that if there is a risk that the applicant would face a real risk of torture, inhuman or degrading treatment in Iran, then Articles 2 and 3 imply that the Contracting State must not expel him.109 But to assess whether the Contracting State breaches Articles 2 and 3 in this case, the ECHR must make a risk assessment.110

109 F.G v Sweden, § 110.
110 F.G v Sweden, Ch 3.2(a).
According to Goodwin-Gill and McAdams, the principle of non-refoulement is mostly developed in relation to Article 3. In key cases like Soering and Chahal both against the UK, the Court emphasized on the absolute nature of Article 3 if a person faces a real risk of harm that constitutes of torture.

In the coming section, the cases are introduced and examined for the purpose of answering the research questions. The aim is to observe the discussion and the rhetoric that the respective supervising bodies are using in the cases with the purpose of establishing a pattern to analyze in the discussion. The aim is to see if the authors/applicants are assessed/judged in a discriminatory way because of the fact that they are converts or not.

**F.G. v Sweden**

The case *F.G v Sweden* is about an applicant who converted to Christianity in Sweden. The applicant entered Sweden 16 November 2009 and applied for political asylum. On 24 March 2010 the Swedish Migration Board held an oral interview with the applicant. The applicant handed a certificate from a pastor declaring that the applicant had been baptized and is a member of the congregation since the end of 2009. Since the certificate was handed to the interviewer, the applicant was asked questions about the matter. The applicant answered by saying that his belief is a personal matter. The interviewer from the Migration Board explained that the reason the applicant was asked many questions about his religion was that it had been interpreted that the applicant had relied on his conversion as a ground for asylum. The applicant stated that it was something private and that he did not wish to rely on.

After a break the interviewer asked when he had converted, and the applicant answered that he had converted when he had moved to town X where there were not many Iranians. He got to know a person that went to church, and the person knew that the applicant hated Islam. The applicant described how he started

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111 Goodwin-Gill, McAdam, *The refugee in international law*, 311.
112 Soering v UK, app no 14038/88.
113 Shahal v UK, app no 22414/93.
114 Goodwin-Gill, McAdam, *The refugee in international law*, 311.
115 *F.G v Sweden*, § 11.
to go to the church with this person and then how Christianity had attracted him.\footnote{F.G v Sweden, § 13.} When asked about why he had handed in the certificate he had stated; “I don’t know. I never asked for it and I had not even considered handing it in, but you wanted it. They gave all converts a certificate like that”\footnote{F.G v Sweden, § 13.}. The rest of the interview dealt with his political past.\footnote{F.G v Sweden, § 13.}

The Migration Board noted that the baptism had not taken place in the Church of Sweden and neither did the applicant provide a certificate or proof of his baptism. They assumed that the certificate from the congregation’s pastor was a plea that the Migration Board should grant the applicant asylum.\footnote{F.G v Sweden, § 21.}

Furthermore, the Migration Board argued that the applicant’s ability to pursue his faith was not plausible enough for believing that he would face persecution in Iran and therefore denied him asylum.\footnote{F.G v Sweden, § 21.}

The ECtHR provided relevant background material regarding conversion from Islam to Christianity. In the material was the Danish Immigration Service’s “Update on the Situation for Christian Converts in Iran” from June 2014. The report included that even though Iran does not have an explicit criminal act for apostates in the Iranian Criminal Code, rulings against converts have occurred during several occasions including the case of Pastor Soodmand in 1990 who was executed, according to a Turkish organization.\footnote{F.G v Sweden, § 57.} This is important to emphasize for the purpose of showing that even though Iran does not have laws explicitly determining the converts’ cases, Iran has still ruled against converts as apostates and it has cost them their lives.

The applicant claims that taking his political past and his conversion into consideration, it would breach Articles 2 and 3 if Sweden expels him to Iran.\footnote{F.G v Sweden, § 85.}

The ECtHR restates that Contracting States have the right under international law to regulate and control the “entry, residence and expulsion of
aliens”\textsuperscript{125}. However, the expulsion of an alien may raise the issue of Article 3 if that person faces a real risk of being subjected to torture, inhuman or degrading treatment if deported. In those cases, Article gives an obligation not to deport the person in question and is \textit{de facto} protected under the principle of \textit{non-refoulement}.\textsuperscript{126} This is also referred to in the case of \textit{Saadi v Italy}.\textsuperscript{127}

There are several points that must be included before a State makes the decision to expel an individual. The applicant must provide substantial grounds supporting his or her claim of a real risk of being subjected to treatment constituting of Article 3. The ECtHR states that a State must give the benefit of the doubt when assessing the credibility of the statement from the individual in question.\textsuperscript{128}

Foreseeable consequences upon expelling the applicant to the receiving State must also be assessed by examining the general situation in the State of destination regarding the individual’s circumstances.\textsuperscript{129} In this case, the reports and research that present Iran’s view on converts both \textit{de jure} and \textit{de facto}.

Regarding the conversion, the ECHR states that it is very difficult to examine if it is genuine or if it is used to create “post-flight grounds”\textsuperscript{130}. It further referred to the UNCHR Guidelines on International Protection regarding Religion-Based Refugee Claims of 28 April 2004 which states that:

“particular credibility concerns tend to arise in relation to sur place claims and that a rigorous and in-depth examination of the circumstances and genuineness of the conversion will be necessary ... So called “self-serving” activities do not create a well-founded fear of persecution on a Convention ground in the claimant’s country of origin, if the opportunistic nature of such activities will be apparent to all, including the authorities there, and serious adverse consequences would not result if the person were returned”\textsuperscript{131}

\begin{footnotes}
\item[125] \textit{F. G v Sweden}, § 111.
\item[126] \textit{F. G v Sweden}, § 111.
\item[127] \textit{Saadi v. Italy}, no 37201/06, §§ 124-125, ECHR 2008.
\item[128] \textit{F. G v Sweden}, § 113.
\item[129] \textit{F. G v Sweden}, § 114.
\item[130] \textit{F. G v Sweden}, § 123.
\item[131] \textit{F. G v Sweden}, § 123.
\end{footnotes}
The ECtHR holds that the State would violate Articles 2 and 3 of the ECHR if the applicant would be sent back to Iran without and *ex nunc* assessment regarding his conversion.\(^{132}\)

To conclude, the ECtHR found that the applicant would face torture amounting to a breach of Article 3 of the ECHR if deported back to Iran and that the State should have the benefit of the doubt when the applicant is proving substantial grounds that he can face irreplaceable harm if deported. The ECtHR assessment found his conversion genuine based on the certificate of his baptism and that he was a member of the congregation even though the rest of the story was not as coherence due to the fact that he was fleeing for a political reason to begin with. It can be seen that the ECtHR gives a narrow margin of appreciation in this case.

**Ahmadpour v Turkey**

This case is about an applicant who is an Iranian national. In 2005, the applicant fled from her husband in Iran with her children to Turkey.\(^{133}\) In 2006, the applicant married an Iranian national who had converted from Islam to Christianity and later she converted as well.\(^{134}\) She applied for an asylum in Turkey, but her application was dismissed.\(^{135}\)

In November 2007, the applicant was informed that she is to be expelled back to Iran.\(^{136}\) In March 2006, the United Nations High Commissioner for Refugees\(^{137}\) reopened her case.\(^{138}\) The UNHCR found that it was a legitimate reason for the applicant to flee Iran with her children due to the fact that the ex-husband had abused them physically and sexually.\(^{139}\)

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\(^{132}\) *F.G v Sweden*, § 164.

\(^{133}\) *Ahmadpour v Turkey*, § 8.

\(^{134}\) *Ahmadpour v Turkey*, § 9.

\(^{135}\) *Ahmadpour v Turkey*, § 10.

\(^{136}\) *Ahmadpour v Turkey*, § 11.

\(^{137}\) Hereinafter UNHCR.

\(^{138}\) *Ahmadpour v Turkey*, § 18.

\(^{139}\) *Ahmadpour v Turkey*, § 19.
The applicant claimed that her rights under Articles 2 and 3 of the ECHR would be violated if she would be deported to Iran.\textsuperscript{140} She argued that it is a clear risk of her being subjected to death or ill-treatment if deported, due to the fact that she had married a Christian convert and that she herself had converted too. Her new marriage was not recognized by the Iranian authorities either, making her an adulterer, which is punishable in Iran by law.\textsuperscript{141}

In this case, the ECtHR judges in line with UNHCR’s conclusion.\textsuperscript{142} It argues that when the UNHCR had interviewed the applicant, it had “the opportunity to test the credibility of her fears and the veracity of her account of the circumstances in her home country”\textsuperscript{143}. Therefore, the ECtHR judges that deportation of the applicant and her children to Iran would violate her right under Article 3 of the ECHR.\textsuperscript{144}

To conclude, the ECtHR judged that Turkey would violated Article 3 of the ECHR if deporting the applicants back to Iran because they would face irreplaceable harm because of their conversion.

\textit{M.B and others v Turkey}

This case is about four applicants who converted to Christianity and is claiming that Turkey has violated their rights under Articles 2 and 3. The first and second applicants are married and the third and fourth are their children.\textsuperscript{145} The applicants fled to Turkey due to the first applicant’s political background in Iran. When they applied for refugee status in Turkey, the UNHCR dismissed their application and instead “refused to recognize the applicants’ refugee status”\textsuperscript{146}
The applicants later moved to Istanbul and converted to Christianity. They all were active in the Protestant Churches.\textsuperscript{147} This led to a denial for the third and fourth applicants to study at the Iranian Consulate School.\textsuperscript{148}

In 2008 the UNHCR recognized the applicants’ refugee status because it found that the applicants had converted from Islam to Christianity and that the Iranian authorities were aware of that.\textsuperscript{149} This would risk the applicants’ lives and risk that they would be subjected to ill-treatment. The UNHCR concluded therefore that they had a well-grounded fear of being persecuted in Iran if deported, because of their religion.\textsuperscript{150}

In May 2008, the first and the fourth applicants travelled to Iran to take Bibles in Farsi to Iran. In July 2008, the applicants were requested to appear at the Hakkari police headquarters, where they were informed that they would be deported.\textsuperscript{151} The day after, the applicants re-entered Turkey illegally and re-applied for asylum at the UNHCR. The UNHCR found them credible and considered that their asylum would be valid again.\textsuperscript{152}

The applicants claimed that a deportation to Iran would violate their rights under Articles 2 and 3 of the ECHR.\textsuperscript{153}

The ECtHR normally assesses if the applicants would face a risk under their first deportation on 30 July 2008, together with the deportation for the second time. But due to the fact that the applicants returned to Turkey after their deportation, the ECtHR only assessed if they would face a risk if expelled the second time.\textsuperscript{154}

Just like in Ahmadpour v Turkey, the ECtHR chose to judge this case in accordance with the UNHCR assessment because it had interviewed the applicants and tested the credibility of their fears.\textsuperscript{155} Therefore, the ECtHR

\textsuperscript{147} M.B and others v Turkey, §§ 12-13.  
\textsuperscript{148} M.B and others v Turkey, § 13.  
\textsuperscript{149} M.B and others v Turkey, § 14.  
\textsuperscript{150} M.B and others v Turkey, § 14.  
\textsuperscript{151} M.B and others v Turkey, §§ 16-17.  
\textsuperscript{152} M.B and others v Turkey, § 18.  
\textsuperscript{153} M.B and others v Turkey, § 21.  
\textsuperscript{154} M.B and others v Turkey, § 31.  
\textsuperscript{155} M.B and others v Turkey, § 33.
concluded that it would be a violation of Article 3 of the ECHR if the applicants would be expelled to Iran.\footnote{\textit{M.B and others v Turkey}, § 35.}

**Analysis of the E CtHR Cases**

In the cases of the ECtHR regarding converts that have been examined in this thesis, credibility has not been an arising issue. The ECtHR has given the benefit of the doubt to the applicants that have converted instead of questioning whether the conversion is genuine or not.\footnote{\textit{Saadi v. Italy}, no 37201/06, §§ 124-125, ECHR 2008.} This consequently interprets the relevant Article more restrictively and therefore the ECtHR finds that the State Party has violated the applicants right.

In both cases, the ECtHR has put an emphasize on Iran’s view on converts and how that in turn can affect the applicants if deported back there.

To conclude, the main reasons behind both assessments of the ECtHR were that it gave the applicants the benefit of the doubt when proving substantial fear and took research on Iran in to account.

**ICCPR**

Similar to the ECHR, the ICCPR does not have a specific article that defines non-refoulement but instead it has several articles that can hold implicit prohibition against refoulement. This chapter examines articles 2 para 1 or article 26 (equality before the law), and articles 7 (torture or inhuman treatment).

**K.H v Denmark**

This case is about an individual who has converted to Christianity and is claiming that Denmark has violated his rights under Articles 6 and 7 of the ICCPR. The subject was born in 1988 and is an Iranian national.\footnote{\textit{K.H v Denmark}, §1.1.} In 2012 the subject fled to Denmark through Turkey and applied for asylum.\footnote{\textit{K.H v Denmark}, § 2.2.}
On February 2013 K.H met a woman who preached the Christian gospel to him. The woman, Z.A., introduced him to meetings with a pastor and on 8 April 2013 the author was baptized. His first application for asylum had been refused so he appealed and cited his conversion as grounds for asylum.\textsuperscript{160}

On 27 March 2014 the Danish Refugee Appeals Board rejected his appeal for a request for asylum on the grounds that they did not find his conversion to Christianity as “genuine” despite the fact that he had provided a certificate of his baptism, his active participation in the congregation and declarations from the pastor, Z.A and the Pentecostal Church. The Danish Immigration Service dismissed this and argued that “his interest in Christianity began after the negative decision”\textsuperscript{161} The subject claims that his right under Article 7 has been breached by Denmark.\textsuperscript{162}

The HRC notes that expelling the author to Iran would expose him to a real risk of harm. This would further violate Articles 6 and 7 of the ICCPR because of his conversion from Islam to Christianity.\textsuperscript{163}

The HRC further on recalls its general comment No. 31 (2004) regarding the obligation for Signatory States not to expel an individual from its territory if there are substantial grounds that he or she might face risk of irreplaceable harm contrary to Articles 6 and 7.\textsuperscript{164}

The HRC notes that the Danish Refugee Appeals Boards found that the author had failed to demonstrate that his conversion was genuine despite the baptism certificate and declarations from relevant actors including the pastor and letters of support.\textsuperscript{165}

In paragraph 8.5. the HRC deem that if an individual has converted after his or her initial asylum request have been rejected, it is still reasonable to commit a more thorough examination of the conversion to be done by the Danish authorities. But according to the HRC, regardless if the conversion is genuine or not, there are substantial grounds that the author may face risk of treatment in

\textsuperscript{160} K.H v Denmark, § 2.4.
\textsuperscript{161} K.H v Denmark, § 2.6.
\textsuperscript{162} K.H v Denmark, § 1.1.
\textsuperscript{163} K.H v Denmark, § 8.2.
\textsuperscript{164} K.H v Denmark, § 8.3.
\textsuperscript{165} K.H v Denmark, § 8.4.
accordance with Articles 6 and 7 of the Covenant if deported to Iran.\textsuperscript{166} On these bases, the HRC found that a deportation of the author to Iran, would constitute a violation of the ICCPR.\textsuperscript{167}

To conclude, The HRC did not put emphasize on the State’s claim that the conversion was not genuine and noted that the author had provided a certificate of his baptism, shown active participation in the congregation and received declarations from the pastor, Z.A and the Pentecostal Church.

The HRC also stated that there would be a risk of irreplaceable harm if the author is deported back to Iran and therefore it would constitute a breach of Articles 6 and 7 of the ICCPR.

\textbf{S.A.H v Denmark}

\textit{S.A.H v Denmark} is about an author, S.A.H, who has converted to Christianity and is claiming that Denmark would violate his rights under Articles 6 and 7 of the ICCPR if he was deported back to Afghanistan. The author is an Afghani citizen born in 1987.\textsuperscript{168} In 1999 his father was killed by a local commander. This forced the author to drop out of school and work to support his family.\textsuperscript{169} 10 years later as the author was working in a repair shop, the same local commander that had killed his father came in order to repair his car in the shop. While S.A.H was repairing the commander’s car, an accident occurred causing the death of the commander’s driver. Fearing that this accident would be considered as a plotted revenge against his father’s killer, the author fled to his brother in Kabul.\textsuperscript{170}

The day after he had arrived in Kabul he had been kidnapped by unknow men that he had never met before nor met after the kidnapping. After the kidnapping he chose to flee to another city and worked there for two years before his neighbor informed him that the commander’s men were looking for him.\textsuperscript{171}

\textsuperscript{166} \textit{K.H v Denmark}, § 8.5.
\textsuperscript{167} \textit{K.H v Denmark}, (Annex § 1).
\textsuperscript{168} \textit{S.A.H v Denmark}, § 1.
\textsuperscript{169} \textit{S.A.H v Denmark}, § 2.1.
\textsuperscript{170} \textit{S.A.H v Denmark}, § 2.2.
\textsuperscript{171} \textit{S.A.H v Denmark}, § 2.2.
The author feared for his life and decided to flee to Europe and entered Denmark in December 2011.\textsuperscript{172} He applied for asylum but was dismissed by the Danish Immigration Service.\textsuperscript{173} After taking it to the Refugee Appeals Board, the author’s request for asylum was also rejected due to his story’s lack of credibility.\textsuperscript{174}

In 2013 the author started attending church and was baptized in June 2013. He continually attended and participated in church activities, but subsequently left Denmark and applied for asylum in the Netherlands where he continued being active in a church. In 2014 he was transferred back to Denmark in accordance with the Dublin Regulations.\textsuperscript{175}

After reentering Denmark, the author requested the Danish Refugee Council to reopen his case and requested his conversion to Christianity to be included.\textsuperscript{176} On 2 June 2014 the Refugee Appeals Board decided not to reopen his asylum case since it considered that no new information had been provided by the author.\textsuperscript{177} It did not find his conversion from Islam to be genuine since during the first procedure in 2011, he had stated that he was a Muslim and had no interest in Christianity.\textsuperscript{178}

The author complained to the HRC claiming that his rights under Articles 6 and 7 would be violated if he is deported back to Afghanistan.\textsuperscript{179}

The HRC notes that his conversion “puts him at risk of persecution if returned to Afghanistan; and that the Afghan authorities would not be able to protect him”.\textsuperscript{180} It further notes that reports indicate that conversion from Islam in Afghanistan is considered as apostasy, which is punished by death under the court’s interpretation of Sharia law.\textsuperscript{181}

\begin{itemize}
  \item[\textsuperscript{172}]{S.A.H v Denmark, § 2.3.}
  \item[\textsuperscript{173}]{S.A.H v Denmark, §2.5.}
  \item[\textsuperscript{174}]{S.A.H v Denmark, § 2.6.}
  \item[\textsuperscript{175}]{S.A.H v Denmark, § 2.7.}
  \item[\textsuperscript{176}]{S.A.H v Denmark, § 2.8.}
  \item[\textsuperscript{177}]{S.A.H v Denmark, § 2.10.}
  \item[\textsuperscript{178}]{S.A.H v Denmark, § 2.11.}
  \item[\textsuperscript{179}]{S.A.H v Denmark, § 3.1.}
  \item[\textsuperscript{180}]{S.A.H v Denmark, §11.5.}
  \item[\textsuperscript{181}]{S.A.H v Denmark, § 11.7.}
\end{itemize}
The HRC believes that since the author changed religion after his initial request for asylum had been dismissed, the authorities in Denmark should carry out an in-depth examination on the conversion.\textsuperscript{182} It notes that regardless of the sincerity of the conversion, there are still grounds substantial enough to believe that expelling the author back to Afghanistan would create a real risk of irreplaceable harm.\textsuperscript{183}

The HRC concludes by viewing that the author expressed fear of a general nature and not because of the facts that he had provided.\textsuperscript{184} Therefore, it considered that if the author would be deported to Afghanistan, it would not violate Articles 6 and 7 in the ICCPR.\textsuperscript{185}

Even if the HRC had noted that it is important to make an in-depth examination on the circumstances of the conversion and did not take the Danish Board’s party on the fact that it did not consider the author’s conversion as genuine, it still chose to assess that a refouler would not violated Articles 6 and 7 in the ICCPR. Instead, the HRC argued that the author was fearing generally to be expelled and not because he had converted.

To conclude, it is still considered fear, and there are still substantial grounds to believe that due to his conversion (genuine or not), he could risk irreplaceable harm amounting to Articles 6 and 7.\textsuperscript{186}

\textit{X v Norway}

\textit{X v Norway} is about an author who has converted to Christianity and claims that his rights under Article 7 would be violated if he is deported to Afghanistan. The author is an Afghani national born in 1989.\textsuperscript{187} In 2008, the author applied for asylum. In his application he asserted that he had been kidnapped for several days.

\begin{itemize}
\item \textsuperscript{182} \textit{S.A.H v Denmark}, § 11.8.
\item \textsuperscript{183} \textit{S.A.H v Denmark}, § 11.8.
\item \textsuperscript{184} \textit{S.A.H v Denmark}, § 11.9.
\item \textsuperscript{185} \textit{S.A.H v Denmark}, § 12.
\item \textsuperscript{186} \textit{S.A.H v Denmark}, § 11.8.
\item \textsuperscript{187} \textit{X v Norway}, § 1.1.
\end{itemize}
in Afghanistan before he escaped and that the reason why he was applying for asylum in Norway was because of that and another series of events.\footnote{X v Norway, § 2.2.}

The Norwegian Directorate of Immigration rejected his application for asylum because the kidnapping was “a criminal relationship” and did not meet up with the requirements for a refugee status.\footnote{X v Norway, § 2.2.}

In November 2009, X started attending services at a church and on February 2010 he was baptized.\footnote{X v Norway, § 2.4.} This was submitted to the Immigration Appeals Board on May 2010 and it was dismissed in April 2010 due to the fact that the majority of the judges did not find the author’s conversion to be genuine.\footnote{X v Norway, § 2.4.} It argued that his understanding of Christianity seemed rehearsed and superficial.\footnote{X v Norway, § 2.4.}

The author claims that expelling him back to Afghanistan would violate his right under Article 7 of the ICCPR.\footnote{X v Norway, § 3.1.}

The HRC notes that the author’s claim that he would risk being subjected to ill-treatment contrary to Article 7 of the ICCPR if he is sent back to Afghanistan due to his conversion to Christianity.\footnote{X v Norway, § 7.2.} It also notes the Norwegian Court of Appeals that does not deny persecution of converts in Afghanistan but argues that the author’s conversion is not genuine.\footnote{X v Norway, § 7.2.} The HRC notes that the Court of Appeals failed to examine the testimonies provided from the Church to assess the genuineness of the author’s conversion.\footnote{X v Norway, § 7.5.}

The HRC refers to the general comment No. 31 which protects persons from deportation if there are substantial grounds of them being subjected to treatment contemplated by Articles 6 and 7.\footnote{X v Norway, § 7.3.}
The HRC also notes that the author has provided several contradictory statements and the fact that he was baptized a couple of months after the final rejection, lowered his credibility. 198

The HRC notes that the author claims that the State Party is not willing to give him protection under the principle of non-refoulement. The HRC considers that the author has not given enough basis for this allegation. 199 Despite the fact that he has continuously shown a fear of being persecuted in Afghanistan due to his conversion and that the HRC has stated that converts in Afghanistan faces persecution and ill-treatment in accordance with Articles 6 and 7 in paragraph 7.2 of the case, the HRC considers that the author’s deportation to Afghanistan would not violate his rights under Article 7. 200

To conclude, although the author has provided baptism certificate and shown substantial fear, the HRC still sided with the State which claimed that the conversion was not considered as genuine because “it seemed rehearsed”

**X v Republic of Korea**

In the case *X v Republic of Korea*, the author has converted to Christianity and claims that if deported to Iran, his rights under Article 7 of the Covenant would be violated. The author is an Iranian national and was born Muslim. 201 He developed an interest in Christianity while listening to a Christian radio program. In 2005 he travelled to South Korea for a business visa, valid for three months. There, he started attending services at the Shin-Kwang Church. He started developing a Christian faith that lead him to study the Bible and then officially convert to Christianity. 202

In November 2005 the author was arrested and charged for cannabis consumption and subsequent to his sentence a deportation was ordered. 203 The author applied for asylum, but it was rejected by the authorities on the grounds that

198 *X v Norway*, § 7.6.
199 *X v Norway*, § 7.8.
200 *X v Norway*, § 8.
201 *X v Republic of Korea*, § 2.1.
202 *X v Republic of Korea*, § 2.1.
203 *X v Republic of Korea*, §§ 2.1-2.2
he did not prove that there was a “well-grounded fear of persecution” in Iran in accordance with the Refugee Convention.204

The author continued to attend services at church and in July 2006 he was baptized.205 In February 2006, the author submitted a new application for asylum, but it was rejected again. This time the authorities stated that "his statements were untrustworthy and contradicted by the minister who baptized him"206. According to the Iranian Embassy, there is no risk of persecution in Iran because it does not recognize the conversion and it is only a risk if the author is active in religious missions in Iran.207

The author appealed further and submitted evidence from the UN, and a non-governmental organization208 that Muslims who convert to Christianity are persecuted and may suffer in Iran in other ways. He also submitted his personal diary to show in his genuineness of the conversion.209

The HRC notes that the Iranian authorities are aware of the fact that the author has converted to Christianity, putting him in risk of harm contrary to Article 7 of the ICCPR.210 It also notes that the State party has not evaluated the evidence provided by the author, the UN and the NGO before assessing if the author risks irreplaceable harm if deported.211

The HRC also notes that not only is converting from Islam considered as apostasy and can be punished by death in Iran,212 but also the fact that the author has a bachelor’s degree from a Seminary that is run with the purpose of spreading “the Gospel effectively to the unreached people groups”213.
The HRC, concludes that the author’s removal from South Korea to Iran would violate his right under Article 7 of the ICCPR.\footnote{X v Republic of Korea, § 12.}

To conclude, the applicant provided proof that he has converted and that if he would be deported to Iran he would be punished by death. The HRC found this sufficient enough to assess that it would violate Article 7 of the Covenant if he would be sent back to the State of origin.

\textit{W.K v Canada}

\textit{W.K v Canada} is a case about an Egyptian national.\footnote{W.K v Canada § 2.1.} He identifies himself as a homosexual\footnote{W.K v Canada § 2.1.} and has converted from Islam to Christianity\footnote{W.K v Canada § 2.2.}. In February 2013, W.K fled to Russia where he applied for asylum. In his application he chose not to mention his sexual orientation due to the fear of a “negative reaction” from the Russian authorities. His application was rejected because they did not believe his claims that he had developed his Christian faith in Egypt and officially converted in Russia.\footnote{W.K v Canada § 2.2.} Fearing to return to Egypt, he obtained a fake passport and fled to Canada.\footnote{W.K v Canada § 2.2.}

In Canada, the author admitted that he had purchased the Israeli passport and fled to Canada because he feared for his life to return to Egypt because of his sexuality.\footnote{W.K v Canada § 2.3.} The official questioning the author reported him to the Immigration, Refugees and Citizenship Canada\footnote{Hereinafter PRRA.} and “recommended that an exclusion order be issued for attempted entry into Canada using fraudulent documents”\footnote{W.K v Canada §2.3.}. The author had provided documented evidence that there are risks of violence and discrimination of homosexuals in Egypt.\footnote{W.K v Canada § 2.3.} He also provided written submissions on his fear of returning to Egypt because he had converted to
Christianity, and documents describing the human rights situation in Egypt.\textsuperscript{224} The PRRA in return rejected the author’s application for asylum due to the fact that it assumed he lacked credibility.\textsuperscript{225} Here again, the rhetoric is that the authorities did not find the author a “genuine Christian” despite his baptism and his attendance at church.\textsuperscript{226}

Analysis of the HRC Cases

Similar to the cases $X$ v $Norway$ and $S.A.H$ v $Denmark$ the HRC notes that even though there is a risk for the author to be subjected to irreplaceable harm amounting to Articles 6 and 7 of the ICCPR, the author is not considered as a “genuine Christian” due to the circumstances. The HRC therefore assesses that a deportation to Egypt, in the case of $X$ v $Canada$ would not violate the author’s rights under Articles 6 and 7 of the ICCPR.\textsuperscript{227}

One can see a pattern in all the cases of the HRC regarding converts examined in this thesis. The discussion of the HRC is always narrowed down to one question; credibility. If a convert is considered genuine or not is what determines the assessment of this supervising body regarding Articles 6 and 7 of the ICCPR. In $K.H$ v $Denmark$, both the State and the HRC argued that the author’s conversion was not genuine despite the fact that he had provided baptism certificate, declarations from the Pastor and other Church members, and has been active in the Church.\textsuperscript{228} Similarly, the authors in both $S.A.H$ v $Denmark$, $X$ v $Norway$ and $W.K$ v $Canada$ also was baptized.\textsuperscript{229} Still, the HRC assessed that no Articles were violated because the authors conversion was not considered to be genuine.\textsuperscript{230}

The only case from the HRC that assessed a violation against the author was $X$ v $Korea$.\textsuperscript{231} Even though the HRC noted that authors in other cases

\textsuperscript{224} W.K v Canada, §2.10.
\textsuperscript{225} W.K v Canada, § 2.11.
\textsuperscript{226} W.K v Canada, § 2.11.
\textsuperscript{227} W.K v Canada, § 11.
\textsuperscript{228} K.H v Denmark, § 1.1.
\textsuperscript{229} See S.A.H v Denmark, § 2.7, X v Norway, § 2.4, W.K v Canada, § 2.11.
\textsuperscript{230} See S.A.H. v Denmark, § 11.8, X v Norway, § 2.4, W.K v Canada, § 2.11.
\textsuperscript{231} X v Korea, § 11.
would face ill-treatment if *refouler* to the State of origin, this was the only case that that in fact prevailed. The reason behind the HRC assessment was most likely because of the fact that Korea had not evaluated the evidence provided by the UN before assessing the case. This does not have to be sufficiently different for the HRC to assess so differently in this case compared to the other ones mentioned because the HRC noted that all authors could be subjected to ill-treatment after deportation.

The HRC also noted that X had a bachelor’s degree from a Seminary. This raises a question; is it sufficient to have a baptism certificate and be active in a Church for the conversion to be considered as genuine by the HRC or does a person need to obtain a bachelor’s degree from a Seminary as well?

**LGBTQ**

This section examines an LGBTQ case with the purpose of making a comparison in how the HRC assesses converts and LGBTQ persons regarding credibility and genuineness.

**M.K.H v Denmark (LGBTQ)**

The author is a national of Bangladesh and a Muslim, born 1994. He applied for asylum in Denmark, but the application was rejected. He claims that if he is deported back to Bangladesh he would be subjected to treatment contrary to Article 7 of the ICCPR.

The author was caught having a homosexual relationship with his childhood friend in 2011. They both were turned in to the village council where they were beaten up and tortured. He was expelled from the family and was threatened to be killed if her returned home.

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232 *X v Korea*, § 11.3.
233 *X v Korea*, § 11.5.
234 *M.K.H v Denmark*, § 1.1.
235 *M.K.H v Denmark*, § 1.1.
236 *M.K.H v Denmark*, § 2.1.
He fled to another village, but he was eventually recognized by one of villagers. Then he decided to flee to India and in 2012 he fled India for Europe. 3 February 2012 he entered Denmark without any valid documents and applied for asylum.\textsuperscript{237}

When the police interrogated the author, he told them that he had submitted an application for asylum because he had left his home due to the fact that his village found out that he was homosexual.\textsuperscript{238}

The Danish Immigration Service rejected the author’s claim for asylum. It found that the author had not been credible and that “several aspects of his explanations were unreliable.”\textsuperscript{239} The author appealed and claimed that his sexual orientation would get him persecuted if sent back to Bangladesh and that he would not be able to seek protection there.\textsuperscript{240}

The HRC notes that a deportation to Bangladesh would expose the author to the risk of torture and persecution because of his homosexuality. It notes that it is illegal to commit homosexual acts in Bangladesh and that the police use the law to discriminate individuals belonging to the LGBTQ community.\textsuperscript{241}

The HRC notes that the Danish authorities did not give “due weight” to the evidence that the author had provided. The authorities questioned his birth certificate and his credibility but did not take measures to verify his age. The authorities did not assess whether being homosexual would put the author of risk of being persecuted if deported.\textsuperscript{242}

The HRC further notes that both the Immigration Service and the Appeals Board had determined that the author’s homosexuality as credible and that it had not been demonstrated that it would put him to risk if being expelled to

\textsuperscript{237} \textit{M.K.H v Denmark}, § 2.1.
\textsuperscript{238} \textit{M.K.H v Denmark}, § 2.2.
\textsuperscript{239} \textit{M.K.H v Denmark}, § 2.3.
\textsuperscript{240} \textit{M.K.H v Denmark}, § 2.3.
\textsuperscript{241} \textit{M.K.H v Denmark}, § 8.2.
\textsuperscript{242} \textit{M.K.H v Denmark}, § 8.3.
Bangladesh. Bearing all that in mind, the HRC found that the author’s deportation to Bangladesh would violate his right under Article 7 of the ICCPR.

Chapter 5

Discussion

This chapter discusses the cases from the last chapter and answers the three questions of the thesis.

Does the principle of non-refoulement protect converts under international law?

It protects them to some extent. It does not automatically protect them because they are converts like it would do if it was a matter of religion. If it was only a matter of religion, the supervising bodies would not have put such a huge emphasize on the credibility and genuineness as they do in the matter of the conversion. This is because converts are not yet “assessed” that they are really converts by the institutions. Instead there is another dimension. It is a discussion regarding burden of proof and credibility. Similar to the LGBTQ and the credibility of that an individual is not heterosexual, however it is to a greater extent for the converts. The reason behind it may be that in the S.M.K v Denmark, the applicant had already been conducting homosexual acts with his friend while still in Bangladesh, while most of the cases regarding converts were that they converted in the receiving State and therefore the credibility was questioned. This should however not be a factor because even if an individual has converted in the State of origin or in the receiving State, it does not change the fact that he or she is an apostate and can be punished for it. These punishments can amount to irreplaceable harm and that by itself must protect under the principle of non-refoulement.

The discussions regarding burden of proof and credibility were mainly done by the domestic authorities in respective State Party. It was also discussed by

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243 M.K.H v Denmark, § 8.8.
244 M.K.H v Denmark, § 9.
245 M.K.H v Denmark, § 2.1.
the supervising bodies as well. Credibility is important to be discussed by the respective supervising body because then it can assess whether the individual is genuine about his or her conversion. But should supervising bodies conduct credibility assessments or should they only be conducted at the national process?

It would be easier if the supervising bodies only assessed whether it can be a risk for the applicant/author to be subjected to ill-treatment contrary to Articles 6 or 7 in the ICCPR or Articles 2 or 3 of the ECHR. The discussion about genuineness should not be at the supervising bodies, because institutions are flawed and therefore it can give a wrong assessment if it does not also look at substantial facts of the States of origin and how they treat converts. The national authorities are also flawed and can give wrong assessment and if they should have the authority to conduct the assessment they should do it with cooperation with Churches and congregations that know more about Christianity.

How important is it to determine the genuineness? At the end of the day, the applicant/author can still risk being subjected to ill-treatment if deported to his or her State of origin if that State considers that the conversion is genuine. The same goes for the family. In several cases, the applicant/author feared the risk of persecution by family and citizens of their village because even if the State does not prosecute, the State is unwilling or unable to prevent persecution leading to torture or even death. Therefore, it does not matter if receiving States or supervising bodies assess that the individual is to be deported because the lack of the genuineness. As long as the State of origin does, irreplaceable harm amounting torture or deprivation of life can occur.

In the cases presented it was clear that the supervising had a constant tug of war between “genuine convert” vs “risk of irreplaceable harm”. In all cases, the supervising body had no doubt in determining that it was a risk of irreplaceable harm for the applicant/author if her or she would be deported to State of origin. There were many reports and NGOs that provided information of the different States and their laws that would persecute converts. However, the question was always fighting with if the applicant/author was a genuine convert. This is a legitimate question because if this would not be assessed by the domestic authorities nor the supervising bodies, then it would be very easy for anybody from a State that

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246 M.K.H v Denmark, § 2.1.
persecutes converts to flee and apply for asylum. The same goes for LGBTQ. However, the author of this thesis thought that an assessment of whether the author was homosexual would be more similar to assessing applicants/authors that claim to have converted to Christianity from Islam since both are difficult or even impossible to proof. Goodwin-Gill and McAdam also wrote that it is difficult to assess cases when it comes to fear because fear is subjective. Therefore, facts should be taken into consideration together with the examination of the applicant. This has not been done thoroughly by the HRC since it mainly focuses on the credibility of the applicant/author’s fear of persecution.

During this research, the author of this thesis questioned why individuals would go through all the trouble of claiming to have converted to Christianity from Islam, if they must provide proof, when it can be easier to claim to be homosexual, since the HRC does not discuss genuineness and credibility in its LGBTQ case. Some of the converts are most likely to be genuine and some may not be. However, it is bizarre to think that a secular institution, or any institution is to assess or decide for such a personal matter.

International law protects converts to an extent but not as fully as non-converts. The reason behind it is because the secular institutions such as the supervising bodies examined in this thesis, decide whether an applicant’s or an author’s conversion is genuine or not. Based on that, the HRC and ECtHR assess if the State has violated human rights.

To conclude, the supervising bodies conduct credibility assessment, and genuineness (decided by the supervising bodies) affects the assessment. This is indicating questionable results based on the few cases that has been assessed since it does not consider what makes a person in need of international protection.

Is there any difference in the determination of non-refoulement of converts depending on supervising body?

It was indeed a difference on the assessments between the supervising bodies when determining the non-refoulement. The ECtHR was using a more extensive interpretation in general and had not put the burden of proof as strongly on the

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247 Goodwin-Gill, McAdam, The refugee in international law, 64.
applicants as the HRC had put it on the authors in the mentioned cases. Instead, the ECtHR gave its applicants the benefit of the doubt and took into consideration the fear that they had of being risked being subjected to torture or other ill-treatment if deported back. The HRC on the other hand stated in the case *K.H v Denmark* that it noted the author’s fear, but that the author had failed to provide enough credibility that the fear that he was feeling was connected to his conversion and the risk of being subjected to irreplaceable harm in Iran if deported back.

Therefore, based on the few cases analyzed in this thesis, there are indications that it was a difference in the determination of *non-refoulement* of the converts depending on the supervising body.

**If not, is it considered discrimination against converts?**

Here one has to turn to the discrimination theory. Is it considered as discrimination, or adverse treatment if converts are assessed more thoroughly than individuals who are born into Christianity or Islam for example? Is it discrimination towards the converts, in relations to individuals born into a religion, if State authorities and supervising bodies are deciding whether the conversion is genuine, and on that base, decide if the applicant/author should be *refouler* or not? If yes, this would be a discrimination against converts because they are given a negative treatment in relation to individuals born into a religion.

These questions are necessary to answer before answering the question of the thesis. One can argue back and forth if it is discrimination or not. First and foremost, a convert must not only prove that he or she has converted but also that there is a risk of irreplaceable harm while individuals applying asylum when born into a religion only have to prove the latter. Secondly, it is interesting that an institution can determine if a convert is genuine and therefore decide that he or she should not be protected by the principle of *non-refoulement* and return to a State where a risk of ill-treatment may occur. Because neither the ECHR nor the HRC have denied that a convert may risk harm if deported.

The last question of the thesis examines if the assessments towards the converts can be considered to be discrimination. This is answered by discussing the discrimination theory of Roth. Roth reviewed several forms of discrimination
and introduced how discrimination can be looked upon. According to him, negative treatment is considered discrimination if that differential treatment is based on morally irrelevant characteristics. It can be established that converts have been treated different. The genuineness of their conversion has been questioned in many different ways and especially with regards to the HRC where they have not been given the benefit of the doubt unlike with the ECtHR. The question that has to be asked to continue is whether the differential treatment is based on morally irrelevant characteristics or not.

When Roth explained morally relevant and irrelevant characteristics he gave a couple of examples. He explained that if a person has committed a crime and been sentenced to prison, then it is a negative treatment towards that person. However, it is considered morally relevant since the person has committed a crime and should be (proportionately) be punished for that. Converts that have fled States where they risk being tortured or subjected to other irreplaceable harm have not committed a crime. The differential in treatment in comparison to non-converts is a fact and the moral characteristics are irrelevant. Therefore, the assessments of the HRC and the judgments of the ECtHR regarding converts and their genuineness of conversion is morally irrelevant according to Roth’s theory. Still converts face difficulties because the genuineness of the conversion is decided by the State authorities and the supervising bodies. This creates a negative treatment towards (based on morally irrelevant factors) converts and therefore it is considered as discrimination according to Roth’s theory.

Since the question of genuineness is not asked in the cases when individuals are born into a religion, can it be considered that they have a positive differential treatment in comparison to the converts? Roth argues that women with the same merits and conduct the same type of work as men have lower salaries and are not in seated in high positions are subjected to discrimination. This is because money and promotions are considered as positive values. In the case of converts, they hold the same religion as the other Christians that face the same risk of torture and other irreplaceable harm if sent back to the country of origin, still they are not

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248 See e.g. F.G v Sweden, § 113.
249 Roth, Diskriminering, 11.
250 Roth, Diskriminering, 13.
treated equally. To obtain asylum in the receiving State is considered of positive value, similar to promotion and money.

It can be discussed whether non-converts and converts should even be treated the same. One theory against converts can be that they may “use conversion” as a method to not be sent back. Another theory for converts can be that converts can risk suffering more discrimination because they are not only seen as Christians in the country of origin but apostates as well, which is criminalized in some Muslim States.\textsuperscript{251} Converts also risk facing both \textit{personal and impersonal discrimination} if sent back because families can also persecute if a family member has converted from Islam.\textsuperscript{252}

Converts are clearly also in a more disadvantaged position in their society because of these factors and because of the fact that both national authorities in the receiving State and the HRC especially, are not considering the conversions as genuine. Converts can be considered to be discriminated against because of their position in the society and how the assessment of the genuineness is conducted as well since the authorities do not take baptism certificates, the priests’/pastors’ statements and the Churches’ pleading seriously. The HRC assessment goes in line with the receiving States. The ECtHR on the other hand is more critical to the assessments of the States’.

To conclude this; obtaining asylum or refugee status in a State is valued positively because then that individual is free from the risk of ill-treatment amounting to Article 3 ECHR or Article 7 ICCPR. But individuals born into a religion do not have their genuineness questioned and therefore can automatically have an easier time obtaining it in comparison to converts even though both have the same risk (if not more for the converts because of apostates’ laws in many Muslim States) of being subjected to irreplaceable harm.

Another form of discrimination that was discussed by Roth was \textit{structural discrimination}. He discussed that structural discrimination can take place through legislation.\textsuperscript{253} \textit{De jure}, converts are not necessarily discriminated against

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\textsuperscript{251} See e.g. S.A.H v Denmark, § 11.7.
\textsuperscript{252} M.K.H v Denmark, § 2.1.
\textsuperscript{253} Roth, Diskriminering, 33.
\end{flushright}
because there are no laws that are giving the chance for them to be discriminated. However, *de facto*, when discussing discrimination because of religion or belief then usually individuals that are born into the religion are assumed there but rarely converts. Instead, converts have to go through a test that is not unanimously done in either national nor international law which creates a gap as well as unpredictability. This is not acceptable because laws should be predictable for the people. Also, discussing if a conversion is genuine or not as a belief that is internal because of timing or the amount of time he or she spends time in the church is absurd (although most converts have priests and church people arguing for that the convert is genuine) since one cannot for sure claim that a person is not genuine, the same as one cannot prove whether a person is truly a homosexual or if he or she is using it as an argument to not be *refouler* to the country of origin.

The author of this thesis argues that there are indications based on the few cases presented, that can be considered easier to argue for homosexuality if one wants to stay in a country because you cannot really prove if someone is either and most can argue that they have not exercised their homosexuality in their country of origin because of fearing to be tortured or subjected to other irreplaceable harm. It was shown by the case presented in this thesis that it was never a question of genuineness when discussing the homosexual man in *M.K.H v Denmark*, in comparison with the cases regarding converts at the same supervising bodies. Instead, other factors were mentioned and discussed. Furthermore, neither the supervising body nor the State authorities in said case presented proof or evidence that was relevant to a discussion of genuineness like in the cases of the converts where there were submitting of baptism certificate and statements from Pastors and Church members.

This does not mean that no supervising body ever questions the credibility and the genuineness of a person claimed to belong to the LGBTQ community. On the other hand, this is an indication that has been shown in the HRC.

Barisic presented that internal consistency as an important factor for credibility. If an applicant shows vague coherence or consistency in his or her

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254 Art 9 ECHR see *forum internum*
statement it automatically diminishes the credibility. This in turn, can lead authorities and supervising bodies to assess that conversions for example are not genuine. That factor, together with the time consistency since many of the cases examined in the dissertation were regarding applicants/authors who converted in the receiving State and fled mainly firstly for political purposes. This does not however, mean that they have not genuinely converted or that there is no irreplaceable harm for a convert.

Kagen’s theory is relevant and very important to know when determining credibility but it must not be forgotten that the persons who are dealt with have substantial fear and, like the ECtHR assessed, they must be given the benefit of the doubt. Especially when there are reports regarding the State of origin and how it de jure or de facto persecutes converts.

Based on the cases examined in this thesis, there are indications that converts are discriminated against by family and the society usually in the country of origin that they have fled. Honor killings and persecution happens within the family. In the cases that have been examined throughout this thesis, one can determine that some Muslim States also have laws that criminalizes conversion (or in the case of Malaysia, does not recognize the conversion, which is another problematic issue). It can therefore be concluded, that converts do also get subjected to both personal and impersonal discrimination like homosexuals.

To answer the last question, based on the few cases that have been examined in this dissertation, there are indications that the HRC discriminates converts when determining the genuineness of the conversion which leads to them being refouler to the State of origin despite it being a risk of them being subjected to irreplaceable harm.

256 M.K.H v Denmark, § 2.1.
Conclusion

It can seem that the issue of homosexuals and the LGBTQ community have during many years been discriminated against and it is not uncommon anymore to stand up for them and their human rights. It is important to recognize that converts face difficulties both in their country of origin and also in the receiving State, especially when an employee at the Migration Board determines if the convert is genuine in his or her conversion, putting all their safety in the hands of the outcome. The HRC generally followed the States’ assessment although it always notes that there is a risk of irreplaceable harm if the convert is expelled to the country of origin.259

To conclude, international law protects converts to an extent but not as fully as non-converts. The reason behind it is because the secular institutions such as the supervising bodies examined in this thesis, decide whether an applicant’s or an author’s conversion is genuine or not. Based on that, the HRC and ECtHR assess if there are violations against human rights and if the individual in the matter is to be deported or not. Despite the fact that facts have established that the individual might face irreplaceable harm if deported to their States of origin.

259 See e.g. K.H v Denmark, S.A.H v Denmark
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