

**LEGAL AND PROTECTION POLICY  
RESEARCH SERIES**

**Nordic Asylum Practice in relation to Religious  
Conversion: Insights from Denmark, Norway  
and Sweden**

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## TABLE OF CONTENTS

<b>1. INTRODUCTION .....</b>	<b>1</b>
1.1 Methodology .....	2
1.2 Structure.....	3
<b>2. APPLICABLE LEGAL FRAMEWORK: RELIGIOUS CONVERSION AS A BASIS FOR ASYLUM CLAIMS.....</b>	<b>3</b>
2.1 International refugee and human rights law .....	3
2.2 Regional refugee and human rights law .....	6
2.3 Summary.....	7
<b>3. NATIONAL PRACTICE ON CONVERSION IN DENMARK .....</b>	<b>8</b>
3.1 The Danish asylum system.....	8
3.2 Legal annual report and academic textbook analysis .....	8
3.3 Case law analysis.....	10
3.4 Computational analysis .....	12
3.5 Interviews with decision makers.....	22
3.6 Summary.....	24
<b>4. NATIONAL PRACTICE ON CONVERSION IN NORWAY.....</b>	<b>25</b>
4.1 The Norwegian asylum system .....	25
4.2 Legal practice note and academic textbook analysis.....	25
4.3 Case law analysis .....	28
4.4 Interviews with decision makers.....	30
4.5 Summary.....	32
<b>5. NATIONAL PRACTICE ON CONVERSION IN SWEDEN .....</b>	<b>33</b>
5.1 The Swedish asylum system .....	34
5.2 Legal practice note and academic textbook analysis.....	34
5.3 Case law analysis.....	36
5.4 Interviews with decision makers.....	38
5.5 Summary.....	41
<b>6. CONCLUSION AND RECOMMENDATIONS.....</b>	<b>42</b>
Credibility assessments.....	45
Country of origin information and risk assessments .....	45
Dialogue and discussions .....	46
Effective disclosure in conversion cases.....	46

Quality of interpretation.....	46
The role of religious institutions.....	47
<b>ANNEX 1: INTERVIEW QUESTIONS .....</b>	<b>48</b>

## 1. INTRODUCTION

The last decade has seen a significant increase in asylum claims based on religious conversion not only in the Nordics but also in also other European countries.<sup>1</sup> The majority of these cases concern Afghan and Iranian nationals, and many emerge after the first instance refusal, making them *sur place* claims.<sup>2</sup> This may reflect both a growing need for international protection for persons abandoning or changing their religion in these countries – something supported by relevant country of origin information – but also a stronger interest in conversion among applicants and better support for conversion from religious institutions in the countries of asylum. The rise in applications further coincides with a broader practice change in this area based on jurisprudence from the Court of Justice of the European Union (‘CJEU’), meaning that asylum applicants can no longer be required to conceal their faith or exercise discretion upon repatriation in order to avoid persecution.<sup>3</sup> This practice change significantly changes how credibility assessments are carried out, insofar as the outcome of the case no longer depends solely on external circumstances, such as whether the conversion has already or is likely to come to the attention of authorities in the country of origin, but rather an assessment of the applicant’s subjective religious conviction.

Both national asylum authorities and scholars have debated how best to conduct credibility assessment in conversion cases, but research highlights that there may be significant variation in how national authorities approach this issue.<sup>4</sup> In response, the United Nations High Commissioner for Refugees (‘UNHCR’) has provided explicit guidelines to facilitate credibility assessments in conversion cases.<sup>5</sup> However, it is not clear to what extent these guidelines are applied at the national level. Therefore, this report offers a comparative examination of the current patterns in national methods of adjudication on conversion in religion-based asylum claims in Denmark, Norway and Sweden and, on this basis, sets out some recommendations for future legal and policy action. Against this background, this report is guided by the following research question:

*How are religion-based asylum claims concerning sur place conversion adjudicated across the appeal levels in Denmark, Norway and Sweden?*

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<sup>2</sup> L. Rose and Z. Given-Wilsen, ‘What is Truth? Negotiating Christian Convert Asylum Seekers’ Credibility’, in *The ANNALS of the American Academy of Political and Social Science*, 697(1), 221-235; UNHCR, ‘Guidelines on international protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees’, HCR/GIP/04/06 (28 April 2004) (‘Guidelines on international protection No. 6: Religion-Based Refugee Claims’).

<sup>3</sup> CJEU - C-71/11 and C-99/11 *Germany v Y and Z* (5 September 2012).

<sup>4</sup> M. Kagan, ‘Refugee credibility assessment and the ‘religious imposter’ problem: a case study of Eritrean Pentecostal claims in Egypt’, in *Vanderbilt Journal of Transnational Law*, 43(5):1179-1233; L. Rieder, ‘Assessing credibility in conversion-based asylum claims’, in *International Journal for Religious Freedom* Vol. 15:1, 2022; A. Jahangir, ‘Report of the Special Rapporteur on freedom of religion or belief on promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development’, United Nations, New York, 2007; H. Bielefeldt, N. Ghanea-Hercock and M. Wiener, ‘Freedom of religion or belief: an international law commentary’, Oxford University Press, 2017.

<sup>5</sup> UNHCR, ‘Guidelines on international protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees’, HCR/GIP/04/06.

## 1.1 Methodology

This report analyzes the national practices in *sur place* religious conversion cases across the different appeal levels in Denmark, Norway and Sweden, i.e. the Danish Refugee Appeals Board, the Swedish Migration Courts and the Norwegian Immigration Appeals Board, in the period of 2011 to 2022/2023. The choice to focus on the appeal stage reflects that a significant number of conversion motives emerge only after the first instance refusal, as well as the principled role of the various appeal bodies in establishing national practice.<sup>6</sup>

The report builds on four different datasets. The first dataset consists of legal practice notes issued by the Swedish Migration Agency<sup>7</sup> and the Norwegian Immigration Appeals Board, annual reports issued by the Danish Refugee Appeals Board, as well as law books on asylum and immigration law in Denmark, Norway and Sweden. The Norwegian and Swedish legal practice notes specifically describe the national practices in religious conversion cases. In Denmark, a similar description of national practice in conversion cases is contained in sub-sections of the annual reports. The law books are used as a subsidiary source to confirm legal practice in religion-based asylum claims.<sup>8</sup>

The second dataset involves case law from the Danish Refugee Appeals Board, the Swedish Migration Courts and the Norwegian Immigration Appeals Board. This dataset consists of a randomized sample of 50 decisions on *sur place* religious conversion involving Iranian and Afghan nationals made by the Danish Refugee Appeals Board and the Swedish Migration Courts in the period of 2011 to 2022/2023; and a sample of 36 similar decisions from the Norwegian Immigration Appeals Board during the same period.<sup>9</sup> The Swedish Migration Court of Appeal has further shared four of its precedent-setting decisions on *sur place* religious conversion.<sup>10</sup> The case law analysis provides a chance to further nuance the legal practice notes, annual report and textbook analysis, including whether national guidance notes are also consistently followed in practice. This case law analysis is thus organized around the following features: 1) year of decision, 2) decision outcome, 3) arguments made by the appeal level, 4) reference to external evidence, 5) reference to country of origin information, and 6) reference to UNHCR guidance, jurisprudence by international and regional courts, including the European Court of Human Rights ('ECtHR') and the CJEU, as well as quasi-judicial bodies (hereafter collectively referred to as "international and regional jurisprudence").

The third dataset involves 15,535 full-text asylum decisions made by the Danish Refugee Appeal Board in the period of 1995 to 2022. Within this dataset, 1,057 decisions involve asylum claims on religious conversion in the chosen period of 2011 to 2022. A computational analysis, including a topic modelling, is undertaken in respect to these with the aim of uncovering underlying trends and

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<sup>6</sup> Flygtningenævnet, 'Formandskabet, 21. beretning 2012' (2013), p. 215; Flygtningenævnet, 'Formandskabet, 21. beretning 2021' (2022); Utlendingsnemnda, 'Praksisnotat: Forfølgelse på grunnlag av religion' (2022); Migrationsverket, 'Rättsligt Ställningstagande: Metod för prövningen då religion, inklusive konversion och ateism m.m. åberopas som asylskäl' (2021).

<sup>7</sup> The Swedish Migration Agency is the first asylum instance in Sweden and intermittently issues its "Rättsligt Ställningstagande", which is based on legally binding Swedish law.

<sup>8</sup> The most recent law books on immigration law from Denmark, Norway and Sweden have been selected for the analysis. A common denominator for the books is that the target groups are university students as well as practitioners who work with asylum, refugee and immigration matters.

<sup>9</sup> The Norwegian Immigration Appeals Board noted that it has not been possible to fully meet the request for 50 decisions, as several decisions are no longer valid or available.

<sup>10</sup> The Swedish Court of Appeal is the second and final level of appeal in the Swedish asylum system. However, it only reviews questions of law, as its main task is to provide precedent.

practice changes, as well as key features of applicants, including gender, country of origin, case reasoning and church affiliations.<sup>11</sup>

The fourth and final dataset consists of 12 semi-structured interviews with decision makers from the Danish Refugee Appeals Board, the Norwegian Immigration Appeals Board and the Swedish Migration Court. The interviews have been conducted in the period of 23 March 2022 to 2 May 2023. While there are four Migration Courts in Sweden, it has only been possible to conduct interviews with decision makers from the Migration Court in Malmö.<sup>12</sup> Central themes for all interviews concern include the approach to assessing credibility in conversion cases, the types of questions asked in conversion cases, the use of country of origin information and other external evidence, and the perceived relevance of international and regional jurisprudence and guidance.

## **1.2 Structure**

Part II of the report sets out the legal positions of Denmark, Norway and Sweden to various international and regional legal frameworks as well as the UNHCR Guidelines on Religion-Based Refugee Claims. In continuation, part III, IV and V examine the judicial practices on conversion in religion-based asylum claims across the appeal levels in Denmark, Norway and Sweden through the various elements of analysis set out above. For each country, we begin by analyzing the legal practice notes, annual reports and academic textbooks to uncover whether there are particular national practices and interpretations of refugee law in conversion cases across Denmark, Norway and Sweden, respectively. Secondly, we analyze sample case law to examine argumentative patterns and uncover trends within the conversion decisions. Thirdly, for the section on Denmark a computational analysis of 1,057 Danish conversion decisions visualizes tendencies, commonalities and themes within Danish conversion cases. Fourthly and finally, insights from interviews with decision makers are presented with the view to verifying and nuancing findings from the other datasets. In the conclusion (part VI), we discuss and compare the findings from each of the previous sections and set out some recommendations for future legal and policy action in Denmark, Norway and Sweden.

## **2. APPLICABLE LEGAL FRAMEWORK: RELIGIOUS CONVERSION AS A BASIS FOR ASYLUM CLAIMS**

This section sets out the legal framework relating to conversion in religion-based asylum claims as provided in international and regional refugee and human rights law, as well as the UNHCR Guidelines on Religion-Based Refugee Claims. Secondly, the legal positions of Denmark, Norway and Sweden to the international and regional legal frameworks are comparatively examined to illuminate applicable rules governing conversion before the various elements of analysis in part III, IV and V.

### **2.1 International refugee and human rights law**

The 1951 Refugee Convention is grounded in Article 14(1) of the 1948 Universal Declaration of Human Rights ('UDHR'), which acknowledges that *"everyone has the right to seek and to enjoy in other*

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<sup>11</sup> It has not been possible to obtain access to a similar large databases of full-text asylum decisions from the Norwegian Immigration Appeals Board and the Swedish Migration Courts within the time frame of this report.

<sup>12</sup> The four Migration Courts in Sweden are based in Malmö, Luleå, Stockholm and Gothenburg.

*countries asylum from persecution*".<sup>13</sup> In this context, the internationally agreed definition of a refugee is exhaustively defined in Article 1A(2) of the 1951 Refugee Convention.<sup>14</sup> According to Article 1A(2), the term "refugee" applies to, among other things, any person who has a well-founded fear of persecution for reasons of religion.

Denmark, Norway and Sweden have signed the UDHR.<sup>15</sup> Denmark have signed and ratified the 1951 Convention on December 4, 1952, followed by Norway on March 23, 1953. Sweden further became a ratifying State on October 26, 1954.<sup>16</sup> Moreover, central provisions of the 1951 Refugee Convention have been incorporated into the national alien legislations of Denmark, Norway and Sweden, including Article 1A(2).<sup>17</sup> Citizens of Denmark, Norway and Sweden, respectively, enjoy the right to freedom of religion.<sup>18</sup> Article 4 of the 1951 Refugee Convention provides refugees a right to practice religion in line with the citizens of Denmark, Norway and Sweden. However, guidance as to how religious conversion claims should be dealt with in practice is absent in the 1951 Refugee Convention, and in the national asylum legislation of Denmark, Norway and Sweden, respectively. Nevertheless, various legal instruments under international human rights law inform the interpretation of the term "religion" in the context of the 1951 Refugee Convention. For example, Article 18 of the UDHR and Article 18 of the International Covenant on Civil and Political Rights ('ICCPR') specifically address the right to freedom of thought, conscience and religion.<sup>19</sup> General Comment no. 22 issued by the Human Rights Committee elaborates that the human right to freedom of thought, conscience and religion includes the freedom to "have or to adopt" a religion or belief, which "necessarily entails the freedom to choose a religion or belief, including the right to replace one's religion or belief with another".<sup>20</sup> The United Nations Human Rights Committee has further developed case law involving *sur place* religious conversion by interpreting the ICCPR. For example, in a 2014 case the Committee stated that test in conversion cases remains whether, regardless of the sincerity of the conversion, there are substantial grounds for believing that such conversion may have serious adverse consequences for the applicant upon return to the country of origin.<sup>21</sup>

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<sup>13</sup> Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention); Universal Declaration of Human Rights (adopted 10 December 1948), Article 14(1).

<sup>14</sup> According to Article 1A(2) of the 1951 Refugee Convention, as amended by the Protocol Relating to the Status of Refugees, 31 January 1967, a refugee is someone who is outside their country of nationality with a well-founded fear of persecution based on one of five grounds, i.e. race, religion, nationality, membership of a particular social group or political opinion, and is unable or unwilling to avail themselves of the protection of their country of nationality or habitual residence.

<sup>15</sup> The Danish Institute for Human Rights, 'Signatories for Universal Declaration of Human Rights', available at: <https://sdg.humanrights.dk/en/instrument/signees/24> on 3 March 2023.

<sup>16</sup> UNHCR, *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, (2011); Sweden was the first country to sign and ratify the 1967 Protocol relating to the Status of Refugees ('the Protocol') on October 4, 1967, followed by Norway on November 28, 1967 and Denmark on January 29, 1968.

<sup>17</sup> The refugee definition contained in Article 1(A)2 of the 1951 Convention is reflected in Section 7(1) of the Danish Aliens Act, Section 28(a) of the Norwegian Immigration Act, and Section 1, chapter 4, of the Swedish Aliens Act. Moreover, the principle of *non-refoulement*, which is embodied in Article 33(1) of the 1951 Refugee Convention, serves as complementary protection status in the respective alien legislations. The principle appears in section 28(b) of the Norwegian Immigration Act, in section 2, chapter 4, of the Swedish Aliens Act, and in sections 7(2) and 7(3) of the Danish Aliens Act. However, section 7(3) of the Danish Aliens Act differs from the other provisions, in that it is intended to encompass asylum seekers who are at risk of torture, inhuman or degrading treatment or punishment due to a particularly serious situation in their country of origin characterized by arbitrary violence and assaults on civilians.

<sup>18</sup> Danmarks Riges Grundlov section 67, lov nr. 169 af 05/06/1953; Kongeriget Norges Grundlov section 2, given i Rigsforsamlingen paa Eidsvold den 17 Mai 1814; Religionsfrihetslag (1951:680).

<sup>19</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966) General Assembly resolution 2200A (XXI) (ICCPR). The Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief (adopted 25 November 1981), General Assembly resolution 36/55, and the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (adopted 18 December 1992), General Assembly resolution 47/135, provide further guidance.

<sup>20</sup> UN Human Rights Committee, General Comment No. 22 (adopted 20 July 1993).

<sup>21</sup> UN Human Rights Committee, 'Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2494/2014'.



Denmark, Norway and Sweden have all signed and ratified the ICCPR.<sup>22</sup> However, Norway is the only country that has incorporated ICCPR into its national legislation. The ICCPR has been incorporated into the Norwegian Human Rights Act, which in effect means it takes precedent over ordinary legislation in the event of a legal conflict, including the Norwegian Immigration Act.<sup>23</sup> As the ICCPR has not been incorporated into the Danish and Swedish legal hierarchies, the integration of case law pertaining to the ICCPR into Danish and Swedish decision-making is particularly important to ensure that ICCPR principles and provisions are taken into account.

The UNHCR has also published explicit soft law guidelines on religion-based claims under the 1951 Refugee Convention.<sup>24</sup> The purpose of the UNHCR Guidelines is to provide asylum adjudicators, government officials and legal practitioners with explicit guiding parameters to facilitate refugee status determinations.<sup>25</sup> While the focus of the Guidelines is to inform the interpretation of the terms “religion” and “persecution” in light of human rights law, they also cover procedural issues and the examination of *sur place* claims based on post-departure conversion. In this context, the Guidelines underscore that *sur place* conversion claims may raise particular credibility concerns. The Guidelines therefore advise that asylum adjudicators conduct a rigorous and in-depth examination of the circumstances, including the genuineness of the religious conversion. In this context, it is recommended that adjudicators assess the nature of and connection between religious convictions held in the country of origin and those now held: any disaffection with the religion held in the country of origin: how the applicant became familiar with the new religion: individual experiences with the new religion: the mental state of the applicant: and corroborating external evidence.<sup>26</sup> Simultaneously, the Guidelines emphasize that adjudicators should avoid making assumptions or reaching conclusions based on their own experiences, even if they may belong to the same religion as the applicant.<sup>27</sup> The Guidelines further advise that adjudicators ask open questions when assessing the genuineness of the conversion. This includes questions about the motivations for conversion and what effect the conversion has had on the applicant’s life.<sup>28</sup> However, the most important element in conversion cases is whether the applicant risks persecution based on his/her religious activity upon return to the country of origin. If the alleged conversion emerges *sur place*, some adjudicators may potentially shift their focus from the risk question to the genuineness or self-serving nature of the conversion. The Guidelines therefore emphasize that an applicant who is objectively at risk of persecution in their country of origin is entitled to protection notwithstanding his/her motivations, intentions, conduct or other surrounding circumstances. Against this background, the Guidelines underline that adjudicators must assess the risk of persecution faced by the applicant rather than whether the applicant’s activities are self-serving.<sup>29</sup>

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<sup>22</sup> Denmark signed the ICCPR on 20 March 1968, and ratified it on 6 January 1972. Norway signed the ICCPR on 20 March 1968, and ratified it on 13 September 1972. Sweden signed the ICCPR on 29 September 1967, and ratified it on 6 December 1971.

<sup>23</sup> Act relating to the strengthening of the status of human rights in Norwegian Law (the Human Rights Act), LOV-1999-05-21-30, Article 3.

<sup>24</sup> UNHCR, ‘Guidelines on international protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees’, HCR/GIP/04/06 (28 April 2004) (‘UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims’).

<sup>25</sup> According to Article 35 of the 1951 Refugee Convention, States parties undertake to cooperate with the UNHCR in the exercise of its functions, and shall in particular facilitate its duty of supervising the interpretation application of the provisions of the Convention.

<sup>26</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 34.

<sup>27</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 27.

<sup>28</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 35.

<sup>29</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 36; UNHCR, ‘Submission by the Office of the United Nations High Commissioner for Refugees in case numbers 202003129/1/V2 and 202004875/1/V2 before the Council of State, 17 November 2020, paras. 25-29; UNHCR, ‘The Office of the United Nations High Commissioner for Refugees Statement on the interpretation of Article 5(3) of the EU Qualification Directive regarding subsequent applications for international protection based on *sur place* religious conversion’, 3 February 2023, paras. 4.2.6 - 4.2.13, 4.3 and 5.

The UNHCR Guidelines on Religion-Based Claims are by nature not legally binding on Denmark, Norway and Sweden. However, this type of soft law standards may be expected to serve as interpretive principles or auxiliary standards for national judiciaries, especially where existing hard law is indeterminate or ambiguous.<sup>30</sup> Nonetheless, disagreement persists as to the practical significance and usage of UNHCR guidance in asylum adjudication.<sup>31</sup>

## 2.2 Regional refugee and human rights law

While the right to seek asylum is not explicitly protected by the European Convention on Human Rights ('ECHR'), several rights and principles enshrined in the Convention are closely related to the right to seek asylum on religious grounds.<sup>32</sup> These include the right to life (Article 2) and the prohibition against torture, inhuman or degrading treatment or punishment (Article 3). By applying and interpreting Articles 2 and 3 of the ECHR, the ECtHR has developed significant case law in the field of religion-based asylum claims, including *sur place* conversion claims. For example, in the cases of *A.A. v. Switzerland* and *F.G. v. Sweden*, the ECtHR acknowledged that *sur place* conversion claims may legitimately arise during the asylum proceedings.<sup>33</sup> Moreover, in the case of *M.A.M v. Switzerland*, the ECtHR criticized that the Swiss asylum authorities had decided to return the applicant to Pakistan without first assessing the general situation for Christian converts and the personal situation of the applicant.<sup>34</sup> On this basis, the ECtHR concluded that the Swiss asylum authorities had failed to conduct a thorough well-founded fear assessment of the applicant's *sur place* claim, which resulted in a violation of Articles 2 and 3 of the ECHR.

Denmark, Norway and Sweden have all signed and ratified the ECHR, and the Convention has further been incorporated into their national legal systems.<sup>35</sup> The ECHR has further achieved a semi-constitutional status in Norway and Sweden, as both countries have made constitutional amendments in order to include provisions and principles from the Convention.<sup>36</sup>

Over the past 15 years, the CJEU has also developed some case law on religion-based asylum claims. The CJEU is charged with the interpretation of, among things, the EU Qualification Directive ('QD'), which lays down minimum standards for recognizing applicants within the meaning of both Article 1A(2) of the 1951 Refugee Convention and subsidiary protection based on general human rights law.<sup>37</sup>

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<sup>30</sup> O. Stefan, 'Soft Law and the Enforcement of EU Law', in 'The Enforcement of EU law and Values: Ensuring Member States' Compliance' by A. Jakab (ed.) and D. Kochenov (ed.), 2017; H. Lambert, 'Transnational law, judges and refugees in the European Union' in G. Goodwin-Gill and H. Lambert, 'The limits of transnational law: Refugee law, policy harmonization and judicial dialogue in the European Union', Cambridge University Press, 2010.

<sup>31</sup> H. Slim, 'Claiming a Humanitarian Imperative: NGOs and the Cultivation of Humanitarian Duty' in Refugee Survey Quarterly, Vol 21. No. 3. Humanitarian Values for the 21<sup>st</sup> Century, 2002, published by Oxford University Press; G Goodwin-Gill, 'The Search for the One, True Meaning', in G Goodwin-Gill and H Lambert, 'The Limits of Transnational Law: Refugee Policy Harmonization and Judicial Dialogue in the European Union' 224-7, 2010; K O'Byrne, 'Is there a Need for Better Supervision of the Refugee Convention?', 2 JRS 330, 339-41, 2013; B. Burson, 'Refugee Status Determination', in The Oxford Handbook of International Refugee Law, 2021; H Slim 'Humanitarian Ethics: A Guide to the Morality of Aid in War and Disaster', p. 64, New York: Oxford.

<sup>32</sup> The Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI, 1950 (ECHR).

<sup>33</sup> *A.A. v. Switzerland*, application no. 32218/17, 5 November 2019; *F.G. v. Sweden*, application no. 43611/11, 23 March 2016.

<sup>34</sup> *M.A.M v. Switzerland*, application no. 29836/20, 26 April 2022.

<sup>35</sup> Denmark signed the ECHR on 4 November 1950, and ratified it on 13 April 1953. Norway signed the ECHR on 4 November 1950, and ratified it on 15 January 1952. Sweden signed the ECHR on 28 November 1950 and a ratified it on 4 February 1952.

<sup>36</sup> J. Nergelius, 'The Nordic States and the European Convention on Human Rights', in R. Arnold 'The Convergence of the Fundamental Rights Protection in Europe. Ius Gentium: Comparative Perspectives on Law and Justice', Vol. 52, Springer, 2016.

<sup>37</sup> EU, Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted, (Qualification Directive).

For example, Article 9 of the QD elaborates on the concept of persecution within the meaning of Article 1A(2) of the 1951 Refugee Convention, while Article 10(b) of the QD defines the term “religion” within human rights law. The CJEU also interprets the Charter of Fundamental Rights of the European Union (‘Charter’), in which Article 18 guarantees the right to seek asylum with due respect for the rules of the 1951 Refugee Convention.

The Charter, the QD as well as the additional directives and regulations of the Common European Asylum System (CEAS) are directly applicable in Sweden.<sup>38</sup> The Charter is also applicable to Denmark, but Denmark maintains an opt-out from supranational EU legislation in the area of justice and home affairs, meaning that the common EU asylum directives are not binding for Denmark. In addition, Denmark has been granted a parallel agreement to participate in the Dublin and Eurodac Regulations on an intergovernmental basis.<sup>39</sup> Norway is not a member of the EU, but has a similar agreement covering the Dublin system. A pre-condition for joining the Dublin and Eurodac Regulations was that Norway’s legislation had to stay compliant with the additional CEAS directives, including the QD.<sup>40</sup> By applying and interpreting the QD and the Charter, CJEU has developed case law concerning conversion in religion-based asylum claims. Most notably, in the joined cases *C-71/11* and *C-99/11*, the CJEU assessed whether it is compatible with EU asylum law, in particular the Charter and Article 9(1) of the QD, that applicants are required to conceal their faith or exercise discretion in exercising it upon repatriation to avoid persecution.<sup>41</sup> The CJEU ruled that religious belief is fundamental to human identity and that an individual thus cannot be expected to hide, change or renounce this belief to avoid persecution upon return to the country of origin. In this way, the CJEU clarified that the possibility of concealing a religious belief upon return to the country of origin is irrelevant in such cases where national asylum authorities determine that the applicant’s religious practice ultimately will result in a risk of persecution upon return. Furthermore, in case *C-56/17* concerning a Christian convert the CJEU held that an applicant should provide the authorities with evidence that supports the religion-based claim in a reliable manner.<sup>42</sup>

## 2.3 Summary

Part II has set out the legal positions of Denmark, Norway and Sweden to international and regional refugee and human rights law relating to religious conversion in religion-based asylum claims. In this context, it is important to note that Denmark, Norway and Sweden do not have entirely uniform positions in regard to regional refugee and human rights law.

For example, Sweden is fully bound by EU asylum law, including the QD and CJEU jurisprudence. Although not an EU-member, Norway applies the Dublin and Eurodac Regulations. Through these regulations, Norway is furthermore indirectly linked to the CEAS directives, including the QD. Denmark has been granted an opt-out from the CEAS directives, which means that the QD as well as CJEU jurisprudence pertaining to the Directive do not formally bind Denmark. Moreover, the ECHR has achieved a semi-constitutional status in both Norway and Sweden, while Denmark has incorporated the ECHR into its national legal system but not into its constitution.

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<sup>38</sup> The main CEAS legislation consists of the Reception Conditions Directive, the Qualification Directive, the Asylum Procedures Directive, the Dublin Regulation and the Eurodac Regulation.

<sup>39</sup> T. Gammeltoft-Hansen, ‘Dansk flygtninge- og indvandringspolitik og EU-retten’ (2022); Lovforslag nr. L 177, ‘Lov om Danmarks tiltrædelse af Edinburgh-Afgørelsen og Maastricht-Traktaten’, 9 February, 1993.

<sup>40</sup> J Brekke and A Staver, ‘The Renationalisation of Migration Policies in Times of Crisis: The Case of Norway’, 2018.

<sup>41</sup> CJEU - *C-71/11* and *C-99/11 Germany v Y and Z* (5 September 2012).

<sup>42</sup> CJEU – *C-56/17 Fathi v. Predsedatel na Darzhavna agentsia za bezhantsite* (4 October 2018).

### 3. NATIONAL PRACTICE ON CONVERSION IN DENMARK

The subsections which follow examine the national legal framework on conversion in religion-based asylum claims in Denmark. The first subsection starts by providing a brief description of the national asylum system. Subsequently, the national approach to conversion in religion-based asylum claims is analyzed through the various datasets.

#### 3.1 The Danish asylum system

Danish asylum law is set out in *Udlændingeloven* (the Aliens Act).<sup>43</sup> The Act has seen numerous amendments since its inception in 1983, leading to various changes in both the substantive and procedural rules relating to asylum. In the Danish asylum system, the Danish Immigration Service ('DIS') serves as the first legal instance, while the Refugee Appeals Board ('RAB') is the second and final instance. The DIS is an administrative body, and it is inquisitorial in design. The RAB is a quasi-judicial body, but it has full competence to assess questions of fact and law.

The DIS generally carries out two to three personal interviews with an applicant. The DIS serves its decisions in writing, and a refusal is automatically appealed to the RAB. In the event of a refusal, the applicant is assigned an attorney, who is responsible for submitting a comprehensive complaint to the secretariat of the RAB. The RAB usually decides appealed cases at oral decision hearings, but the chairperson of the RAB may also decide e.g. manifestly unfounded cases and *prima facie* cases on a written basis. At oral decision meetings, the adjudicating committee of the RAB currently consists of the chairperson, who is a judge, as well as two additional members from the Danish Ministry of Immigration and Integration and the Danish Bar Association, respectively, who are appointed by the RAB and serve in their individual capacity. The applicant, the attorney of the applicant, an interpreter, a representative from the DIS, as well as a legal case officer from the secretariat of the RAB will also participate. As a main rule, decisions made by the RAB are final and cannot be appealed to the ordinary courts in Denmark.<sup>44</sup>

#### 3.2 Legal annual report and academic textbook analysis

In the RAB's annual report from 2012, it appears that there has been a national practice change due to the joined CJEU cases *C-71/11* and *C-99/11*.<sup>45</sup> In this context, it briefly appears from the annual report that applicants can no longer be sent back to their country of origin with instructions to conceal their new religion to avoid persecution. This shows that CJEU jurisprudence has had a knock-on effect on the Danish practice of religious conversion claims, which is notable in light of Denmark's opt-out from EU asylum law. Since the issuance of the 2012 annual report, the RAB has published 10 new annual reports. A review of these reveals that the sections on the national practice in conversion cases have largely remained unchanged since the 2012 annual report. On this basis, the analysis concentrates on the latest annual report from 2022.

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<sup>43</sup> Principally sections 7.1- 7.3.

<sup>44</sup> Furthermore, the RAB's decisions cannot be appealed to the Danish Ombudsman.

<sup>45</sup> Flygtningenævnet, 'Formandskabet, 21. beretning 2012' (2013), p. 215.

The 2022 annual report sets out that the procedure in conversion cases broadly consists of two steps. First, it must be assessed whether the alleged conversion can be considered genuine.<sup>46</sup> In this context, it is noted that an assessment of the applicant's credibility as to the alleged conversion differs from regular credibility assessments by focusing more on the applicant's subjective conviction. Secondly, if the alleged conversion can be considered genuine, it must be assessed whether the applicant risks persecution based on his or her religious activity upon return to the country of origin.

The assessment of whether the conversion is genuine should include elements about the time of the conversion, including whether the applicant has previously shown an interest in converting, and the applicant's knowledge of the new religion.<sup>47</sup> With regard to the time of the conversion, the annual report specifies that where an applicant refers to religious conversion at a late stage in the asylum proceedings, this can weaken his/her overall credibility. With regard to religious knowledge, an assessment may be undertaken of the applicant's knowledge of basic underlying doctrines, historical events and key figures in the new faith. In this context, the applicant's individual circumstances and prerequisites should be taken into account, such as dyslexia, illiteracy and level of education. However, the annual report specifies that a comprehensive knowledge of the new faith alone does not necessarily reflect a subjective conviction. The ultimate question is thus whether the factual knowledge of the content of the new faith supports a finding of genuine conviction.

In this context, it should therefore be assessed how the applicant has encountered the new religion, including the considerations that the applicant has made about the significance of the new religion for his or her subjective clarification. It must also be assessed whether and how the new religion has been manifested, such as through baptism preparation, baptism, participation in church services or other activities, including teaching or media statements, and whether the applicant's faith has been manifested in a persistent and regular manner.

If it can be assumed that the conversion is genuine, a risk assessment is subsequently made.<sup>48</sup> The core of this forward-looking assessment is whether the applicant, upon return to the country of origin, can be expected to perform religious acts that will expose him or her to persecution or other abuse. In relation to the issue of persecution, it follows from the annual report that emphasis can be placed on the national legislation in the country of origin, as well as how the legislation usually is enforced in practice. Furthermore, emphasis can be placed on how private persons and the authorities in the country of origin are generally expected to react, including whether the applicant may risk deprivation of liberty, discrimination, harassment or violence.

It is finally noted that an applicant may also be entitled to protection if the religious activities have come to the attention of the authorities or private persons in the country of origin, and that the applicant, on this basis, risks persecution. In this context, emphasis must be placed on the applicant's circumstances in the country of origin, including whether the applicant has had contact with the authorities prior to the departure, as well as the conditions in Denmark, including whether the applicant's religious acts are mentioned in Danish media, and whether the applicant generally is identifiable.

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<sup>46</sup> Flygtningenævnet, 'Formandskabet, 31. beretning 2022' (2023), p. 209-210.

<sup>47</sup> Flygtningenævnet, 'Formandskabet, 31. beretning 2022' (2023), p. 209.

<sup>48</sup> Flygtningenævnet, 'Formandskabet, 31. beretning 2022' (2023), p. 210.

In line with the annual report, the main Danish academic textbook on immigration law confirms that a central practice change concerning conversion cases occurred in 2012 based on a principle decision made by the RAB.<sup>49</sup> The textbook contains an anonymized version of the 2012 decision, in which it appears that the RAB carried out a rigorous credibility assessment in accordance with the UNHCR Guidelines on Religion-Based Refugee Claims, and that the Board, on this basis, assumed that the applicant's conversion to Christianity was genuine. Subsequently, the RAB assessed that authorities or private individuals in the country of origin potentially would become aware of the applicant's new religion upon return. Notably, the RAB decision explicitly cites both the UNHCR Guidelines and the CJEU cases *C-71/11* and *C-99/11*, noting that the freedom of religion is a fundamental human right and that the applicant could not be expected to hide his new religion in order to avoid persecution upon return to his country of origin.

The textbook further notes that the RAB has processed a large number of *sur place* conversion cases since the practice change in 2012, mainly concerning applicants having converted from Islam to Christianity after entering Denmark. The general approach in such cases is summarized as follows:

“When dealing with such cases, the Board assesses whether the conversion can be considered genuine. If the Board assumes that the conversion is genuine, the Board carries out a risk assessment of what the applicant may be exposed to upon returning to his country of origin. According to the Board, it must thus be assessed whether, upon returning to the country of origin, the applicant, based on his personal circumstances, including his religious behavior and activities, can reasonably be expected to perform religious acts which will put him at risk of being exposed to persecution or other abuse.”<sup>50</sup>

In the academic textbook, it is thus emphasized that a risk assessment is conditional on the RAB assuming that the alleged conversion is genuine. In this way, the textbook indicates that the most important element in Danish conversion cases is whether the RAB finds the alleged conversion to be credible. While the Guidelines similarly emphasize that an assessment of the genuineness of the conversion must be made, they however also underscore that the most important element in a conversion case is a risk assessment of whether there is a well-founded fear of persecution upon return to the country of origin.<sup>51</sup> The RAB's annual reports similarly emphasize that an applicant whose conversion cannot be considered genuine may nevertheless be entitled to protection. This may be the case if the religious activities have come to the attention of the authorities or private individuals in the country of origin, and the applicant risks persecution on this basis.<sup>52</sup>

### 3.3 Case law analysis

Various decision patterns and trends within Danish conversion cases further emerged through the qualitative analysis of the randomized sample of 50 conversion decisions. The distribution of positive and negative decisions based on the sample of 50 conversion decisions concerning Iranian and Afghan nationals in the period from 2011 to 2021 can be schematized as follows:

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<sup>49</sup> B. D. Jacobsen et al, 'Udlændingeret – 4. udgave', Djøf, Jurist- og Økonomforbundets Forlag (2017), p. 207.

<sup>50</sup> B. D. Jacobsen et al, 'Udlændingeret – 4. udgave', Djøf, Jurist- og Økonomforbundets Forlag (2017), pp. 206-207.

<sup>51</sup> UNHCR, 'Guidelines on international protection No. 6: Religion-Based Refugee Claims, p. 12.

<sup>52</sup> Flygtningenævnet, 'Formandskabet, 31. beretning 2022' (2023), p. 213-214.

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	Sum
Positive outcomes	0	2	4	3	4	1	3	2	3	0	1	23
Negative outcomes	3	2	0	2	1	1	2	7	6	3	0	27
Sum	3	4	4	5	5	2	5	9	9	3	1	50

As the decisions were randomly selected, it should be noted that the above schematization does not provide a representative overview of the RAB's final distribution of accepted and rejected decisions in relation to each year. Nevertheless, the case law analysis supports the finding that the RAB saw a change of practice around 2012. In the 2011 decisions, the RAB argued that the applicant had not made it likely that the authorities or private individuals in Afghanistan would be able to disclose his conversion. As a result, the RAB found that the applicant could hide his religion upon return to Afghanistan to avoid persecution. In every post-2011 decision, the RAB has refrained from arguing that applicants could conceal their religion upon return to their country of origin to avoid persecution. For example, in the negative 2012 decisions, the RAB primarily referred to the applicant's lack of credibility as an argument for not granting a residence permit. In line with the previous parts of the analysis, this finding thus confirms that the CJEU joined cases *C-71/11* and *C-99/11* have had an impact on the Danish asylum practice in cases involving religious conversion.

Another notable finding from the qualitative analysis is that the RAB regularly determined that the applicant's general credibility was weakened by the fact that a previous asylum motive was considered untrustworthy. This was evident in the majority of both positive and negative decisions. The analysis further shows that the RAB placed a strong emphasis on external evidence, and that the presence of such can positively impact outcomes. The following formulations frequently emerged in the positive decisions, "the applicant has participated in Christian activities regularly", "based on the external evidence, the RAB finds that the applicant has converted to Christianity", and "the RAB finds that conversion is genuine based on the applicant's explanation and the external evidence." Baptism certificates were the most commonly encountered evidentiary material, as they emerged in 39 out of the 50 conversion decisions. Statements or certificates from church ministers in which various church activities were confirmed further emerged in 31 out of the 50 decisions. In 16 decisions, evidence in the form of video clips of the applicant in religious settings, or photographs, such as excerpts from social media accounts or photographs of newspapers, was also included. The strong emphasis placed on external evidence by the RAB aligns with the UNHCR Guidelines, in which it is underscored that decision makers need to assess the existence of corroborating evidence regarding involvement in and membership of the new religion.<sup>53</sup>

Furthermore, a notable finding from the qualitative analysis is that the RAB only explicitly referred to country of origin information in nine out of the 50 decisions. Similarly, risk assessments generally did not occupy a lot of space, in either positive or negative decisions. This is notable, as it follows from the UNHCR Guidelines on Religion-Based Claims that detailed country of origin information is required. The lack of more explicit references may reflect that as matter of practice the RAB's risk

<sup>53</sup> See UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, p. 12.

assessment for conversion cases is relatively stable in relation to the countries selected and thus not a point of contention.

The case law analysis also revealed that the RAB affords significant value to the applicant's knowledge of Christianity as well as the applicant's personal reflections, thoughts and considerations about the conversion process. For example, the RAB often justified positive decision outcomes with the formulations, "the applicant has explained his reflections about conversion in a convincing and personal manner", "the applicant has demonstrated a significant knowledge of Christianity", and "the applicant's explanation is detailed, consistent, self-experienced and dedicated." While the applicant's personal reflections, thoughts and considerations about the conversion process consistently appeared as the most important assessment element, some positive credibility findings were however justified solely by reference to the applicant's knowledge of Christianity. The same pattern was evident in the negative decisions. For example, the RAB frequently justified negative decisions with the following sentences, "the applicant has not demonstrated a basic knowledge of Christianity" and "the applicant could not distinguish between religious rituals".

Finally, in the sample cases analyzed the RAB rarely referred to UNHCR guidance, ECtHR or CJEU jurisprudence. Only two decisions contained explicit references to the UNHCR Guidelines on Religion-Based Refugee Claims. A common denominator for these two decisions is that they were made in the immediate aftermath of the 2011 joined cases of *C-71/11* and *C-99/11*, i.e. in 2012 and 2013. The 2012 decision further contained an explicit reference to the joined cases, whereas the RAB implicitly referred to the joined cases in the 2013 decision by emphasizing that no one can be expected to hide their religion to avoid persecution. This is consistent with the RAB's general approach to not cite individual cases once a particular practice has been well established.

### 3.4 Computational analysis

Computationally examining a larger number of cases may yield further insights in terms of underlying trends and applicant characteristics. From a corpus of 15,535 full-text asylum decisions available from the RAB, the decisions concerning religious conversion have been extracted. The extraction has been carried out with the program DocFetcher by applying search strings to the full corpus of decisions.<sup>54</sup> Overall, 1,075 decisions in the chosen period of 2011 to 2022 were identified and imported into the program Python. Of the examined decisions, the rejection made by DIS was upheld by the RAB in 653 cases (61 %), while 415 DIS rejections were reversed by the RAB (38.6%) and seven DIS rejections (0.7 %) were remanded to the DIS for a renewed assessment. Compared to the average of cases processed by the Board, the acceptance rate in religious conversion cases is almost double the norm in other types of asylum claims (15-20%).<sup>55</sup>

As can be seen from Figure 1 below, the majority of asylum claims concerning religious conversion originate from Iranian and Afghan nationals. Figure 1 also illustrates how the number of religious conversion claims peaked in 2018 and has significantly declined since then.

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<sup>54</sup> Eg. 'konvertit' and 'konvertere'.

<sup>55</sup> Flygtningenævnet, 'Formandskabet, 20. beretning 2011' (2012) - 'Formandskabet, 31. beretning 2022' (2023).



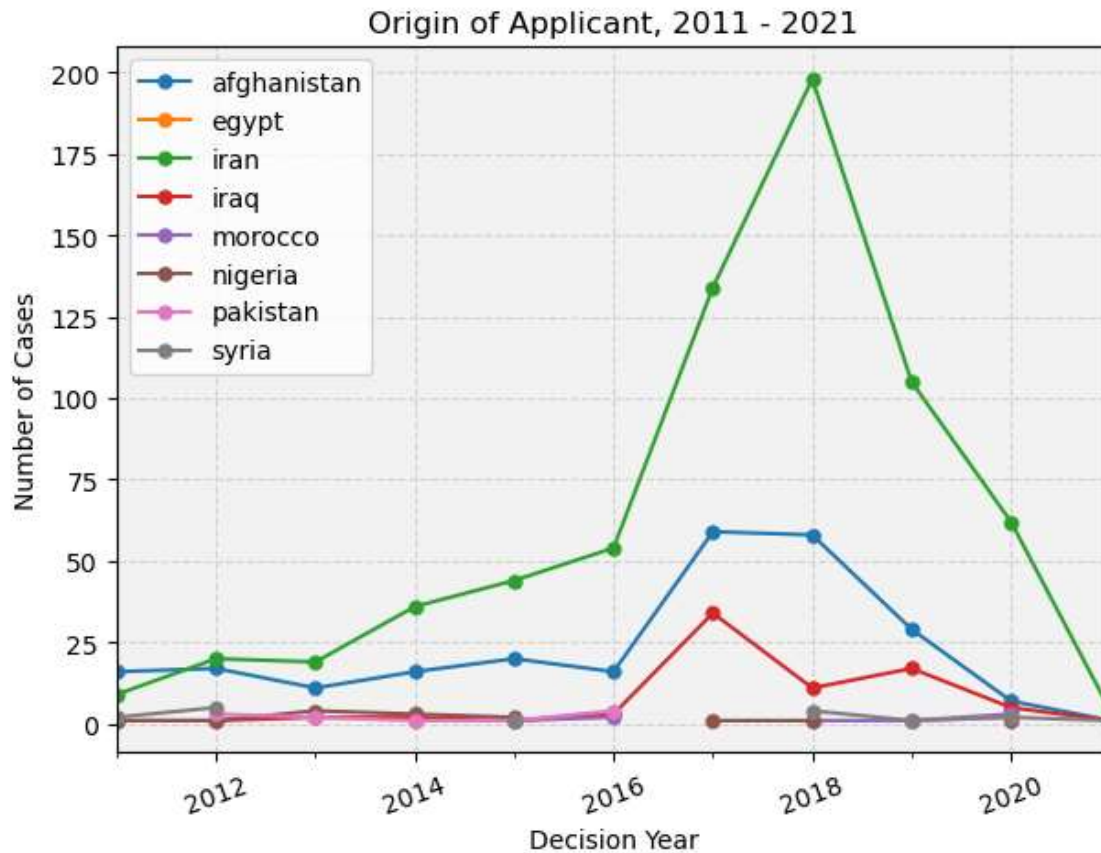


Figure 1: Applicant nationalities in relation to year.

As can be seen from Figure 2 below, the number of rejections has similarly increased in line with the rising number of asylum applications (Figure 1), i.e. from 2016 to 2018. This may reflect that an increasing number of asylum applicants sought out religious conversion in response to the general practice change, but failed to convince the RAB that their conversion was genuine. Yet, it may also reflect that Danish asylum authorities gradually developed a more uniform approach to assessing credibility in this type of cases when faced with an increase in the number of asylum applications, leading to fewer cases being overturned.<sup>56</sup>

<sup>56</sup> D. Chen, T. J. Moskowitz, and K. Shue, 'Decision making under the gambler's fallacy: Evidence from asylum judges, loan officers, and baseball umpires.' In *The Quarterly Journal of Economics*, 131(3), 2016; W. Hamilton Byrne, T. Gammeltoft-Hansen et al, 'Data-Driven Futures of International Refugee Law', in *Journal of Refugee Studies*, 2023.

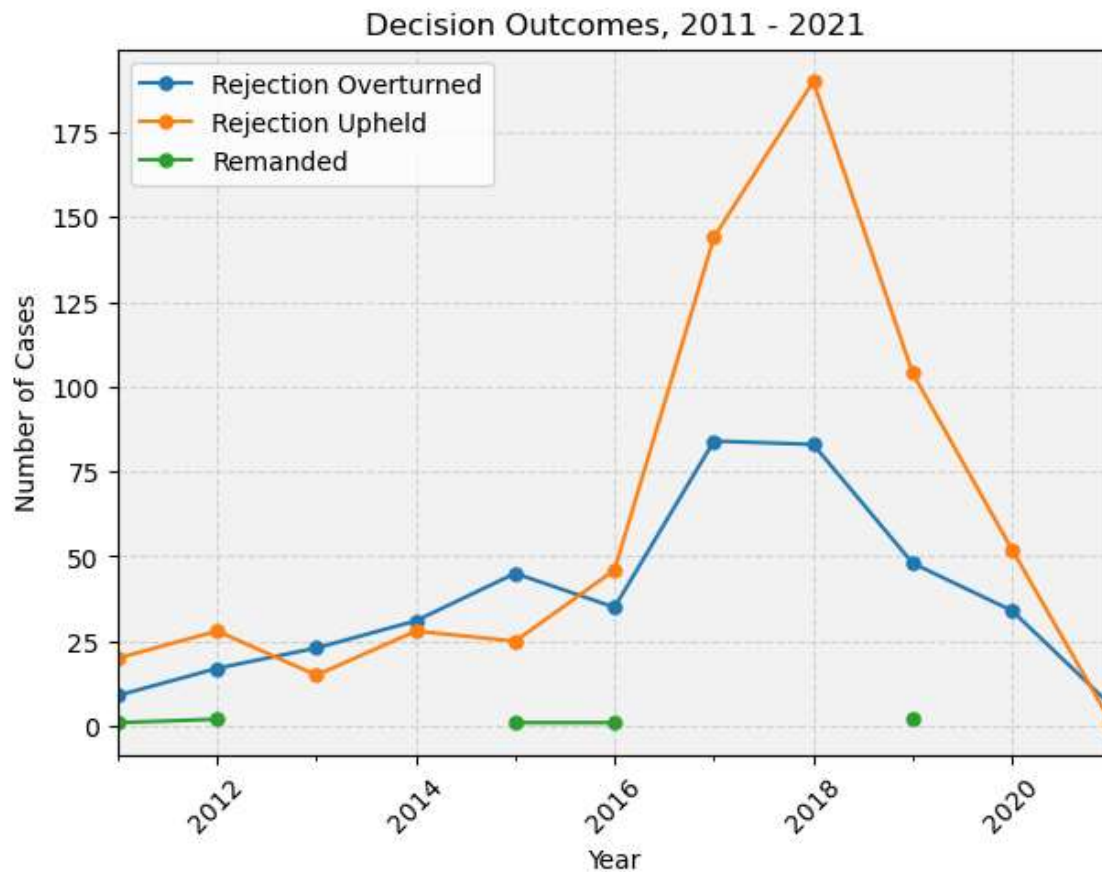


Figure 2: Decision outcomes in relation to year.

In terms of gender, 82 % of the identified 1,075 conversion decisions concerned male applicants (880). Yet, comparing outcomes between men and women, the success rate for men is 35 %, while the success rate for women is 53 % (Figure 3 below).

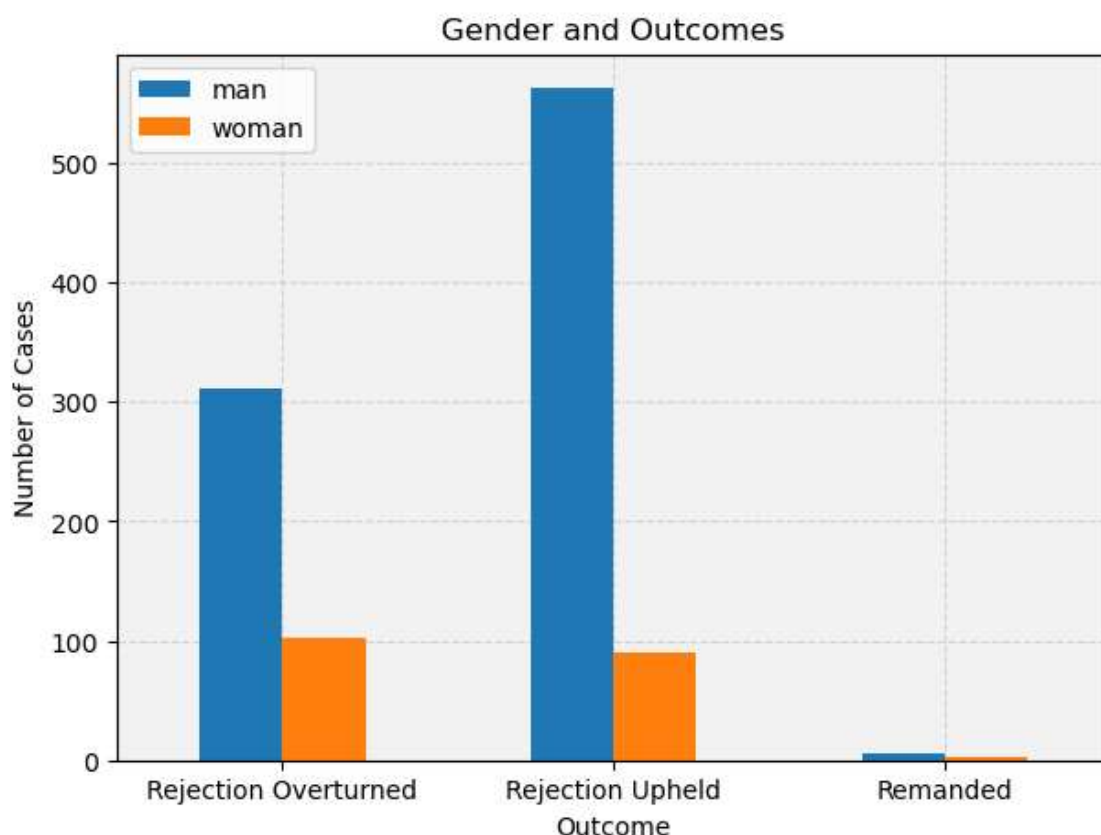


Figure 3: Decision outcomes amongst men and women.

Recent country of origin reports available at the website of the RAB do not indicate that women who have converted to Christianity are at greater risk of persecution upon returning to Iran or Afghanistan.<sup>57</sup> The significant difference in recognition rates between men and women may thus suggest that decision makers find female applicants to be more credible when presenting religious conversion. This is in line with general research demonstrating that female applicants are often perceived as more credible in their claim for international protection.<sup>58</sup>

A topic model algorithm was moreover applied to the legal reasoning made by the RAB in the 1,057 decisions.<sup>59</sup> The model is used to identify themes in the decisions and group them based on their semantic features. To detect these topological clusters within the 1,057 decisions, the decisions were analyzed using a Latent Semantic Indexing (LSI) topic model, and to reduce the dimensionality of the matrix, a Truncated Singular Value Decomposition (SVD) was employed.<sup>60</sup>

<sup>57</sup> See for example, US Department of State, 'Afghanistan 2022 Human Rights Report', 20 March 2023; EUAA, 'People convicted with religious offences', 8 February 2023; US Department of State, '2022 Report on International Religious Freedom, Iran', 15 May 2023; US Department of State, '2022 Report on International Religious Freedom: Afghanistan', 15 May 2023.

<sup>58</sup> T. Plümper, & E. Neumayer, 'Human rights violations and the gender gap in asylum recognition rates' in Journal of European public policy, 28(11), 1807-1826, 2021; UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 24.

<sup>59</sup> The legal reasoning made by the RAB in the decisions were computationally cleaned, but various typing errors in the data still introduces some noise to the text data. The noise predominantly consists of spelling errors introduced by the transformation process from pdf and word files to computationally readable formats. Common spelling errors are corrected using regular expressions, however, less infrequent errors have not been captured by the automated cleaning process.

<sup>60</sup> The LSI is done using the Gensim package for Latent Semantic Analysis (LSA). The SVD is a matrix factorization that decomposed a term-document matrix ( $M$ ) into three matrices relating each of the words to topics ( $U$ ), the documents to topics ( $V$ ) and a diagonal matrix ( $\Sigma$ ) of single values combining the two. Mathematically this can be denoted as  $M = U\Sigma V^T$ . The matrices are then reduced to only include

With the LSI model, the words and decisions associated with a topic can take on both positive and negative eigenvalues based on their co-occurrence. As such, a positive eigenvalue indicates a positive relationship between a word or decision and a given topic, while a negative eigenvalue indicates the absence of a word or decision on a given topic. To infer meaning from the topics, the 20 terms with the highest eigenvalues (either positive or negative,  $U$ ) connecting or distancing them from a given topic are qualitatively examined. In this way, close readings of a sample of decisions located within each topological cluster inform the computational analysis.

<b>Words in topic 0:</b> -0.519*"forklar" + -0.239*"iran" + -0.216*"kristendom" + -0.198*"svar" + -0.192*"kirk" + -0.191*"famili" + -0.185*"ansøg" + -0.116*"ver" + -0.116*"myndighed" + -0.100*"fortalt" + -0.100*"person" + -0.099*"udlændingestyr" + -0.097*"oplyst" + -0.096*"tog" + -0.091*"forehold" + -0.091*"dag" + -0.087*"klag" + -0.087*"ar" + -0.086*"gud" + -0.085*"vid"
<b>Words in topic 1:</b> 0.974*"klag" + -0.162*"ansøg" + 0.064*"§" + -0.037*"kirk" + -0.031*"kristendom" + 0.031*"syri" + 0.027*"opholdstillad" + -0.026*"svar" + -0.023*"mand" + 0.022*"udlændingestyr" + -0.022*"forklar" + 0.020*"oplyst" + -0.020*"fortalt" + 0.020*"politisk" + 0.018*"nemat" + -0.016*"kvind" + 0.015*"fængsel" + -0.015*"sa" + 0.014*"aktivitet" + -0.014*"gud"
<b>Words in topic 2:</b> 0.919*"ansøg" + -0.179*"forklar" + 0.141*"klag" + -0.129*"kristendom" + -0.122*"kirk" + 0.065*"svar" + -0.065*"gud" + 0.059*"mand" + 0.046*"hashem" + 0.042*"dat" + -0.036*"fgrste" + 0.035*"fad" + 0.034*"zah" + -0.032*"religion" + 0.031*"mod" + -0.031*"begynd" + -0.029*"bibl" + -0.029*"døbt" + -0.029*"konvert" + -0.028*"islam"
<b>Words in topic 3:</b> 0.669*"forklar" + -0.460*"svar" + -0.281*"kirk" + -0.220*"kristendom" + -0.206*"iran" + -0.141*"gud" + -0.083*"døbt" + -0.069*"famili" + -0.066*"begynd" + -0.061*"tro" + 0.061*"forehold" + -0.059*"bibl" + 0.057*"udlændingestyr" + 0.054*"ansøg" + -0.051*"konvert" + -0.050*"iransk" + -0.050*"islam" + 0.046*"person" + 0.045*"taliban" + -0.044*"bibel".
<b>Words in topic 4:</b> 0.423*"kirk" + 0.386*"kristendom" + -0.327*"svar" + 0.231*"ansøg" + -0.230*"famili" + 0.175*"gud" + 0.171*"forklar" + -0.150*"myndighed" + 0.126*"døbt" + -0.109*"oplyst" + -0.108*"mand" + -0.097*"iran" + -0.091*"irak" + -0.090*"far" + -0.082*"bopæl" + 0.080*"konvert" + -0.079*"person" + -0.077*"parti" + -0.076*"politisk" + -0.076*"kontak"

Table 1: Terms and eigenvalues for the identified five topics

Decisions can contain multiple topics to a smaller or larger degree. For this analysis however, only the primary topic (the highest positive eigenvalue,  $V$ ) within each decision is considered. As no decision primarily belongs to topic 0, this topic is excluded in the further analysis (Table 2).

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dimensions similar to the number of desired topics and superfluous information is discharged about the words and decision relations to the topics.

Topic	Number of documents
0	0
1	122
2	208
3	337
4	408
<b>Total</b>	<b>1,075</b>

Table 2: Number of decisions primarily belonging to each topic.

**Topic 1** prevails in 122 decisions, and these decisions relate positively to terms such as *Complain* (0.97), *§* (0.06) and *Syria* (0.03), while they have negative associations with the terms *applicant* or *apply* (-0.16), *church* (0.04), and *Christianity* (-0.03) (Table 1 and 2). For example, in one of the cases within this topic it was explained that the applicant often attended dinners at the local church, but he had no intentions of converting to Christianity. As the number of decisions as well as the scores for the terms within this topic are low, it is not possible to infer substantial conclusions from this. Rather this topic should be considered false positives or outliers.

**Topic 2** dominates in 208 of the decisions (Table 1 and 2). The RAB granted protection in 40% of these decisions, while it remanded three decisions for renewed assessment in the first instance (Figure 4, below). An examination of the terms in the decisions' eigenvalues indicates that words concerning religion such as *Christianity* (-0.13), *church* (-0.12) and *God* (-0.07) have negative values and as such do not positively define the cases. A close reading of a sample of cases confirms that each of them contain other prevalent asylum motives. Although words concerning religious conversion were also included in these decisions, they were not considered legally decisive by the RAB and hence not subjected to in-depth questioning. For example, in one of the cases the applicant had a relationship with another refugee whose ex-husband had converted to Christianity, but the applicant himself had no intentions of converting.

**Topic 3** dominates in 337 decisions (Table 1 and 2). Within this topic, the rejection rate is 74% (Figure 4, below). The negative relationship between the topic and religious terms, such as *church* (-0.28), *Christianity* (-0.22), *God*, (-0.14) and *baptism* (-0.08), is more prevalent here than in topic 2. Reading a sample of decisions within this topic shows that the religious conversion motives were included as subsidiary asylum motives and that these emerged after the first instance refusal. In this context, the terms within topic 3 thus indicate that the RAB's assessment elements with regard to the subsidiary conversion motives include level of factual knowledge and the scope of religious activities within the church concerned, such as baptism. Overall, this suggests that the RAB primarily focused on establishing objective facts, such as the applicant's level of knowledge and religious activities, rather than assessing the applicant's subjective religious beliefs. The rejection rate is comparatively higher (74 %) for this topic than for the other topics (Figure 4). A qualitative reading of a sample of decisions pertaining to this topic further shows that the credibility assessment of the original asylum motive strongly impacted the credibility assessment of the subsidiary conversion motive. Thus, the vast majority of the interview summaries revolved around the original asylum motive, while the interview concerning the conversion itself was limited to a few questions about the applicant's factual

knowledge of e.g. Christian holidays and religious activities. Likewise, in these decisions the RAB consistently noted that the general credibility of the applicant with regard to the subsidiary conversion motive was weakened when the original motive was assessed as being untrustworthy. This suggests that such combined motives are not to the advantage of applicants.

**Topic 4** prevails in 408 decisions (Table 1 and 2). The success rate for decisions within this topic is 49.5 %, and no decisions were remanded for new assessment in the first instance (Figure 4, below). The decisions within this topic are grouped based on positive eigenvalues relating to religion, such as *church* (0.42), *Christianity* (0.39), *God* (0.18), *baptism* (0.13), and *conversion* (0.08). Words indicating a different asylum motive, such as *authority* (-0.15), *party* (-0.08), and *political* (-0.08) as well as nationalities such as *Iran* (-0.1) and *Iraq* (-0.09), also appeared in this topic, however the negative eigenvalues suggest a negative relationship between these terms and the cases in topic 4. Overall, the terms within this topic generally indicate that the conversion motive constituted a central part of the asylum case in these decisions. The terms within this topic further indicate that the RAB placed particular emphasis on the applicants' subjective motivations for converting to Christianity in these decisions. Reading a sample of decisions pertaining to this topic shows that the RAB primarily asked applicants open questions about Christianity and the conversion process, e.g. how the applicant encountered the Christian faith, how Christianity has impacted the applicant's life, and whether the applicant has a favorite Christian gospel. In this way, the conversion process itself is a central assessment element in this cluster of cases, distinguishing this topic from the others. The overturn rate is moreover significantly higher for topic 4 (Figure 4), which suggests that when the RAB asks more detailed questions about the conversion process itself, this is to the advantage of applicants.

Decision outcomes for each topic can further be illustrated as follows:

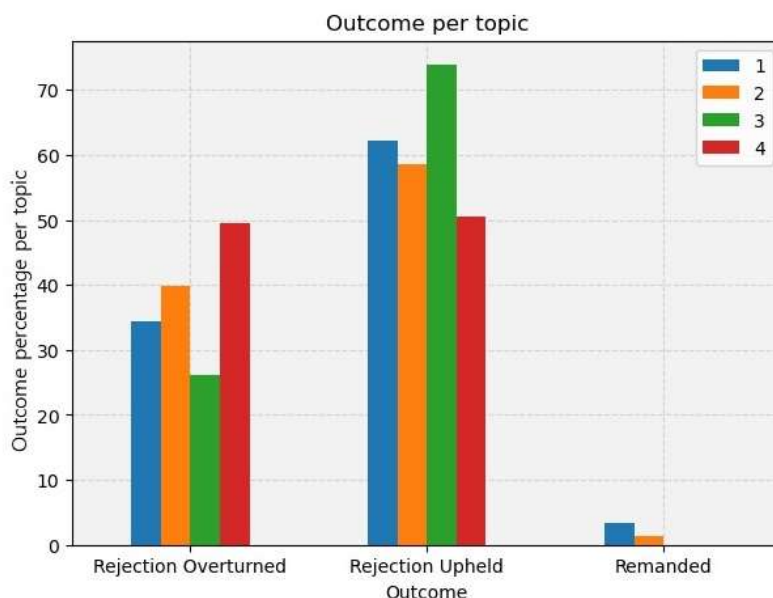


Figure 4: Outcomes for cases primarily belonging to each of the four topics.

More generally, it is notable that none of the topics contain words indicating that an assessment as to whether there is a real risk of persecution upon return to the country of origin has been carried out.

In line with the other elements of Danish analysis, it thus appears that risk assessments generally do not take up much space in Danish conversion case decisions.

A number of more specific elements further emanate from the computational analysis. Firstly, decisions within topic 4 concerned a higher proportion of female applicants than for other topics (Figure 5, below). Topic 4 concerned 22 % female applicants compared with 14-18 % for the other topics. Topic 3 contained most decisions relating to male applicants, i.e. 86 %, compared with the other topics, i.e. 78-82 %. This adds further nuance to the above-mentioned findings regarding gender dynamics, indicating that a higher proportion of female applicants were assessed with religious conversion as their primary asylum motive, and asked more detailed questions about their faith and conversion process.

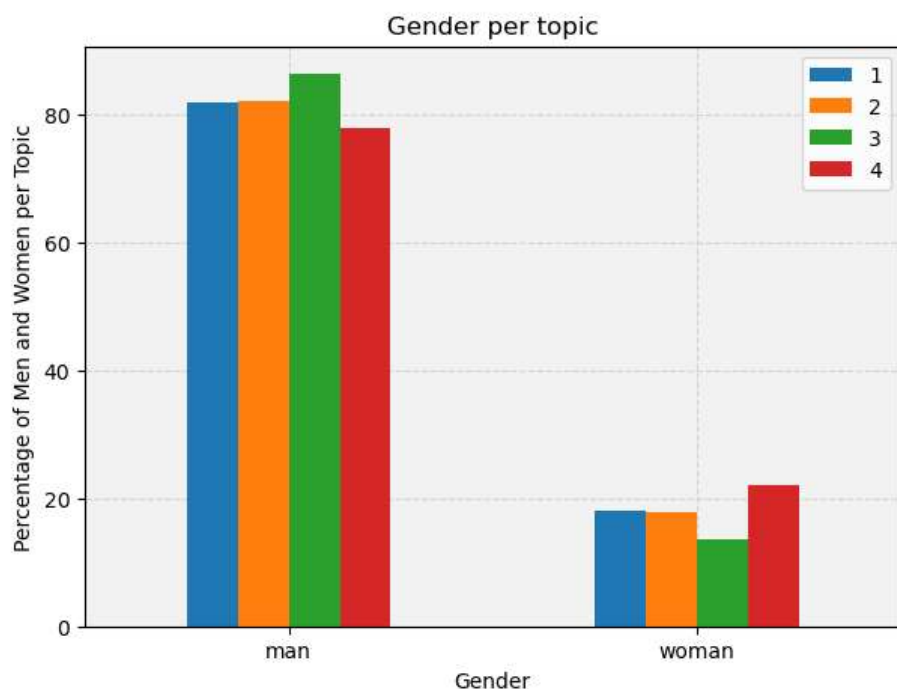


Figure 5: Percentage of men and women in relation to the various topics in the period of 2011 to present

A temporal breakdown of each topic further shows that topic 4 has prevailed in the majority of cases since 2014. As can be seen from Figure 6 below, topic 2 dominated in the majority of cases in the period 2011 to 2013, whereas topic 3 and 4 increased exponentially in the period 2014 to 2018. As topic 1 and 2 only increased minimally while topic 3 and 4 did drastically, it shows that the conversion process itself (topic 4) and the establishment of objective facts, such as knowledge and the scope of religious activities (topic 3) became more central assessment elements across more cases at the RAB in the period 2014 to 2018. This may again support a finding that a new assessment practice was developed and gradually mainstreamed in the period following the practice change in 2012.

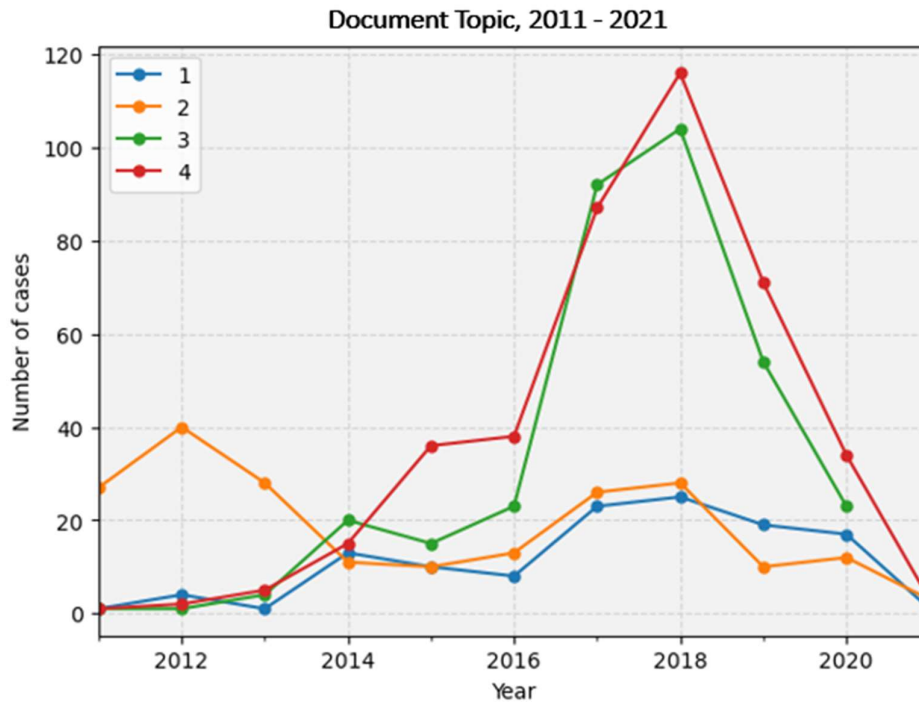


Figure 6: Development of topics

The dynamic developments between topics may, however, also be related to institutional developments among applicants and church organizations. Not all case files specifically mention which church or other religious institution the applicant was baptized or attends activities in. Yet, an automatic extraction of recognised church names shows that a limited number of churches repeatedly appear across a high number of the identified conversion cases (Figure 7, below). This is supported by reports that particular churches and denominations have also become more active in organising religious services for and offering support to asylum-seekers as part of their pastoral care.<sup>61</sup>

<sup>61</sup> Petersen, M. J., & Jensen, S. B. (red.) (2019). *Faith in the system? Religion in the (Danish) asylum system*. Aalborg Universitetsforlag; Jaeun Kim. (2022) Between sacred gift and profane exchange: identity craft and relational work in asylum claims-making on religious grounds. *Theory and Society* 51:2, pages 303-333; Börjesson, Ellinor. "The Multiple Roles of the Church of Sweden: Young Asylum Seekers' Perspectives on Conversion to Christianity." (2018). See more generally, "Kirker i hele Europa døber muslimske flygtninge," *Kristelig Dagblad*, 16 June 2016. Available at: <https://www.kristeligt-dagblad.dk/kirke-tro/kirker-i-hele-europa-doeber-muslimske-flygtninge>.



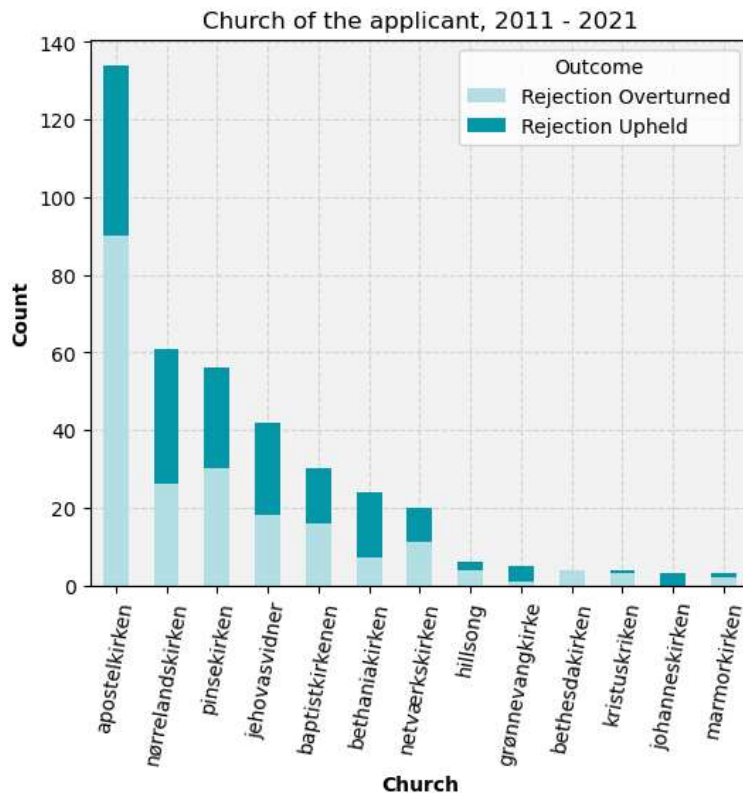


Figure 7: Church of the applicant

Nonetheless, the above figure indicates that among the most prevalent churches in the dataset, there is also a significant discrepancy between the outcomes of applicants from different churches at the RAB. For e.g. Bethaniakirken the average overturn rate is 29 % percent across 23 cases, and thus below the average overturn rate for the identified cases generally. Vice versa, for Apostelkirken – the church most often referred to in our dataset – more than two-thirds of applicants (67 %) were granted asylum when appearing before the RAB. This suggests that individual churches may also play an important role in shaping asylum outcomes, through their particular practices of preparing and supporting asylum applicants in the conversion process. For example, Apostelkirken is known to require a lengthier preparation process before baptizing asylum-seekers, which in turn creates a longer timeline when such cases are subsequently assessed by the RAB. Similarly, the experience of supporting a high number of converted asylum-seekers may lead to a better understanding of the RAB’s practice and assessment criteria. More generally, the Church of Denmark has also sought to offer cross-cutting support to individual churches working with asylum-seekers. In 2014, a national resource network of pastors was established to deal with matters of conversion among asylum seekers (Folkekirkens Asylsamarbejde); and in 2016 an updated set of guidelines for churches encountering asylum-seekers who want to be baptized was published.<sup>62</sup>

<sup>62</sup> Available at: [https://religionsmoede.dk/Resources/Persistent/e/5/6/2/e562c54ecff5a14cd63e06a508948ffa7dd8cef2/X\\_Vejledning-omkring-kirkers-kontakt-med-asylanansoegere.pdf](https://religionsmoede.dk/Resources/Persistent/e/5/6/2/e562c54ecff5a14cd63e06a508948ffa7dd8cef2/X_Vejledning-omkring-kirkers-kontakt-med-asylanansoegere.pdf). See further Petersen, M. J., & Jensen, S. B. (red.) (2019). *Faith in the system? Religion in the (Danish) asylum system*. Aalborg Universitetsforlag.

### 3.5 Interviews with decision makers

Interviews with Danish decision makers confirm that a conversion motive typically emerges after another asylum motive has been assessed and rejected by the first instance.<sup>63</sup> The preparation in conversion cases thus differs from the preparation in other asylum cases, as decision makers must pay attention to both the original motive as well as the subsidiary conversion motive. The relationship between the two motives was seen as important by several of the interviewed decision makers:

“If the original asylum motive has been assessed as untrustworthy, the credibility of the applicant is already weakened. Hence, it may become more difficult for the applicant if he or she then presents a new *sur place* motive. [...] So, sometimes an applicant can put him- or herself in a situation where he or she is faced with a tougher assessment, for example in relation to obtaining the benefit of the doubt.”<sup>64</sup>

Here, the decision maker explicitly refers to the principle of the benefit of the doubt.<sup>65</sup> He later mentioned that he has a structured approach to assessing credibility in conversion cases. The decision maker emphasized that he initially would ask questions about how the interest in Christianity arose. Subsequently, the trajectory of questions would proceed as follows:

“If there is a baptism certificate, I subsequently ask questions about the baptism. I particularly ask questions about the baptism process, including the scope of baptismal preparation and the church. I ask about the baptism ceremony, including how it was carried out and what it meant for the applicant. [...] If there are statements or declarations from church ministers, I also ask how the applicant got the statement or declaration and why the applicant knows the church minister. [...] When this part is over, the difficult part begins. It is the part about the subjective clarification process. Here, I usually start by asking questions that relate to the applicant’s knowledge of the religion. It cannot be a thorough theological examination. I often think about my own knowledge of Christianity. If I do not know specific things myself, I cannot ask the applicant about such things. [...] In this context, you must also consider personal details, such as the level of education. For example, you can have a well-educated applicant who can echo several phrases from the Bible but not really mean it. And then you can have an applicant, who has no educational background and hence has difficulties verbalizing the conversion process, but who deeply has changed his faith. [...] But, I usually ask basic questions about why we celebrate Christmas and Easter. I ask such questions before the most difficult part begins, which is the part about the subjective clarification process. Here, the focal point is the applicant’s feelings about the conversion process. I need to understand why the applicant has chosen Christianity. What does it give the applicant that Islam could not give?”<sup>66</sup>

Other decision makers did not outline a similar approach to assessing credibility in conversion cases, but they comparably expounded that credibility assessments must always be concrete and

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<sup>63</sup> Interview with decision maker 1 from the Danish Refugee Appeals Board, March 23, 2022; Interview with decision maker 2 from the Danish Refugee Appeals Board, April 6, 2022; Interview with decision maker 3 from the Danish Refugee Appeals Board, 11 April 2022; Interview with decision maker 4 from the Danish Refugee Appeals Board, 3 May 2023.

<sup>64</sup> Interview with decision maker 4 from the Danish Refugee Appeals Board, 3 May 2023.

<sup>65</sup> UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, *supra* note 15, paragraphs 196, 203 and 204.

<sup>66</sup> Interview with decision maker 4 from the Danish Refugee Appeals Board, 3 May 2023.

individualized, which means, among other things, that the applicant's personal prerequisites, such as his/her level of education, must be taken into account.<sup>67</sup> The interviews further highlighted some general credibility indicators used in credibility assessments.<sup>68</sup> For example, a decision maker emphasized that the three most important credibility indicators include internal and external coherence, as well as the applicant's personal appearance, including body language.<sup>69</sup> Other decision makers mentioned that body language has absolutely no significance when assessing the genuineness of a conversion claim, as "it is not an everyday situation for applicants and they are often very nervous".<sup>70</sup> However, all the decision makers agreed that internal and external coherence are important credibility indicators. A decision maker further emphasized that vague or deviant answers also have a negative impact on the applicant's credibility as to the alleged conversion claim:

"It affects the overall credibility assessment if the applicant does not really answer the questions that are asked, or if the applicant answers the questions in a sliding manner, or if the applicant does not give an account of what the conversion really means to the person."<sup>71</sup>

The decision maker did not mention how far he would usually go in his line of questions before reaching the conclusion that an applicant's statements are vague or insufficiently detailed. The decision makers were also asked to what extent they rely on ECtHR or CJEU jurisprudence as well as external guidance, such as the UNHCR Guidelines on Religion-Based Refugee Claims, when assessing conversion claims. In this context, the interviewees responded that they rarely focus on international and regional jurisprudence, nor the UNHCR Guidelines, unless there is a significant judgment or practice change. However, the interviews highlighted that decision makers often use the annual report when preparing conversion cases, which in turn reflects international developments.

Finally, the interviews revolved around the translation standard in relation to conversion cases. The decision makers similarly emphasized that an interpreter manages a crucial position as the linguistic channel, especially in conversion cases where the level of detail is often very high and specific religious expressions can be central to assessing an applicant's claim. Where decision makers are faced with imprecise or erroneous answers, it can thus sometimes be hard to know if it is due to the applicant or the interpreter. The following excerpt, which originates from an interview with one of the decision makers, depicts this:

"Good interpretation is very important, because people talk about their most important conflicts, often with a great degree of detail. Therefore, we depend on good interpreters. It is also so important in relation to conversion motives, as it is crucial to understand the subjective clarification process, which is often very emotional."<sup>72</sup>

However, it also became clear from the interviews that the decision makers have no influence on which interpreter is chosen. The secretariat of the RAB selects interpreters who are listed on a so-called 'interpreter list' issued by the National Police, and there is no specific training requirements

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<sup>67</sup> Interview with decision maker 1 from the Danish Refugee Appeals Board, 23 March 2022; Interview with decision maker 2 from the Danish Refugee Appeals Board, 6 April 2022; Interview with decision maker 3 from the Danish Refugee Appeals Board, 11 April 2022; Interview with decision maker 4 from the Danish Refugee Appeals Board, 3 May 2023.

<sup>68</sup> Interview with decision maker 1 from the Danish Refugee Appeals Board, 23 March 2022; Interview with decision maker 2 from the Danish Refugee Appeals Board, 6 April 2022; Interview with decision maker 3 from the Danish Refugee Appeals Board, 11 April 2022.

<sup>69</sup> Interview with decision maker 3 from the Danish Refugee Appeals Board, 11 April 2022.

<sup>70</sup> Interview with decision maker 4 from the Danish Refugee Appeals Board, 3 May 2023.

<sup>71</sup> Interview with decision maker 4 from the Danish Refugee Appeals Board, 3 May 2023.

<sup>72</sup> Interview with decision maker 4 from the Danish Refugee Appeals Board, 3 May 2023.

besides being able to speak and write Danish as well as another language.<sup>73</sup> The various elements of empirical analysis indicate that the applicant's personal and detailed explanation of his/her subjective clarification process in relation to Christianity is crucial for the conversion to be considered genuine. In order for an applicant to be able to explain his/her subjective clarification process compellingly, it is therefore important that interpreters possess a high level of linguistic expertise as well as a high degree of religious literacy.

### 3.6 Summary

The preceding sections have examined how conversion cases are adjudicated in Denmark through the various elements of the analysis. Most notably, it became clear that the joined CJEU cases *C-71/11* and *C-99/11* have resulted in a practice change in Denmark, despite Denmark not being bound by the judgment and the EU Qualification Directive. The annual report and academic textbook are further closely aligned with the UNHCR Guidelines on Religion-Based Refugee Claims. However, in contrast to the Guidelines, the textbook does not place the same emphasis on risk assessments. The Guidelines underscore that the most important element in a conversion case is a risk assessment of whether there is a well-founded fear of persecution upon return to the country of origin.<sup>74</sup> Conversely, the textbook emphasizes that a risk assessment is conditional on the RAB assuming that the alleged conversion is genuine. In line with the Guidelines, however, the annual report sets out that an applicant may be entitled to protection, regardless of whether his/her conversion is considered genuine, if the religious activities have come to the attention of the authorities or private individuals in the country of origin, and that the applicant, on this basis, risks persecution. Moreover, the case law analysis showed that the RAB generally affords significant value to both the applicant's knowledge of Christianity as well as the applicant's personal reflections, thoughts and considerations about the conversion process. It further became clear that risk assessments do not occupy a lot of explicit space in the conversion decisions.

In continuation, the analysis of the semi-structured interviews highlighted a specific method to be applied in conversion cases. First, it must be assessed how the interest in Christianity arose. Secondly, external evidence must be examined. Thirdly and finally, an assessment of the applicant's subjective clarification process must be made, which includes an examination of religious knowledge as well as the applicant's reflections, thoughts and considerations about the conversion. However, it generally weakens the overall credibility of the applicant if he/she has had a previous asylum motive rejected by the first instance. Vague or insufficiently detailed answers further weaken the overall credibility of the applicant.

The computational analysis lastly provided an overview of underlying themes and developments within conversion cases based on a larger dataset of cases from the RAB. The larger dataset confirmed that the majority of the religious conversion claims originate from Iranian and Afghan nationals. While the majority of applicants are male, it is noticeable that female applicants have a somewhat higher success rate in conversion cases. It further showed that there is a significant discrepancy between the outcomes of applicants across different churches mentioned in the dataset, which in turn suggests that individual churches, through their internal procedures and experience supporting converts in the asylum process, can also play a role in shaping outcomes. The computational analysis further showed that the percentage of rejections made by the RAB has increased in line with rising

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<sup>73</sup> Moreover, an interpreter must also have the right to work in Denmark. The interpreter must also be security cleared.

<sup>74</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 35.

numbers of asylum applications concerning religious conversion. This may indicate that the RAB has gradually developed a more uniform but also more restrictive approach to assessing credibility in response to growing numbers of conversion cases.

## 4. NATIONAL PRACTICE ON CONVERSION IN NORWAY

The subsections which follow investigate the national legal framework in conversion cases in Norway. The first subsection provides a description of the Norwegian asylum system. In continuation, the national approach to conversion cases is examined through 1) the legal practice note and the academic textbook, 2) the randomized sample of conversion decisions involving Iranian and Afghan nationals, and 3) interviews with appeal level decision makers.

### 4.1 The Norwegian asylum system

Norwegian asylum law is set out in *Utlendingsloven* (the Immigration Act).<sup>75</sup> In the Norwegian asylum system, the Directorate of Immigration ('Utlendingsdirektoratet - UDI') serves as the first legal instance and the Immigration Appeals Board ('Utlendingsnemnda - UNE') as the second and final instance. The UDI is an administrative body and inquisitorial in design. The UNE is a specialized administrative court with quasi-judicial procedures.

The UDI typically carries out one personal interview with an applicant, and its decisions are in writing. If the UDI rejects an asylum application, the applicant is offered five hours of free legal aid with an appointed attorney. If the applicant decides to appeal the decision, the appointed attorney will also assist the applicant during the appeal process. A case officer working at the secretariat of the UNE provides the chairperson with a proposal for the decision outcome. If the chairperson finds that the case and the proposed outcome give rise to doubts, the case is dealt with at an oral board meeting. At oral decision meetings, the adjudicating committee consists of a chairperson, who is qualified to serve as a judge, and two board members (lay assessors) appointed by the Norwegian Association of Lawyers, the Norwegian Association of Social Scientist, the County Governors and voluntary organizations. As a general rule, the applicant has the right to appear in person and make a statement at the oral board meeting. Appeals regarding the decisions made by the UNE can be brought before the Oslo District Court.

### 4.2 Legal practice note and academic textbook analysis

The Norwegian legal practice note is narrowly concentrated on conversion in religion-based asylum claims.<sup>76</sup> It further contains several recommendations for how credibility assessments in cases concerning religious conversion should be carried out. Initially, it is stated that an alleged conversion is considered credible if the Norwegian asylum authorities can assume that the religious conversion is '*reasonably plausible*'.<sup>77</sup> The practice note further specifically singles out Afghan nationals and decision makers are advised to be particularly critical when examining Afghan cases relating to religious conversion.<sup>78</sup>

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<sup>75</sup> Sections 28-30 set out protection statuses.

<sup>76</sup> Utlendingsnemnda, 'Praksisnotat: Forfølgelse på grunnlag av religion' (2022).

<sup>77</sup> Utlendingsnemnda, 'Praksisnotat: Forfølgelse på grunnlag av religion' (2022), p. 4.; In Norwegian, 'noenlunde sannsynlig'.

<sup>78</sup> Utlendingsnemnda, 'Praksisnotat: Forfølgelse på grunnlag av religion' (2022), p. 5-6.

In continuation, the practice note emphasizes that the core of the credibility assessment is the applicant's personal reflections on the conversion and that the degree of reflection must be assessed in light of the applicant's individual circumstances. It further follows that a conversion may be rejected as not genuine if the applicant does not appear to reflect sufficiently on her/his relationship to the new faith.

It also appears from the practice note that the applicant's knowledge of the new religion should be included in the assessment of whether the conversion can be considered genuine. In this context, it is mentioned that little knowledge of the religion may indicate that the conversion is not genuine.

The practice note further emphasizes that the applicant's connection to religious environments and congregations is relevant in the overall assessment. Some weight must therefore be accorded to external evidence, such as letters of support from church ministers and congregations. The weight given to external evidence is relative to other elements in the case, including whether there are contradictions, ambiguities or omissions in the testimony that cannot be satisfactorily justified, whether the testimony conflicts with other relevant information, and whether the testimony gradually has been adapted and supplemented by new circumstances.

The note further highlights that all *sur place* activity can give grounds for refugee status, and the question remains whether the applicant risks persecution because of his/her actions in Norway. Yet, it also follows that an applicant can be denied refugee status if the main purpose of the actions has been to obtain residence permit in Norway.<sup>79</sup> This stands in contrast to the UNHCR Guidelines, as the Guidelines underline that the critical focus of decision makers must be on the risk of persecution faced by the applicant and not on whether the activities of the applicant are self-serving.<sup>80</sup> In 2017, the UNHCR decided to intervene before the Norwegian Supreme Court stating that this practice was not in line with the 1951 Refugee Convention.<sup>81</sup> However, the Norwegian practice remains unchanged, as the Norwegian Supreme Court stated that this practice was in line with the Refugee Convention in a national judgment.<sup>82</sup>

Nevertheless, the practice note underscores that a risk assessment must be carried out, regardless of whether the authorities assess the conversion to be genuine. The risk assessment should take into account the general circumstances in the country of origin, including relevant country of origin information, as well as the applicant's personal circumstances, including how the applicant is expected to exercise his/her religion upon return to the country of origin. In relation to the applicant's personal circumstances, the assessment should particularly focus on how the applicant has practiced the religion in Norway, as well as the applicant's knowledge of the new religion. In line with the previously visited CJEU cases *C-71/11* and *C-99/11* it also follows from the practice note that no one can hide his or her faith to avoid persecution.<sup>83</sup>

Finally, it follows from the Norwegian practice note that it must be assessed whether the authorities in the country of origin have the ability and willingness to prevent persecution, or whether the applicant can be returned to a safe area in the country of origin, i.e. internal flight alternative. In this

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<sup>79</sup> Utlendingsnemnda, 'Praksisnotat: Forfølgelse på grunnlag av religion' (2022), p. 13.

<sup>80</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 36.

<sup>81</sup> UNHCR, 'Amicus curiae of the United Nations High Commissioner for Refugees (UNHCR) on the interpretation and application of 'sur place' claims within the meaning of Article 1A(2) of the 1951 Convention Relating to the Status of Refugees', 14 February 2017.

<sup>82</sup> HR-2017-569-A para. 35-70.

<sup>83</sup> Utlendingsnemnda, 'Praksisnotat: Forfølgelse på grunnlag av religion' (2022), p. 13.

context, the practice note refers to a previous judgment by the UNE where a Christian applicant from Nigeria was referred to internal relocation in the southern part of the country, which was considered safe.<sup>84</sup>

Overall, the Norwegian legal practice note follows the various elements of the UNCHR Guidelines on Religion-Based Refugee Claims. However, a notable discrepancy between the Guidelines and the Norwegian practice note also emerges. In contrast to the UNHCR Guidelines, the practice note stipulates that the Norwegian authorities must operate with the evidentiary threshold '*reasonably plausible*' in religious conversion cases. With an emphasis on a Supreme Court judgment, the practice note further advises that the evidence threshold generally should be "very high" in conversion cases originating from Afghan nationals.<sup>85</sup>

The most recent Norwegian academic textbook on immigration law confirms the '*reasonably plausible*' threshold.<sup>86</sup> It further confirms Norway's international obligations and thoroughly informs the interpretation of the term "religion" with an emphasis on Article 18 of the UDHR and Article 9 of the ECHR. The right to freedom of religion is defined to include 1) religious and other outlooks, 2) participation in, or abstention from, formal worship in private or in public, either alone or in community with others, 3) other religious acts or expressions of views, 4) forms of personal or communal conduct based on or mandated by any religious belief, or 5) freedom to change religion.<sup>87</sup>

While the concept of "religion" is meticulously examined in the Norwegian textbook, the textbook does not explicate the procedure to be followed in religion-based claims pertaining to conversion. However, the textbook does refer to the UNHCR Guidelines on Religion-Based Claims and emphasizes that an applicant cannot be expected to conceal his or her faith in the country of origin in order to avoid persecution.<sup>88</sup> In line with the legal practice note, this reference shows that CJEU jurisprudence has impacted the Norwegian asylum practice in conversion cases.

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<sup>84</sup> Utlendingsnemnda, 'Praksisnotat: Forfølgelse på grunnlag av religion' (2022), p. 14.

<sup>85</sup> Utlendingsnemnda, 'Praksisnotat: Forfølgelse på grunnlag av religion' (2022), p. 5-6.

<sup>86</sup> Ø. D. Øyen, 'Lærebok i utlendingsrett – 3. utgave', Universitetsforlaget (2022), p. 186-192.

<sup>87</sup> Ibid p. 224.

<sup>88</sup> Ibid, pp. 224-225.

### 4.3 Case law analysis

The distribution of positive and negative decisions from the randomized sample of 36 conversion decisions provided by the Norwegian UNE can be schematized as follows:

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Sum
Positive outcomes	0	0	1	0	4	1	2	1	2	3	0	0	2	16
Negative outcomes	1	0	0	2	0	2	2	2	2	0	2	2	5	20
Sum	1	0	1	2	4	3	4	3	4	3	2	2	7	<u>36</u>

It should be noted that the above schematization does not provide a representative overview of the UNE's final distribution of accepted and rejected decisions in relation to year. Nevertheless, the cases analyzed show that the evidentiary threshold '*reasonably plausible*' is also in practice applied by Norwegian decision makers in conversion cases. The UNE explicitly noted that the applicant must make it reasonably plausible that he or she has converted in 26 out of the 36 decisions. A common denominator for the 26 decisions in which the evidentiary threshold was mentioned is that the UNE referred to various national judgments, in which the Supreme Court had ruled that an alleged conversion must appear reasonably plausible.<sup>89</sup>

In a 2011 decision, the UNE further referred to a Supreme Court judgment, noting that it generally weakens an applicant's credibility if a previous asylum motive has been deemed untrustworthy.<sup>90</sup> This argument is applied in several subsequent cases, often using the following phrase, "the UNE finds that it is striking that the applicant showed an interest in converting in parallel with his first instance refusal". The argument emerged in both positive and negative decisions, suggesting a general bias in *sur place* conversion cases.

The case law analysis further indicates that the UNE places a relatively strong emphasis on external evidence, both in positive and negative decisions. The following formulations frequently emerged in the positive decisions, "based on the evidence, it seems likely that the applicant has been baptized and that the applicant actively participates in church activities"; "the evidence supports the applicant's explanation"; and "the UNE finds that conversion is genuine based on the applicant's explanation and the evidence." Overall, statements from church ministers and members of congregations confirming various church activities were the most commonly encountered evidence and emerged in 31 out of the 36 decisions. Baptism certificates further emerged in 27 out of the 36 conversion decisions. In 16 decisions, evidence in the form of video clips of the applicant in religious settings, or photographs, such as excerpts from social media accounts or photographs of newspapers, were included. Witness statements and written statements from private persons were moreover occasionally included as evidentiary material in the Norwegian conversion cases. Witness statements

<sup>89</sup> In particular, the UNE referred to the judgments Rt. 2011 p. 1481, sections 45 and 46, Rt. 2015 p. 1388 section 129 and HR-2021-1209-A.

<sup>90</sup> Rt. 2011 s. 1481



were used as evidence in four decisions, while statements from private persons appear in eight decisions.

In addition to external evidence, emphasis was attached to the applicant's knowledge of Christianity. In several positive decisions the phrase, "the applicant has demonstrated a good knowledge of Christianity," appeared. However, an applicant may also demonstrate a sufficient level of knowledge of Christianity and still receive a negative decision. In a number of negative decisions the UNE justified the decisions as follows, "the applicant has demonstrated an expected knowledge, but evidence and knowledge do not fully reflect a genuine and personal religious conviction." This phrase also points to what the UNE appears to consider the most important element in conversion decisions, i.e. the applicant's personal reflections, thoughts, and considerations about the conversion process. For example, the UNE repeatedly justified positive decisions with the phrases, "the applicant has compellingly explained his reflections regarding the conversion"; "the applicant has convincingly explained why she was drawn to Christianity"; and "the applicant has provided a reflective explanation about the conversion process, and he has shared his thoughts on the consequences associated with leaving Islam." Likewise, the UNE justified negative decisions with the following sentences, "the applicant has not reflected on the consequences if he is returned"; "the applicant could not provide compelling reflections as to why he chose to convert, and he often answered by echoing quotes from the Bible"; and "the UNE lacked the applicant's own words and reflections." Furthermore, in negative decisions, the UNE often argued that the lack of reflections indicated that conversion was a strategic choice, i.e. self-serving. This points to a potential discrepancy between the Norwegian approach and the UNHCR Guidelines on Religion-Based Refugee Claims, as the UNHCR Guidelines emphasize that the critical focus of decision makers must be on the risk of persecution faced by the applicant and not on whether the activities of the applicant are self-serving.<sup>91</sup>

However, the case law analysis does not indicate that the focus on strategic conversions impacts the conduct of risk assessments. For example, in contrast to the sample of Danish conversion decisions, the UNE referred to country of origin information in 28 out of the 36 decisions. In the majority of these decisions, the references were accompanied by careful examinations of the country of origin information. Regardless of whether the UNE deemed the alleged conversion to be genuine, risk assessments were also included. In this context, the UNE considered how the applicant would practice the new religion upon return and whether this would expose the applicant to any adverse consequences, with an emphasis on the country of origin information and the written evidence. In the positive decisions, the UNE employed arguments such as, "the activities in Norway indicate that applicant will continue to practice religion upon return"; and "applicant's consistent and regular Christian activities may raise particular attention among authorities". In the negative decisions, the UNE might conversely argue that "it does not seem likely that authorities have an interest in the applicant"; or "the UNE does not find that the applicant will assume a leading role in exercising his Christian faith upon return, as he has not made it likely that he regularly practices Christianity in Norway." The UNE's consistent use of risk assessments generally aligns with the UNHCR Guidelines on Religion-Based Refugee Claims, albeit not necessarily with UNHCR's position on self-serving activities as stated above.

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<sup>91</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 36; see also UNHCR, 'The Office of the United Nations High Commissioner for Refugees Statement on the interpretation of Article 5(3) of the EU Qualification Directive regarding subsequent applicants for international protection based on *sur place* religious conversion', 3 February 2023.

That the UNE attaches interpretive weight to the UNHCR Guidelines on Religion-Based Refugee Claims is confirmed by the fact that the Guidelines are referred to in six out of the 36 decisions analyzed. The UNE further indirectly references specific assessment elements from the Guidelines, both the importance of conducting a risk assessment and in-depth examination of the circumstances to establish the genuineness of the conversion. Moreover, the UNE refers to ECtHR jurisprudence in six out of the 36 decisions, in particular the previously visited *A.A. v. Switzerland*, in which the ECtHR acknowledged that *sur place* conversion claims may legitimately arise during the asylum proceedings.<sup>92</sup> Conversely, the UNE did not explicitly refer to CJEU jurisprudence in any of the 36 decisions. In one of the 2014 cases, however, the UNE noted that no one can be expected to be discreet in the exercise of their religion to avoid persecution in the country of origin, thereby implicitly aligning with the joined cases of *C-71/11* and *C-99/11*. In line with the legal practice note and academic textbook analysis, this also confirms that CJEU jurisprudence has had an indirect effect on Norwegian practice in conversion cases.

#### 4.4 Interviews with decision makers

In line with the Danish decision makers, the interviews with Norwegian decision makers indicate that conversion motives that emerge *sur place* after a first instance refusal are treated with a degree of suspicion:

“Conversion motives often emerge after you have been refused. I have always described it like this, “If you claim that you have converted after a refusal then it takes more when you have to defend your credibility.” You really have to explain yourself well in such cases.”<sup>93</sup>

The decision maker emphasized that it always weakens the credibility of an applicant if he/she first presents the conversion motive after the first instance refusal. As this also appears in the analysis of the legal practice note as well as the qualitative analysis of the conversion decisions, it may indicate that there is an inherent bias in *sur place* cases.

When asked whether decision makers generally have a structured approach to assessing credibility in conversion cases, they answered in the negative. However, interviewees emphasized that credibility assessments generally are about logical thinking, and whether there is a plausible internal coherence between what has been said previously, and what is being said in relation to the conversion motive.<sup>94</sup> According to the interviewed decision makers, a vague and general answer from an applicant can have a major impact on the entire credibility assessment:

“Sometimes, when you ask a question, you can get a very general answer – we see that very often. If you are not specific and it is not well justified, then it is often used against the applicant.”<sup>95</sup>

Like the Danish decision maker, this Norwegian decision maker did not mention how far he would usually go in his line of questions before reaching the conclusion that an applicant’s statements are

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<sup>92</sup> *A.A. v. Switzerland*, application no. 32218/17, 5 November 2019.

<sup>93</sup> Interview with decision maker 4 from the Norwegian Immigration Appeals Board, 31 March, 2023.

<sup>94</sup> Interview with decision maker 1 from the Norwegian Immigration Appeals Board, 29 March 2022; Interview with decision maker 2 from the Norwegian Immigration Appeals Board, 1 April 2022; Interview with decision maker 3 from the Norwegian Immigration Appeals Board, 19 April 2022; Interview with decision maker 4 from the Norwegian Immigration Appeals Board, 31 March 2023.

<sup>95</sup> Interview with decision maker 1 from the Norwegian Immigration Appeals Board, 29 March 2022.

vague or insufficiently detailed. Nonetheless, there was agreement among all the interviewed decision makers that details about the conversion process are crucial for an alleged conversion to appear genuine. However, one of the decision makers mentioned that he generally has fewer expectations for details in relation to the applicant's knowledge of the new religion:

"If you convert from one religion to another, you must have a certain knowledge. But I try to ask questions in a way so that they are connected to the history of religion and not to a lot of details. For example, I would never ask why we celebrate Pentecost [...] but I may ask about a holiday that is approaching, for example "Why do we celebrate Easter?", "Why is it important to us?"<sup>96</sup>

It follows that converts must have a certain knowledge of the new religion, but that this level of knowledge should generally relate to broadly known facts about the religion. However, the same decision maker emphasized that his expectations for level of detail would increase when questions revolve around the applicant's subjective religious conviction:

"The level of detail is interesting. If you cannot be detailed, then you must come up with a good explanation as to why you cannot be detailed. An example: I once encountered a young man who described that he was a Christian and that he had Jesus in his heart. And then I asked him, "Well, let's say that I am an Afghan man and I tell you that I do not know who Jesus was. Who was he?" But the young man could not describe who Jesus was, only that Jesus was in his heart. When you convert, you must have some knowledge of the basics. So the young man had a challenge with the level of detail."<sup>97</sup>

An applicant must thus be able to explain his/her subjective religious conviction and personal reflections about the conversion process in a detailed manner. There was a consensus among the decision makers that the focus in conversion cases is to clarify what the new religion actually means for the applicant, and whether the conversion has resulted in any changes in the applicant's life. They further agreed that if an applicant merely cites scripture ("throws out Bible verses") without being reflective about how the Bible has impacted the applicant's life, this does not necessarily support that the conversion is genuine.

When asked whether body language constitutes a credibility indicator in relation to the assessment of the applicant's personal reflections about the new religion, the decision makers mentioned that body language has no significance, e.g. because "people can express themselves in different ways, and there can also be cultural differences".<sup>98</sup> Furthermore, there was a consensus among the decision makers that without knowledge of the socio-political situation in the applicant's country of origin, their chances of making the correct decisions could be diminished.<sup>99</sup> The following statement, from an interview with one of the Norwegian decision makers, captures this:

"Country of origin information is very important. In some countries, it is very dangerous to be a convert, whereas it is not as dangerous in other countries. You have to familiarize yourself

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<sup>96</sup> Interview with decision maker 4 from the Norwegian Immigration Appeals Board, 31 March 2023.

<sup>97</sup> Interview with decision maker 4 from the Norwegian Immigration Appeals Board, 31 March 2023.

<sup>98</sup> Interview with decision maker 2 from the Norwegian Immigration Appeals Board, 1 April 2022.

<sup>99</sup> Interview with decision maker 1 from the Norwegian Immigration Appeals Board, 29 March 2022; Interview with decision maker 2 from the Norwegian Immigration Appeals Board, 1 April 2022; Interview with decision maker 3 from the Norwegian Immigration Appeals Board, 19 April 2022; Interview with decision maker 4 from the Norwegian Immigration Appeals Board, 31 March 2023.

with the potential consequences upon return to the country of origin. In this way, you may also be able to understand the significance of the conversion for the person concerned.”<sup>100</sup>

It was further emphasized that country of origin information is particularly important for a thorough risk assessment of what the applicant may face upon return to the country of origin. When asked whether decision makers rely on other forms of external evidentiary material, such as baptism certificates as well as documents corroborating religious services or activities, the interviewees said that such evidence might substantiate a testimony in some ways, but that it is not sufficient to corroborate a religious conversion. In this context, one decision maker mentioned that he is somewhat skeptical towards baptism and church service certificates.<sup>101</sup> According to the decision maker, this skepticism is connected to the fact that such external evidentiary material does not necessarily reflect a personal religious belief.

The decision makers were also asked whether they rely on international guidance, such as the UNHCR Guidelines on Religion-Based Refugee Claims, when deciding in conversion cases. In this context, one decision maker referred to the legal practice note issued by the UNE and mentioned that the Guidelines have been incorporated into it.<sup>102</sup> The decision makers were also asked whether they include international, regional and national jurisprudence when assessing conversion cases. In this context, disparate accounts emerged. While three decisions makers confirmed that they frequently engage with previous national case law and occasionally seek inspiration in ECtHR jurisprudence, one decision maker emphasized that he completely refrains from looking at both international, regional and national jurisprudence, as “decision-making always revolves around concrete assessments.”<sup>103</sup>

Finally, the decision makers were asked what role interpreters and translation play in conversion cases. Here, several decision makers expressed some concerns about the translation standard and mentioned that they encounter many interpreters, “who are not good enough”, and that “we do not know whether everything is correctly translated. It is, of course, a systemic problem that we are not entirely sure.”<sup>104</sup> There was thus a consensus that whether the applicant’s testimony is translated correctly is sometimes an area of concern but also difficult to assess by decision makers.

## 4.5 Summary

The preceding sections have examined how conversion cases are adjudicated in Norway. Notably, the academic textbook and the legal practice note showed that the joined cases of *C-71/11* and *C-99/11* have influenced Norwegian practice, despite neither the EU Qualification Directive nor CJEU jurisprudence formally binding Norway. The textbook and legal practice note are further closely aligned with the UNHCR Guidelines on Religion-Based Refugee Claims. For example, it became clear that the core in an assessment is the applicant’s personal reflections on the conversion process. Moreover, all assessments must be individualized, meaning that the applicant’s personal prerequisites must be taken into consideration.

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<sup>100</sup> Interview with decision maker 4 from the Norwegian Immigration Appeals Board, 31 March 2023.

<sup>101</sup> Interview with decision maker 4 from the Norwegian Immigration Appeals Board, 31 March 2023.

<sup>102</sup> Interview with decision maker 4 from the Norwegian Immigration Appeals Board, 31 March 2023.

<sup>103</sup> Interview with decision maker 2 from the Norwegian Immigration Appeals Board, 1 April 2022.

<sup>104</sup> Interview with decision maker 2 from the Norwegian Immigration Appeals Board, 1 April 2022.

However, a central discrepancy between the Guidelines and the legal practice note also emerged, as the note advises that the Norwegian asylum authorities operate with the evidentiary threshold '*reasonably plausible*' in conversion cases. The note further singles out Afghan nationals as potentially fraudulent and advises that that asylum motives relating to religious conversion originating from Afghan nationals must be critically examined. Applying a presumptive approach or higher evidentiary threshold in cases concerning a particular nationality is potentially discriminatory. The case law analysis, however, does not confirm that a different threshold is applied in cases concerning Afghan nationals. Yet, the analysis of the 36 conversion cases corroborated that Norwegian decision makers generally apply the evidentiary threshold '*reasonably plausible*' in conversion cases.

Moreover, the case law analysis showed that the UNE regularly noted that the applicant's general credibility was weakened by the fact that a previous asylum motive was deemed untrustworthy, suggesting a possible bias in this type of conversion cases. The analysis further showed that the core assessment element in conversion cases is the applicant's personal reflections on the conversion process, while external evidence and the applicant's knowledge of the new religion tend to be afforded secondary value. From the case law analysis, it also became clear that the UNE regularly noted that conversion was a strategic choice in the negative decisions. This points to a possible discrepancy between the UNHCR Guidelines and the analyzed sample of Norwegian decisions, as the Guidelines emphasize that the critical focus of decision makers must be on the risk of persecution faced by the applicant and not on whether the activities of the applicant are self-serving.<sup>105</sup> However, risk assessments were included in all the decisions, indicating that the focus on strategic conversions does not impact the conduct of risk assessments.

Semi-structured interviews with Norwegian decision makers confirmed that decision makers may treat conversion motives that arise after a first instance refusal with some suspicion. It was further confirmed that the decision makers considered the applicant's personal reflections about the conversion process as the most crucial element in conversion cases, whereas the applicant's knowledge of the new religion and external evidence constituted less central assessment elements. The decision makers further noted that it generally weakens the overall credibility of the applicant if her/his statements are perceived as vague or insufficiently detailed, but they did not mention how far they would usually go in their line of questions before reaching that conclusion. Different views on the inclusion of regional and national jurisprudence in decision-making further emerged from the semi-structured interviews. Nonetheless, the case law analysis found that reference to regional or national jurisprudence was made in no less than 30 of the analyzed decisions.

## **5. NATIONAL PRACTICE ON CONVERSION IN SWEDEN**

The subsections which follow set out the national approach to conversion cases in Sweden. The first subsection starts by providing a brief description of the Swedish asylum system. Subsequently, the national legal framework in conversion cases is examined through 1) the legal practice note and the academic textbook, 2) the randomized sample of conversion decisions involving Iranian and Afghan nationals, and 3) interviews with appeal level decision makers.

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<sup>105</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 36; see also UNHCR, 'The Office of the United Nations High Commissioner for Refugees Statement on the interpretation of Article 5(3) of the EU Qualification Directive regarding subsequent applicants for international protection based on *sur place* religious conversion', 3 February 2023.

## 5.1 The Swedish asylum system

Swedish asylum law is set out in *Utlänningslagen* (the Aliens Act).<sup>106</sup> In the Swedish asylum system, the Swedish Migration Agency ('SMA') is the first legal instance, one of the four Migration Courts ('MC') serves as the first level of appeal<sup>107</sup>, and the Migration Court of Appeal ('MCA') as the second and final level of appeal. The SMA is an administrative body, and it is inquisitorial in design. The MC and MCA are specialized administrative courts with quasi-judicial procedures.

When an applicant submits an application for asylum with the SMA, the applicant is granted free legal assistance in the form of a legal representative or an attorney. The SMA strives to carry out one personal interview with the applicant, and it delivers its decisions in writing. In the event of a refusal, the applicant has three weeks after having been informed of the decision to submit an appeal before an MC. The MC decision hearings are normally oral, but orality is conditioned by the initiative of either the applicant, the attorney/legal representative or by the MC itself. The adjudicating board of the MC consists of a professional judge and three lay assessors, who do not have any qualifications in law. In case of a tie, the judge has the deciding vote but can be defeated by the votes of the three lay assessors combined. A refusal can be appealed to the Court of Appeal in Stockholm within three weeks. A precedent department assesses whether the appealed case can be assessed based on its merits. If deemed eligible, three judges examine the case (collectively as MCA). In exceptional cases, e.g. cases that may lead to changes in practice, a panel of seven judges renders the final decision on the appealed case.

## 5.2 Legal practice note and academic textbook analysis

In the most recent legal practice note on religion-based persecution, the Swedish asylum authorities are advised to follow a concrete method when assessing claims pertaining to religious conversion.<sup>108</sup> Initially, the Swedish asylum authorities must obtain relevant country of origin information to determine whether members of particular religious groups in the country of origin are subject to such treatment that, by its nature and extent, constitutes persecution.

In continuation, the practice note underscores that it is important to individualize the assessment and thus investigate the applicant's personal circumstances. The note encourages the authorities to examine the applicant's personal circumstances, including the social and economic status in the country of origin and the level of education. In this context, it must be clarified whether the applicant has the ability to express him- or herself verbally about his or her personal circumstances. It may also be important to examine whether the applicant comes from a city or the countryside, a religiously homogeneous or multicultural society, as the risk of persecution may vary.

According to the Swedish practice note, it must also be assessed how the applicant's religious conviction is expressed in Sweden, including how the applicant's worship of the new religion is carried out, which rituals the applicant observes, and how the applicant will express his or her faith upon return to the country of origin. Other elements of importance include how the applicant

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<sup>106</sup> Sections 1-2 in Chapter 4 set out protection statuses.

<sup>107</sup> The four Migration Courts are located in Malmö, Stockholm, Gothenburg and Luleå, respectively.

<sup>108</sup> Migrationsverket, 'Rättsligt Ställningstagande: Metod för prövningen då religion, inklusive konversion och ateism m.m. åberopas som asylskäl' (2021).

encountered the new religion, the importance of the new religion in the applicant's everyday life, and how the applicant feels about leaving traditions in the previous religion.

The applicant's knowledge of the new religion must also be examined, including whether the applicant is familiar with the potential consequences of his or her conversion. It is emphasized that applicants are not expected to explain all aspects of the new religion, but main features are expected to be known.<sup>109</sup> It further appears from the practice note that written evidence of the conversion, such as a baptism certificate or documentation of Bible teaching, provides some support but do not remain decisive vis-à-vis the applicant's testimony.

It is further emphasized that a risk assessment must be made with the overall purpose of assessing whether the applicant faces a real risk of being subjected to persecution upon return to the country of origin. It must be examined whether the invoked conversion has come to the attention of the authorities or private persons in the country of origin and, in this context, the applicant has the burden of proof. If this is not the case, it must be assessed if and how the applicant will manifest his or her religion upon return with an emphasis on how the applicant has manifested the religion in Sweden. If the applicant has not practiced the new faith actively in Sweden, the practice note states that there is usually no reason to believe that he or she will do so in the country of origin. It further appears from the practice note that an applicant cannot be expected to hide his or her religion upon return to the country of origin as set out in the CJEU joined cases *C-71/11* and *C-99/11*, which are legally binding in Sweden.

If the applicant, after leaving the country of origin, engaged in an activity with the sole purpose of creating sufficient conditions to obtain international protection, the practice note further states that it must be assessed whether the activity would expose the applicant to persecution upon return. This approach aligns with the UNHCR Guidelines, in which it is underlined that the critical focus of decision makers must be on the risk of persecution faced by the applicant and not on whether the activities of the applicant are self-serving.<sup>110</sup>

In cases where it has been established that there is a need for protection, the practice note finally advises that the Swedish asylum authorities assess the possibility of an internal flight alternative. It is expressly stated that a critical examination must be made as to whether the area in question constitutes a reasonable flight alternative, i.e. that the applicant will not be faced with excessively difficult humanitarian conditions. In this context, it is emphasized that the Swedish asylum authorities have the burden of proof.

Overall, the Swedish legal practice note is closely aligned with the UNHCR Guidelines on Religion-Based Refugee Claims. In fact, it is explicitly stated in the Swedish practice note that the UNHCR Guidelines is of importance in conversion cases.<sup>111</sup> In the Swedish law book, it is similarly emphasized that the UNHCR Guidelines on Religion-Based Claims play a decisive role in asylum cases concerning religion, including *sur place* cases relating to post-departure conversions.<sup>112</sup> The section in the law book on religion-based persecution is very concise, but contains a number of references to the

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<sup>109</sup> Migrationsverket, 'Rättsligt Ställningstagande: Metod för prövningen då religion, inklusive konversion och ateism m.m. åberopas som asylskäl' (2021), p. 7.

<sup>110</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 36.

<sup>111</sup> Migrationsverket, 'Rättsligt Ställningstagande: Metod för prövningen då religion, inklusive konversion och ateism m.m. åberopas som asylskäl' (2021), p. 16.

<sup>112</sup> G. Wikrén and H. Sandesjö, 'Utlänningslagen med kommentarer', Tolfte Upplagan (2020), p. 181 and 198.

Guidelines, as well as the 1951 Refugee Convention, the EU Qualification Directive and the joined cases *C-71/11* and *C-99/11*, and it is emphasized that assessments concerning religion-based asylum claims must be made in accordance with these legal instruments.<sup>113</sup>

### 5.3 Case law analysis

The following sub-section analyzes 50 conversion decisions from the regional Swedish Migration Courts; 20 from Malmö; 17 from Stockholm; 12 from Gothenburg and one from Luleå.<sup>114</sup> While the cases have been randomly selected, a search in the Swedish case law database revealed that the vast majority of decisions regarding religious conversion have been made in the period of 2017 to 2022. A limitation of the case law analysis is thus that the majority of analyzed cases relate to this period. The distribution of positive and negative decisions in relation to years can be schematized as follows<sup>115</sup>:

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Sum
<b>Positive outcomes</b>	0	0	0	1	2	1	1	1	1	3	0	1	<b>11</b>
<b>Negative outcomes</b>	1	1	0	1	0	2	4	6	13	5	4	2	<b>39</b>
<b>Sum</b>	1	1	0	2	2	3	5	7	14	8	4	3	<b>50</b>

In a 2011 decision, the MC emphasized that the applicant presented reasonable and logical explanations about his conversion process in a convincing manner. The MC further stated that the applicant's testimony was coherent, detailed and without contradictions, and that the applicant demonstrated a good knowledge of the Bible. Despite positive credibility findings, however, the MC argued that the applicant could hide his religion upon return to Afghanistan. Nevertheless, the MCs have refrained from using this argument in any of the post-2011 decision analyzed, which confirms that the legally binding CJEU joined cases *C-71/11* and *C-99/11* have impacted Swedish asylum practice.

From the case law analysis, it further appears that a baptism certificate was the most commonly encountered evidentiary material across the MCs (present in 46 out of the 50 conversion decisions). Letters or certificates from church ministers, bishops or pastors in which various church activities were confirmed further emerged in 38 out of the 50 decisions. In 17 decisions the applicant had also presented evidence in the form of photographs, such as excerpts from social media accounts or photographs of newspapers. The MCs referred to country of origin information in 17 out of the 50 decisions analyzed. This is notable, as it follows from the legal practice note that the Swedish asylum authorities initially must obtain relevant country of origin information in order to determine whether religious converts are likely to be subjected to persecution in the country of origin.<sup>116</sup>

A common denominator for all 50 conversion cases is that the MCs emphasized, explicitly or implicitly, that evidentiary material can provide some support for a religious conversion claim, but that written evidence cannot be afforded conclusive or probative value in relation to the assessment

<sup>113</sup> G. Wikrén and H. Sandesjö, 'Utlänningslagen med kommentarer', Tolfte Upplagan (2020).

<sup>114</sup> [www.jpinfo.net/se/tjanster/beslutsstod/jp-rattsfallnetmigration](http://www.jpinfo.net/se/tjanster/beslutsstod/jp-rattsfallnetmigration).

<sup>115</sup> As the cases were randomly selected, it should be noted that the above schematization does not provide a representative overview of the Swedish MCs' final distributions of accepted and rejected cases in relation to year.

<sup>116</sup> Migrationsverket, 'Rättsligt Ställningstagande: Metod för prövningen då religion, inklusive konversion och ateism m.m. åberopas som asylskäl' (2021), p. 5.



of whether the conversion is genuine. Instead, the applicant's personal reflections, thoughts and considerations about the conversion process were afforded decisive value in the overall assessment. This applied to both positive as well as negative decisions. The MCs might justify positive decision outcomes with the following formulations, "the applicant has provided many personal considerations and reflections", "the applicant has a genuine interest in Christianity"; "the applicant seems curious and reflective about the conversion process"; and "the applicant was able to express the conversion process in a credible and self-experienced way". Conversely, the MCs frequently justified negative decisions with the following formulations, "the testimony is not convincing and lacks reflection"; "the applicant's statements appear impersonal"; "conversion is a big step and thus requires more reflections and details"; and "no oral information decisively indicates that the applicant is genuinely interested in Christianity". Considerations about the applicant testimony's level of detail and internal consistency are moreover key elements in the assessments. Another element of the credibility assessments in some cases was whether the applicant concerned had 'a risk mindset' in order to assess likelihood that the applicant would continue to practice the Christian faith upon a return to the country of origin. For example, the MCs were inclined to justify negative decisions with the formulation, "the applicant lacks a risk mindset", whereas positive decisions often entailed the sentence, "the applicant has considered the risks associated with converting".

Furthermore, it emerged from the analysis that the applicant's level of knowledge of Christianity was considered less important in the overall credibility assessment. Applicants might be described as having "a great knowledge of Christianity", or "an excellent knowledge of Christianity", both in positive and negative decisions. In positive decisions, however, the MCs were more inclined to use the applicant's "great knowledge of Christianity" as an argument that spoke in favor of a genuine conversion. In negative decisions, the MCs conversely refrained from mentioning a strong knowledge of Christianity in their reasoning for the decision. Finally, a common denominator for 45 out of 50 decisions is that they contained references to one or more of the following precedent-setting judgments made by the MCA: MIG 2010:11<sup>117</sup>, MIG 2011:29<sup>118</sup>, MIG 2016:1<sup>119</sup>, and MIG 2019:25<sup>120</sup>. The large number of references suggests that the Swedish MCs attach great interpretive value to the MCA's judgments. Among the four precedent-setting judgments made by the MCA, the MCs referred to MIG 2011:29 the most. In this context, it is notable that MIG 2011:29 is the only judgment out of the

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<sup>117</sup> In this judgment, the Swedish MCA stated, among other things, that although the applicant's contact with the Swedish Church, including church activities, was to be considered a new circumstance, her lack of credibility in the information provided did not constitute sufficient support for a re-examination to be granted.

<sup>118</sup> In this judgment, the MCA ruled that when assessing whether an applicant has plausibly demonstrated that the religious conversion is genuine in the sense that it is based on a genuine personal religious conviction, an individual assessment must be made in accordance with the UNHCR Handbook and the UNHCR Guidelines. This assessment must be made based on the circumstances in which the conversion took place and whether the applicant could be expected to live as a convert upon returning to the country of origin. Furthermore, in the case of individuals who has converted after leaving their country of origin, the credibility issue requires particular attention. An applicant whose conversion is not deemed to have been based on genuine conviction has not plausibly demonstrated, that upon returning to his or her country of origin, he or she has the intention of living there as a convert.

<sup>119</sup> In this judgment, the MCA complained that the SMA and the MC had not carried out a thorough and individual assessment of the applicant's conversion, the seriousness of his faith, how the faith was manifested in Sweden, and how he intended to manifest his faith upon return to Iran. Although the SMA and the MC noted that the applicant himself had not invoked his conversion as a ground for asylum, the MCA complained that the authorities failed to carry out the assessment, despite being aware of the applicant's conversion, and ruled that the case should be re-examined.

<sup>120</sup> In this judgment, the MCA ruled that in order for a new examination to become relevant due to a newly invoked circumstance, the new circumstance must, first of all, in itself entail a need for protection. Secondly, the applicant must make it likely that he or she is at risk of protection because of the new circumstance. In that context, there may be reasons to assess the applicant's reasons for not having previously informed about a perceived risk of persecution in the country of origin. However, if the applicant has made it likely that he or she risks persecution upon return to his or her country of origin, it must be assumed that he or she does not consider him- or herself to have had any need for protection on this basis before. There is then generally no reason to question the time when this need for protection should be considered to have arisen.

four judgments in which it is explicitly emphasized that an individualized assessment in conversion cases must be made in accordance with the UNHCR Handbook and the UNHCR Guidelines on Religion-Based Refugee Claims. While this could indicate that Swedish decision makers consistently align their individual assessments with UNHCR guidance, explicit references to the UNHCR Handbook or the UNHCR Guidelines only emerged in 14 out of the 50 decisions. In comparison, none of the decisions contained references to international or regional jurisprudence.

#### 5.4 Interviews with decision makers

The decision makers interviewed from the MC in Malmö were initially asked whether there are any national initiatives to ensure uniform practice in conversion cases amongst the four regional Migration Courts. In this context, each of the decision makers emphasized that the courts follow the same line, as they must conform to the practice of the MCA. As expressed by one of them:

“All four courts follow the practice of the Migration Court of Appeal [...]. I do not think that the Migration Courts judge differently. [...] the Migration Courts have a network. We talk to each other, and we also have meetings with the Migration Court of Appeal.”<sup>121</sup>

This is also supported by the case law analysis, of which 45 of the 50 conversion cases contained references to MCA decisions.

It also became clear from the interviews that some decision makers treat *sur place* conversion claims with a degree of suspicion. Two decision makers explicitly emphasized that they expect more from an applicant who presents his/her conversion motive after the first instance refusal than they expect from an applicant with another asylum motive.<sup>122</sup> According to a decision maker, this is because an applicant cannot “get a completely blank page” when a previous asylum motive has been deemed untrustworthy by the first instance.<sup>123</sup> In line with the various elements of empirical analysis regarding Denmark and Norway, this may thus indicate that a general bias in *sur place* cases exists among Swedish decision makers.

Furthermore, the Swedish decision makers were asked whether they have a structured approach to assessing conversion cases. In this context, the interviewed decision makers similarly emphasized that it is crucial to conduct an overall assessment of all circumstances, but only one decision maker outlined a specific approach to examining conversion cases:

“Among other things, I look at the order in which things happened. I want the applicant to be able to explain the sequence, and for example, to be able to explain if something has happened a little late. It is important for their credibility that they can reasonably explain the entire course of events. I also want them to be able to explain how they look at the risk associated with the conversion. It is also a crucial part of the credibility assessment.”<sup>124</sup>

The decision maker later emphasized that it is more important whether an applicant can meticulously explain the conversion process than whether the applicant can demonstrate an in-depth knowledge

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<sup>121</sup> Interview with decision maker 3 from the Swedish Migration Court in Malmö, 10 March 2023.

<sup>122</sup> Interview with decision maker 3 from the Swedish Migration Court in Malmö, 10 March 2023; Interview with decision maker 4 from the Swedish Migration Court in Malmö, 14 March 2023.

<sup>123</sup> Interview with decision maker 3 from the Swedish Migration Court in Malmö, 10 March 2023.

<sup>124</sup> Interview with decision maker 4 from the Swedish Migration Court in Malmö, 14 March 2023.

of Christianity. Other decisions makers similarly agreed that a credibility assessment in a conversion case is not a test of whether the applicant has a complete knowledge of Christianity.<sup>125</sup> The deciding factor is whether the applicant is able to explain his or her thoughts about the conversion. They further agreed that body language has no significance in this regard, noting that “people are so different.”<sup>126</sup>

One decision maker also emphasized the importance of individualized assessments in conversion cases:

“It is very important that I individualize the assessment based on the person concerned. For example, I can demand more details from a well-educated person than what I can demand from a person who has barely gone to school and who has lived a very isolated life. And some traumatized people may also be likely to forget details, for example. You have to nuance the assessment based on the individual.”<sup>127</sup>

With this statement, the decision maker explained that it is crucial to individualize the credibility assessment in a conversion case based on the applicant’s personal details, such as his/her level of education. The other decision makers did not explicitly emphasize the importance of individualized assessments, but they agreed that a high level of detail<sup>128</sup> as well as internal consistency<sup>129</sup> is crucial for an alleged conversion to appear genuine. Moreover, one decision maker explicitly mentioned that positive decisions in conversion cases are conditioned by the following:

“One has to give an account of the individual faith and explain the conversion process. You must reflect on the fact that you previously had a different religion and that you have replaced it with a new faith. It is crucial that you can explain your thoughts and reflections on the Christian faith.”<sup>130</sup>

A significant level of personal reflection regarding the new faith is thus seen as a precondition for a positive decision. Other decision makers did not explicitly state decisive elements but agreed that it is crucial that an applicant can provide a profound and reflective account of the conversion. When asked how the decision makers would assess whether the applicant’s account of his/her thoughts and reflections on the conversion is genuine, one decision maker emphasized that it depends on what makes “logical sense”.<sup>131</sup> Another decision maker similarly noted that a credibility assessment is about logical thinking, and that vice versa a refusal is usually given if the applicant cannot substantiate the testimony very well.

There was consensus among the interviewed decision makers that external documents, such as country of origin information, baptism certificates and documents corroborating church services or other religious activities, may help substantiate a testimony. However, decision makers had different perceptions as to the weight different forms of external documents should be given in the overall assessment. For example, a decision maker emphasized that it is usually not necessary to include country of origin information in each assessment, as conversion cases always concern Iranian and

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<sup>125</sup> See e.g. interview with decision maker 3 from the Swedish Migration Court in Malmö, 10 March 2023, and interview with decision maker 4 from the Swedish Migration Court in Malmö, 14 March 2023.

<sup>126</sup> Interview with decision maker 2 from the Swedish Migration Court in Malmö, 26 August 2022.

<sup>127</sup> Interview with decision maker 2 from the Swedish Migration Court in Malmö, 26 August 2022.

<sup>128</sup> For example, interview with decision maker 2 from the Swedish Migration Court in Malmö, 26 August 2022.

<sup>129</sup> For example, interview with decision maker 1 from the Swedish Migration Court in Malmö, 25 August 2022.

<sup>130</sup> Interview with decision maker 3 from the Swedish Migration Court in Malmö, 10 March 2023.

<sup>131</sup> Interview with decision maker 2 from the Swedish Migration Court in Malmö, 26 August 2022.

Afghan nationals.<sup>132</sup> Another decision maker conversely mentioned that it is particularly important to assess the most recent country of origin information, as it provides an opportunity to compare the applicant's testimony with details from the reports.<sup>133</sup> This account coincides with the Swedish legal practice note as well as the UNHCR Guidelines on Religion-Based Claims, noting that asylum authorities should always obtain relevant country of origin information in order to determine whether religious converts are likely to be subjected to persecution in the country of origin.<sup>134</sup> However, the MCs only referred to country of origin information in 17 out of the 50 conversion decisions, indicating that the inclusion of country of origin information may depend on the outlook of the individual decision makers.

In relation to other evidentiary material, such as baptism certificates as well as documents corroborating religious services or activities, the decision makers agreed that such evidence alone is not sufficient to support a religious conversion claim. It further emerged from the interviews that one of the most commonly encountered external evidence in conversion cases is the testimonies of church ministers. However, two decision makers had different, yet occasionally overlapping, perceptions as to the evidentiary value of such testimonies. The following excerpts from each interview capture this:

"I think it has a certain significance. However, it is not decisive that a church minister describes his or her assessment of whether the person in question has a Christian conviction. Yet, it may be the case that the person in question finds it difficult to describe his or her subjective conviction or generally has difficulties verbalizing him- or herself. In such cases, it has a certain significance that a church minister describes that it is difficult for the person to explain his or her Christian convictions."<sup>135</sup>

"It appears from the Migration Court of Appeal's practice that there is no written evidence than can corroborate a religious conversion. Hence, the applicant's oral explanation is always decisive [...] and it is difficult for the church minister to report on the subjective conviction."<sup>136</sup>

These statements indicate that individual decision makers may have different, yet partially overlapping, perceptions as to the evidentiary value of the testimonies of church ministers. The interviews further confirmed that all the interviewed decision makers attach considerable interpretive value to the MCA's case practice in conversion cases.<sup>137</sup> A decision maker further emphasized that the case practice of the MCA is echoed in the legal practice note issued by the MA, which also serves as important guidelines in conversion cases.<sup>138</sup> However, disparate accounts emerged in relation to the inclusion of international and regional jurisprudence in conversion cases. While three decision makers confirmed that they consistently engage with international, ECtHR or CJEU jurisprudence, one decision maker mentioned that she did not recall that any international, ECtHR and CJEU judgments had ever influenced her decision-making in conversion cases.<sup>139</sup>

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<sup>132</sup> Interview with decision maker 4 from the Swedish Migration Court in Malmö, 14 March 2023.

<sup>133</sup> Interview with decision maker 3 from the Swedish Migration Court in Malmö, 10 March 2023.

<sup>134</sup> Migrationsverket, 'Rättsligt Ställningstagande: Metod för prövningen då religion, inklusive konversion och ateism m.m. åberopas som asylskäl' (2021), p. 5.

<sup>135</sup> Interview with decision maker 4 from the Swedish Migration Court in Malmö, 14 March 2023.

<sup>136</sup> Interview with decision maker 3 from the Swedish Migration Court in Malmö, 10 March 2023.

<sup>137</sup> Interview with decision maker 1 from the Swedish Migration Court in Malmö, 25 August 2022; Interview with decision maker 2 from the Swedish Migration Court in Malmö, 26 August 2022; Interview with decision maker 3 from the Swedish Migration Court in Malmö, 10 March 2023; Interview with decision maker 4 from the Swedish Migration Court in Malmö, 14 March 2023.

<sup>138</sup> Interview with decision maker 3 from the Swedish Migration Court in Malmö, 10 March 2023.

<sup>139</sup> Interview with decision maker 4 from the Swedish Migration Court in Malmö, 14 March 2023.

The decision makers were also asked whether they rely on other external guidance, such as the UNHCR Guidelines on Religion-Based Claims, when deciding conversion cases. In this context, one decision maker noted that because she has been a decision maker for so long, it is not necessary for her to look at the UNHCR Guidelines anymore.<sup>140</sup> Another decision maker likewise mentioned that there is no need to look at UNHCR guidance, as it has been incorporated into the MCA's practice.<sup>141</sup>

Finally, the decision makers were asked about interpreters and translation in conversion cases. The decision makers mentioned that they have no influence on which interpreter is chosen, but that they generally are satisfied with the interpretation standard at the MC. In this context, they emphasized that they primarily rely on interpreters who are specialized in judicial procedures and terms.<sup>142</sup>

## 5.5 Summary

The preceding sections have examined how conversion cases are adjudicated in Sweden. The legal practice note and the academic textbook analysis showed that Sweden has aligned its practice in conversion cases with the legally binding CJEU joined cases of *C-71/11* and *C-99/11*. The Swedish legal practice is further closely aligned with the UNHCR Guidelines on Religion-Based Refugee Claims. Notably, it follows from the legal practice note that the Swedish asylum authorities must initially obtain relevant country of origin information to familiarize themselves with the potential risks for converts upon return. The authorities must further examine the applicant's personal prerequisites, including whether the applicant has the ability to express him- or herself verbally. The core of the assessment is the applicant's personal reflections on the conversion process, while external evidence as well as the applicant's knowledge of the religion are given secondary value.

The case law analysis of 50 conversion decisions confirmed that the applicant's personal reflections on the conversion process are indeed afforded decisive value in conversion cases. Likewise, the sample of decisions indicated that the applicant's knowledge of the religion as well as external evidence were afforded secondary value in the assessment. Notably, the analysis also showed that the Swedish MCs made explicit references to country of origin information in 17 out of the 50 conversion cases, despite the legal practice note advising the Swedish asylum authorities to carefully examine country of origin information in conversion cases. In comparison, the Swedish MCs referred to decisions made by the MCA in the vast majority of the 50 decisions, indicating that the Swedish MCs attach great interpretive value to the MCA's judgments when deciding in conversion cases.

The interviews with Swedish decision makers confirmed that the MCA's judgments are given significant interpretive value in conversion cases. The interviews further indicate that the inclusion of country of origin information may depend on the outlook of the individual decision makers. For example, a decision maker emphasized that it is important to assess the most recent country of origin information, as it provides an opportunity to compare the applicant's statements with details from the reports. However, another decision maker noted that it is usually not necessary to include country of origin information in each assessment as conversion cases always concern the same nationalities, indicating that she is already familiar with the conditions for some converts upon return due to work

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<sup>140</sup> Interview with decision maker 3 from the Swedish Migration Court in Malmö, 10 March 2023.

<sup>141</sup> Interview with decision maker 4 from the Swedish Migration Court in Malmö, 14 March 2023.

<sup>142</sup> Interview with decision maker 1 from the Swedish Migration Court, 25 August 2022; Interview with decision maker 2 from the Swedish Migration Court, 26 August 2022

experience. From the interviews, it also became clear that decision makers may treat *sur place* conversion claims that emerge after a first instance refusal with some suspicion. Nevertheless, they noted that the applicant's thoughts, considerations and reflections on the conversion process and the Christian faith were decisive assessment elements in conversion cases. They also shared the perception that external documents, such as baptism certificates and documents corroborating church services or other religious activities, may help substantiate a conversion claim.

## 6. CONCLUSION AND RECOMMENDATIONS

The past decade has seen a significant increase in asylum claims based on *sur place* religious conversion across Europe. The development may be linked to a number of different factors, including the risk of persecution in countries of origin faced by individuals who have left their original faith, social structures amongst asylum applicants and churches in countries of asylum, as well as changes in legal practice. Following CJEU joined cases *C-71/11* and *C-99/11*, decision makers can no longer reject religious conversion claims on the basis that the applicant can exercise their faith with discretion upon return. As a result, the decisive question in many such asylum cases is whether the applicant's religious conversion is considered genuine or not. Neither EU law nor international refugee law provide a detailed approach as to how national authorities should assess religious conversion claims in practice. While the UNHCR has developed guidelines to facilitate credibility assessments in such cases, it is still unclear how these guidelines are reflected at the national level. Against this background, this report has examined how religion-based asylum claims concerning *sur place* conversion are adjudicated across the appeal levels in Denmark, Norway and Sweden.

To answer this question, the report draws on four different datasets, each revealing both similarities and differences in the three countries' approach to assessing credibility in conversion cases. For example, national legal practice notes/annual reports as well as academic textbooks show that all three countries experienced a similar practice change based on the impact of the CJEU joined cases of *C-71/11* and *C-99/11*. Nonetheless, a more in-depth analysis of conversion cases indicates that significant differences persist in terms of each country's general orientation towards international jurisprudence and guidance. Among the Danish cases on religious conversion analyzed, only two of the decisions contain specific references to the UNCHR Guidelines on Religion-Based Refugee Claims, and one to the conjoined CJEU judgments; all three cases were from the time period around the CJEU judgments. In comparison, the Norwegian UNE referred to the UNHCR Guidelines in six out of 36 decisions analyzed; and to ECtHR jurisprudence in a similar number of cases. Finally, the Swedish Migration Courts referred to either the UNHCR Handbook or Guidelines in 14 out of the 50 decisions analyzed, as well as principled cases from the Migration Court of Appeal similarly citing UNHCR guidance. However, none of the decisions contained references to ECtHR or CJEU jurisprudence. The relatively small set of sample cases means that one should be careful not to draw overly strong conclusions on this basis. Yet, the interviews with decision makers in each country point to different national approaches, both in terms of when and to what extent regional jurisprudence and guidance is consulted, as well as how explicit this element is featured in the decisions themselves.

The various elements of analysis also show that all three countries align with the UNHCR Guidelines on central elements. For example, the applicant's thoughts, considerations, and reflections are afforded decisive value in the overall credibility assessment, and the applicant's personal prerequisites, such as level of education, are consistently taken into consideration. However, several differences also emerge in this context. Perhaps most significantly, Norwegian decision makers

operate with the evidentiary threshold ‘*reasonably plausible*’ in conversion cases. Moreover, the legal practice note specifically singles out religious conversion claims by Afghan nationals as potentially fraudulent, and advises that decision makers critically examine such cases. Adopting such an assumption against credibility in cases concerning a particular nationality raises significant concerns in terms procedural fairness and discrimination. However, the analyzed sample of case law does not indicate that, as a matter of practice, Norwegian decision makers treat Afghan applicant differently from other conversion cases.

In terms of external evidence, both the Norwegian UNE and Swedish MCs appear to attach relatively less importance to baptism certificates and statements from church ministers, as well as the applicant’s knowledge of Christianity, in the overall credibility assessment. These elements vice versa feature more prominently in conversion decisions from the Danish RAB. The UNHCR Guidelines do not specify how much weight external evidence should be given in an overall credibility assessment, but they explicitly emphasize that decision makers need to assess the existence of corroborating evidence regarding involvement in and membership of the new religion.<sup>143</sup> The Guidelines further underscore that decision makers must avoid making general assumptions or reaching conclusions based solely upon the decision maker’s own experiences, even when the decision maker may belong to the same religion as the applicant.<sup>144</sup>

Overall, the various elements of analysis highlight that despite the development of more standardized procedures and guidance notes, credibility assessments in conversion cases to varying degrees may still be colored by differing approaches, raising questions about procedural fairness and bias.

In all three countries, either the practice note/annual report or interviews indicate that conversion claims, on par with other *sur place* cases, are met with particular suspicion by at least some decision makers, especially where conversion only emerges as a motive during the appeal stage. Neither international refugee law nor the Nordic legal frameworks provide clear guidance on how decision makers should approach the relationship to the original asylum motive when assessing a subsidiary *sur place* motive. Yet, religious conversion is a process which takes time. A bias against applicants who have only formally converted after their initial asylum motive has been rejected risks unfairly disadvantaging applicants who have carefully and more step-by-step embraced a new faith.

The analysis further shows that subjective factors sometimes impact the standard of genuine religious conversion adopted in individual cases. Interviews revealed that some decision makers actively draw on their own background, knowledge or experience of Christianity, both when asking questions and in terms of what level of religious knowledge is expected from the applicant. This raises concerns regarding objectivity when decision makers belong to the same religion as the applicant.<sup>145</sup> The decision makers interviewed moreover differed markedly in their approach in this regard. For example, one Danish decision makers noted that he regularly used his own knowledge of Christianity as a standard that drives the line of questions, whereas the Norwegian decision makers interviewed generally had fewer expectations for details in relation to the applicant’s knowledge of religion.

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<sup>143</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 34-35.

<sup>144</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 27(c).

<sup>145</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 27(c).

The computational analysis moreover suggests that decision makers may exercise a degree of discretion with regard to how extensively conversion motives are examined depending on the facts of the case. In cases where religious conversion appeared alongside other asylum motives, decision makers do not always substantially engage and ask questions to all elements of the conversion motive. This group of cases moreover had a higher rejection rate. It further revealed a possible *gender* bias in conversion cases, with female applicants more likely to be found credible and having a better chance of achieving asylum – despite gender not being a significant factor in the risk assessment according to current country of origin information.

The above findings are consistent with previous research drawing attention to individual biases among decision makers in relation to the level of detail and knowledge required from applicants, a general bias in relation to *sur place* asylum cases, and a gender bias, with female applicants often having a better chance of being perceived as credible than male applicants.<sup>146</sup> While existing empirical research specifically focusing on credibility assessments in religious conversion cases is limited, the findings in this study are consistent with previous research which suggest that intersubjective and cultural factors can have a particular impact on how this type of asylum cases are assessed,<sup>147</sup> and that bias may be held against applicants of a particular nationality based on how many conversion claims have previously appeared.<sup>148</sup> It further speaks to the broader literature on credibility assessments and how assumptions about applicants can impact outcomes.<sup>149</sup>

The analysis further shows that Denmark, Norway and Sweden may have different approaches to the conduct of risk assessments, and the degree to which this is seen as central as emphasized by the UNHCR Guidelines.<sup>150</sup> For example, in several of the analyzed cases the Swedish MCs focus on whether the applicant concerned had ‘a risk mindset’ in order to assess likelihood that the applicant would continue to practice the Christian faith upon a return to the country of origin. The case law analysis and interviews further indicate that the inclusion of country of origin reports in Swedish decision-making may depend on the outlook of the individual decision makers, despite the UNHCR Guidelines highlighting that detailed country of origin information is required to determine whether a fear of persecution is objectively well-founded.<sup>151</sup> In the Norwegian decisions, the UNE regularly considers whether the conversion was a strategic choice. This also points to a potential discrepancy between the UNHCR Guidelines and Norwegian practice, as the Guidelines emphasize that the critical focus of decision makers must be on the risk of persecution upon return and not on whether *sur place* activities are self-serving.<sup>152</sup> Nonetheless, risk assessments and detailed references to country

<sup>146</sup> A. Macklin, ‘Truth and Consequences: Credibility Determination in the Refugee Context’, in International Association of Refugee Law Judges, 1998; and, ‘The Truth about Credibility’, in International Association for Study of Forced Migration, 2006; H. Evans Cameron, ‘Risk Theory and Subjective Fear: The Role of Risk Perception, Assessment, and Management in Refugee Status Determinations’, in 20 INT’L J. REFUGEE L. 567, 2008; J. Ramji-Nogales, A. I. Schoenholtz & P. G. Schrag, ‘Refugee Roulette: Disparities in Asylum Adjudication’, in Stanford Law Review at Stan. L. Rev. 295, 2007; S. Rehaag, ‘Judicial Review of Refugee Status Determinations: The Luck of the Draw?’ in Queen’s Law Journal, Vol. 38, No. 1, 2012; E. Neumayer, ‘Asylum recognition rates in Western Europe: their determinants, variation and lack of convergence’, in Journal of conflict resolution 49(1), 2005.

<sup>147</sup> L. Rose and Z. Given-Wilson, ‘What Is Truth? Negotiating Christian Convert Asylum Seekers’ Credibility’, in The Annals of American Academy of Political and Social Science, Vol. 697 (1), 2021; M. Kagan, ‘Refugee Credibility Assessments and the “Religious Imposter” Problem’, in Scholarly Work 629, 2010; L. Rieder, ‘Assessing credibility in conversion-based asylum claims’, in IJRF Vol. 15:1, 2022.

<sup>148</sup> B. Baade and L. Götz, ‘An Empirical Analysis of Credibility Assessments in German Asylum Cases’, in German Law Journal, 2023.

<sup>149</sup> J. Herlihy, K. Gleeson, and S. Turner, ‘What Assumptions about Human Behaviour Underlie Asylum Decisions?’ in 22 International Journal of Refugee Law 351, 2010; R. Dowd et al, ‘Filling Gaps and Verifying Facts: Assumptions and Credibility Assessment in the Australian Refugee Review Tribunal’, in International Journal of Refugee Law 30(1), 2018.

<sup>150</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 35.

<sup>151</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 35.

<sup>152</sup> UNHCR, Guidelines on international protection No. 6: Religion-Based Refugee Claims, para. 36; see also UNHCR, ‘The Office of the United Nations High Commissioner for Refugees Statement on the interpretation of Article 5(3) of the EU Qualification Directive regarding subsequent applicants for international protection based on *sur place* religious conversion’, 3 February 2023.



of origin reports were included in the vast majority of the Norwegian decisions. This stands in contrast to the Danish case law, where risks assessments and references to country of origin information rarely feature as an explicit element for consideration, but the practice concerning Afghan and Iranian converts risking persecution upon return to their country of origin vice versa well established.

In sum, the report thus highlights significant differences in relation to both the actual assessment of religious conversion cases and what types of consideration are given emphasis in the legal reasoning of decisions by appeal bodies in Denmark, Norway and Sweden, as well as among individual decision makers within the same asylum system. These differences relate to e.g. the explicit inclusion of country of origin information and references to international, regional and national jurisprudence and guidance in national decision-making, the use of specific credibility indicators, and the value attached to external evidence, such as testimonies of church ministers. While it should be recognized that there can be particular difficulties associated with assessing asylum claims based on religious conversion in regard to both the subjective faith element and the timing at which such claims are presented, the findings of this report thus suggest that this type of cases is particularly prone to different type of bias and inconsistency that risk impacting fair and objective decision making.

On this basis, this report recommends that the following considerations be reflected in national assessments concerning religious conversion claims.

### **Credibility assessments**

The report shows that national legal practice notes (or in the case of Denmark, annual reports) remain an important tool not only in terms of ensuring a more uniform approach to credibility assessments in conversion cases, but also in terms of effectively communicating relevant jurisprudence and guidance to individual decision makers.<sup>153</sup> At the same time, however, national practice clearly vary, both in terms of their level of detail and the degree to which they reflect UNCHR guidelines. To effectively ensure national harmonization of decision-making, it is recommended that national practice notes as a minimum reflect the following assessment elements: the motivation for the conversion process, including the applicant's reflections, thoughts and considerations about converting; the personal significance of the new religion for the applicant; the extent of the applicant's knowledge of the religion; and how the applicant practices the religion in the country of asylum. Beyond the need to ask open questions and try to elicit the motivations for conversion and what effect the conversion has had on the applicant's life, decision makers should further be advised to ask structured follow-up questions if the applicant's statement and initial answers appear vague or insufficiently detailed.

### **Country of origin information and risk assessments**

The report indicates that individual decision makers sometimes consider country of origin information more statically, as opposed to regularly consulting the most recent country of origin reports. Country of origin information examinations and risk assessments are almost absent in some cases where decision makers consider the alleged conversion as untrustworthy or self-serving. This

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<sup>153</sup> Flygtningenævnet, 'Formandskabet, 31. beretning 2022' (2023); Utlendingsnemnda, 'Praksisnotat: Forfølgelse på grunnlag av religion' (2022); Migrationsverket, 'Rättsligt Ställningstagande: Metod för prövningen då religion, inklusive konversion och ateism m.m. åberopas som asylskäl' (2021).

entails a risk that asylum authorities do not sufficiently assess the more recent developments and risk of persecution in the country of origin in relation to each individual case. It is therefore recommended that decision makers always conduct thorough risk assessments with an emphasis on updated country of origin information to ensure that individuals who are objectively at risk of persecution are entitled to international protection in accordance with Article 1A(2) of the 1951 Refugee Convention and the UNHCR Guidelines.

## **Dialogue and discussions**

Noting the significant differences in both approaches to and criteria for establishing the genuineness of conversion in religion-based asylum claims, transnational cooperation and inter-State dialogue may be important to ensure continuous dialogue and identification of best practices across national jurisdictions. Such dialogue may be facilitated by UNCHR, as part of its supervisory mandate in relation to the 1951 Convention Relating to the Status of Refugees. Yet, it may also be useful to facilitate more informal discussions between national asylum authorities at the Nordic or international level, or thematic discussions among practitioners in the context of e.g. the International Association of Refugee and Migration Judges, or as part of cross-sectoral forums, such as the Nordic Asylum Law Seminars.

## **Effective disclosure in conversion cases**

It is recommended that asylum authorities implement measures to improve disclosure in conversion cases. Religious conversion is an individual process that for many culminate later than their original arrival in the host State or the initial submission of an asylum claim. As a result, assessments of conversion motives are often carried out after or immediately before the appeal stage, and with more limited opportunities for decision makers to carry out an in-depth examination of this asylum motive and to compare new testimony with earlier explanations. Different measures may be considered to mitigate this issue. Appeal level decision makers may firstly consider a priori remanding *sur place* religious conversion claims to the first instance and thus ensure a two-instance consideration of the new asylum motive. Alternatively, decision makers may appoint consultants with a background in theology or sociology of religion to conduct structured interviews with applicants about their conversion as a supplement to the oral and written testimony submitted as part of the current legal process.

## **Quality of interpretation**

This report indicates that Danish and Norwegian decision makers, in particular, have concerns about the quality of interpretation and occasionally encounter inadequate interpreters. From the various elements of analysis, it cannot be inferred whether the interpreters impact the credibility assessment negatively, for example, by making the applicants explanation appear insufficiently detailed or imprecise in terms of documenting the applicant's religious knowledge. However, based on the findings of this report, it is recommended that national asylum authorities ensure that interpreters are adequately trained on thematic areas, including religious conversion, to ensure that they are capable of adequately communicating relevant concepts, holidays etc. The issue of how interpretation may impact outcomes in Nordic asylum systems is moreover an area that would benefit from further research, also beyond the specific issue of religious conversion.

## **The role of religious institutions**

Religious institutions, such as churches, may play an important role in supporting an asylum authority's credibility assessments of the religious conversion. However, previous research in the Nordic context shows that not all church organizations have a detailed understanding of the legal asylum process and that religious actors disagree on how best to contribute to the legal process from an ecclesiastical perspective.<sup>154</sup> This report therefore recommends that asylum authorities and relevant religious communities facilitate a structured dialogue to create a better reciprocal understanding of the conversion process, and encourage national church organizations to develop their own guidelines for church ministers in this area.

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<sup>154</sup> Folkekirkens Mellemkirkelige Råd, 'Rapport om troværdighedsvurderingen af konvertitter i det danske asylsystem', Jensen Print 2017.

## ANNEX 1: INTERVIEW QUESTIONS

Key questions include:

<i>When do asylum motives concerning religious conversion typically appear?</i>	<i>According to you, what are the typical reasons for giving a permit? Conversely, what are the typical reasons for giving a refusal?</i>
<i>Do you have a structured approach to assessing credibility in conversion cases? If so, what does it entail?</i>	<i>How is country of origin information included in conversion cases? How is it chosen and what significance does it have in an overall assessment?</i>
<i>Do you ask particular questions? Which questions?</i>	<i>What about other external evidence, such as witness statements and baptism certificates?</i>
<i>How are the applicant's personal statements and reflections weighed against the applicant's knowledge of the religion in a credibility assessment?</i>	<i>Do you use UNHCR guidance, such as the UNHCR Handbook or UNHCR Guidelines in your assessment? How (why not)?</i>
<i>Do you rely on any particular credibility indicators in your assessment? If so, how?</i>	<i>Do you use other guidance in your assessments?</i>
<i>Do the interviews that the first instance conducted with the applicant have significance in your assessment? What about the first instance decision? Why (not)?</i>	<i>Do you include ECtHR, CJEU and national jurisprudence in your assessments? Why (not)?</i>
<i>When does a testimony appear untrustworthy?</i>	<i>Do you have an influence on which interpreter is chosen? How can you be sure that the translation is correct?</i>