



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2443/2014*, **

<i>Communication submitted by:</i>	S.Z. (represented by counsel, Jytte Lindgard)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Dates of communication:</i>	7 July 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 7 October 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	13 July 2016
<i>Subject matter:</i>	Non-refoulement; torture; right to liberty and security of person.
<i>Procedural issue:</i>	Admissibility — manifestly ill-founded
<i>Substantive issues:</i>	Non-refoulement; torture
<i>Articles of the Covenant:</i>	7 and 9
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is S. Z., a Russian national of Chechen ethnicity born in 1954. The author's asylum claim was rejected in Denmark and her deportation was set for 23 July 2014. She claims that she would be the victim of a violation by Denmark of her rights under articles 7 and 9 of the Covenant if she were deported to the Russian

* Adopted by the Committee at its 117th session (20 June-15 July 2016).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



Federation. The author is represented by counsel. The Optional Protocol entered into force for Denmark on 23 March 1976.

1.2 On 18 July 2014, pursuant to rules 92 and 97 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from removing the author to the Russian Federation while her communication was under consideration by the Committee.

1.3 On 31 March 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request to lift the interim measures.

The facts as submitted by the author

2.1 The author is an ethnic Chechen. She has six children. Her oldest son was officially considered a rebel, fled Chechnya and was granted asylum in Denmark on 28 May 2010. In 2010, the author's other son also fled from home since he could not bear the authorities' constant searches and interrogations. The author has not been in contact with him since then. Two of the author's daughters have left for Ingushetia. Her third daughter lives in Germany, where she has obtained a residence permit, and her fourth daughter still lives in Chechnya. In Chechnya, the author was baking and selling bread to supplement her retirement benefits. Since her stand was close to a forest, the authorities believed that she sold bread to the rebels and sympathized with them.

2.2 Since the author's oldest son's departure from Chechnya, the authorities have visited the author's house on many occasions inquiring about his whereabouts. In November 2012, the author was detained for about a week because she was accused of supplying the rebels with bread and on the grounds that her son had helped the rebels and she therefore had probably also helped them. She was beaten with a baton and given electrical shocks through wires on her fingers until she lost consciousness.¹ She was taken to a hospital, where the staff told her that she had suffered a heart attack, then subsequently escaped, aided by her niece's friend who was a nurse there. The author fled to Nazran, Ingushetia, and left about two months later for Denmark. In Chechnya, the authorities continued to look for the author, visiting and searching her house 4-5 times a month.

2.3 On 30 March 2013, the author entered Denmark without valid travel documents and applied for asylum. She was interviewed by the police on 11 April 2013 and by the Danish Immigration Service on 24 October 2013. On 25 November 2013, the Service rejected her asylum claim on the ground that the explanation regarding her conflict with the authorities lacked credibility and had been fabricated for the occasion.² The Service found it unlikely that she would have been tortured as a result of selling bread. It admitted that the author could have been approached by the authorities owing to her son's conflict with them but,

¹ The author was not represented by a lawyer before the Danish Immigration Service. She did not submit a medical certificate or similar documentation. In March 2014, however, in her request that the Danish Refugee Appeals Board reopen the asylum proceedings, she submitted a letter dated 5 February 2014 from the director of the "independent information analysis agency" Objective, a Chechen non-governmental organization, confirming that the author's daughter had sought assistance from Objective in December 2012, following the author's arrest and detention. It confirms that the author was tortured by military personnel and hospitalized in the Ninth City Hospital and that her daughter had arranged for the author's departure from Chechnya. The organization also confirmed that the Russian authorities were still searching for the author and her oldest son.

² The author provided the Danish authorities with written consent to carry out a medical examination in order to assess whether she was a victim of torture. The Danish authorities did not carry out such examination.

since she stayed for a couple of years in Chechnya after her son's departure and the authorities were only looking for her son, the Service did not consider her to be in danger of persecution. On 6 March 2014, the Refugee Appeals Board rejected the author's asylum claim for lack of credibility. On 24 March 2014, the author requested the Board to reopen the asylum proceedings. In an attempt to prove that the authorities were still searching for her, she submitted two summonses, a wanted person notice, letters from her family and neighbours, and a letter from a non-governmental organization in Chechnya.³ The author claims that the Ministry of Foreign Affairs of the State party assessed the authenticity of the documents. On 1 July 2014, the Refugee Appeals Board refused to reopen the case. It considered the documents submitted by the author inauthentic and concluded that it had not been provided with significantly new information or opinions concerning the case.

The complaint

3. The author claims that, if deported to the Russian Federation, she would be at risk of torture and arbitrary detention, contrary to articles 7 and 9 of the Covenant, since she is considered a rebel sympathizer and her son was actively involved with the rebels. She maintains that her son's activities do not seem to be taken seriously by the Refugee Appeals Board.

State party's observations on admissibility and the merits

4.1 On 19 January 2015, the State party submitted its observations on admissibility and the merits of the communication. In its observations, the State party provides a detailed description of its refugee status application proceedings, the legal basis and the functioning of the Refugee Appeals Board.⁴

4.2 The State party reports that, on 28 May 2010, the author's son was granted asylum under section 7 (1) of the Danish Aliens Act. According to the case documents relating to the author's son, he relied on his fear of the Chechen authorities, which suspected him of having assisted the rebels. The son stated during his asylum proceedings that he was arrested and detained for 45 days by the Russian authorities during the first war in Chechnya in 1996 and that he had also been subjected to physical abuse. In 1999, he joined the rebels. He was injured during fighting and had therefore gone home. In 2006, he was interrogated by the police about his role among the rebels. He signed a document saying that he had helped General Galaev. He was granted amnesty for his actions. In October 2009, he helped a rebel acquaintance procure various food items and tools for the rebels. In November 2009, his workplace was searched by Russian military forces. He was taken to the police station on that occasion and was shown photographs, from among which he pointed out two acquaintances. He was fingerprinted. The next day, he took up residence with a relative in Naurskij and hid there until his departure in February 2010. Upon his arrival in Denmark, his brother said that, in connection with a search for rebels, some items had been found with his fingerprints on them. It also appears from the case file of the

³ The documents submitted by the author on 25 March 2014 are the following: (a) two summonses (one dated 11 April 2013 and one undated) for a person named S.Z. to appear for questioning as a witness; (b) a letter dated 7 March 2014 from a neighbour; (c) a personal card; (d) a letter dated 7 March 2014 from K.T.M., the author's niece, confirming that the author had been hospitalized in March 2013 at the hospital where she worked and that K.T.M.'s friend helped the author leave the hospital; and (e) a letter dated 31 March 2014 from K.M.M., the author's brother. The documents submitted on 26 March 2014 are the following: (a) an undated "wanted person" notice concerning the author; and (b) the letter dated 5 February 2014 signed by the director of the organization Objective (see footnote 1).

⁴ For a full description, see communication No. 2379/2014, *Obah Hussein Ahmed v. Denmark*, Views adopted on 7 July 2016, paras. 4.1-4.4.

author's son that the Danish Immigration Service accepted his statement as fact and concluded that it could not be ruled out that he had become of interest to the authorities because of his activities.

4.3 In connection with the summonses submitted to the Committee and the contention that the authorities were still pursuing the author, the State party challenges the author's counsel's statement that the Refugee Appeals Board has not taken into consideration the fact that although the Danish Immigration Service had the authenticity of the summonses assessed through the Ministry of Foreign Affairs, their authenticity could not be established with certainty. The State party observes that the Service did not request an assessment of the authenticity of the summonses through the Ministry of Foreign Affairs. The State party also observes that the author's counsel submitted that the author's medical records⁵ did not indicate that she had been tortured but that she was a poor sleeper, that she suffered from nightmares and headaches, that she was worried and that she wanted to see a psychologist. Accordingly, the Danish authorities did not examine the author for signs of torture, despite the consent granted by the author for such an examination to be carried out.

4.4 The State party submits that the author has failed to establish a prima facie case for the purpose of admissibility under article 7 of the Covenant. It considers that the author has not established that there were substantial grounds for believing that she would be in danger of being tortured in the Russian Federation. The State party therefore considers that part of the communication inadmissible. As to the claim of a violation of article 9 of the Covenant, the State party observes that the author's counsel has only asserted that returning the author to the Russian Federation would violate this provision, without establishing how the author risks treatment contrary to article 9. The State party is not aware of any findings made by the Committee that article 9 of the Covenant can be deemed to have extraterritorial effect. It also refers to the judgment of the European Court of Human Rights of 17 January 2012 in *Othman (Abu Qatada) v. the United Kingdom*,⁶ concerning article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which is similar to article 9 of the Covenant. With respect to article 5 of the European Convention on Human Rights, the crucial factor when assessing whether that provision can be deemed to have extraterritorial effect hence is whether there is a real risk of a flagrant breach of that article, and a high threshold applies. For these reasons, and because the author has not sufficiently substantiated that there are substantial grounds for believing that her rights in this regard will be violated in the Russian Federation, the State party submits that the author has failed to establish a prima facie case for the purpose of admissibility under article 9 of the Covenant.

⁵ Medical records were not part of the submission. There is no further information on such records. It is not clear, but it appears that the medical records referred to in paragraph 4.3 were produced within the State party. (In an e-mail dated 17 July 2014 addressed to the Committee, the counsel refers to "the author's medical journal from Denmark".)

⁶ Paragraph 233 of the judgment reads:

The Court therefore considers that, despite the doubts it expressed in *Tomic*, it is possible for Article 5 to apply in an expulsion case. Hence, the Court considers that a Contracting State would be in violation of Article 5 if it removed an applicant to a State where he or she was at real risk of a flagrant breach of that Article. However, as with Article 6, a high threshold must apply. A flagrant breach of Article 5 would occur only if, for example, the receiving State arbitrarily detained an applicant for many years without any intention of bringing him or her to trial. A flagrant breach of Article 5 might also occur if an applicant would be at risk of being imprisoned for a substantial period in the receiving State, having previously been convicted after a flagrantly unfair trial.

4.5 The State party agrees with the Refugee Appeals Board's assessment that the claim that the author had been contacted by the authorities because of her son's situation did not in itself establish a basis for granting asylum to her, nor did her son's situation, in itself, establish a basis for granting asylum. It observes in this respect that the author's son left the country in February 2010, that the author was subsequently contacted by the authorities several times inquiring about the whereabouts of her son (but they did not abuse the author on those occasions) and that there is no basis for assuming that family members of persons connected to the Chechen rebels are usually pursued by the authorities.⁷ The State party also finds that the author's son was not a high-profile member of a Chechen rebel group, nor did he belong to a group of people who would be at a particularly high risk of being abused by the Chechen authorities should the author return to her home region. It observes that it appears from the author's own statements in connection with the case that she moved to Ingushetia after her son's departure because she was tired of being contacted by the authorities, that she then moved back to Chechnya because she preferred to go home and that she subsequently stayed there even though the authorities continued to ask her about her son.

4.6 As to the author's alleged conflict with the authorities because of her sales of bread, the Refugee Appeals Board could not accept the author's statement as fact. The Board emphasized in its assessment that the author had not been politically active, appeared to be a very low-profile individual and had had no previous problems with the authorities, except that she was contacted by the authorities as a result of her son's conflict and except for the circumstances leading to her departure. It also found it less convincing that the author would attract the authorities' attention merely because she sold bread to the rebels. The author's statement about her escape from a hospital to which she had been taken after having been tortured and about having suffered a heart attack appeared to lack credibility. The State party observes in this respect that the author stated, regarding her arrest in November 2012, that the authorities came to her home one night and arrested her because she had been accused of providing rebels with bread. The police also argued that her son had helped the Chechen rebels and that she had probably also helped them. The author was detained in a prison for about a week, during which she was subjected to torture. The police told the author to confess to having baked bread and supplied it and other food items to rebels. The police said that she would not get out alive unless she signed what she was asked. She was not accused of doing anything other than selling bread to the rebels and helping them by getting items for them. The police told her that they would find and kill anyone who had helped the rebels. The author was beaten all over her body with a baton and was given electrical shocks. Wires were put on her fingers and, when the handle of the box was turned, she was given electrical shocks. She lost consciousness and woke up some time later in a hospital. A friend of the author's niece, who worked at the hospital, told the author that she had had a heart attack and she helped the author get away from the guards at the hospital using an elevator. It was a large hospital and no one, not even the guards, saw them escape. The author was put in a taxi, which took her to Ingushetia, where her daughter and son-in-law lived. The author stayed in Ingushetia until 23 March 2013 and subsequently left the Russian Federation. At the time of submitting the communication, she

⁷ As regards the background information on the situation of family members of persons connected to the Chechen rebels, reference is made to the information on page 61 of *Chechens in the Russian Federation: Residence Registration, Racially Motivated Violence and Fabricated Criminal Cases*, a joint report of the Danish Immigration Service and the Danish Refugee Council dated August 2012 (document No. 260 on the list of background material on the Russian Federation available to the Refugee Appeals Board), from which it appears that particularly close male family members of persons connected to rebel groups risk attracting the attention of the Chechen authorities.

was in contact with her family, including her brother and her daughters. Her family has informed her that the authorities are still asking for her and her son's whereabouts.

4.7 With respect to the author's detention in November 2012, the State party agrees with the assessment made by the Refugee Appeals Board that the information cannot be accepted because the events described, both seen in isolation, appear unlikely, particularly in view of the information given by the author on her personal circumstances, including events after her son's departure in 2010 and other background information. The State party observes that, according to the information she submitted, the author has not had any connection with the Chechen rebels. She therefore appears to be a low-profile individual. It appears unconvincing that the author would have become a person of interest to the authorities merely for having sold bread outside her home to passers-by whose identity she ignored. It also appears unlikely that she was able to leave the intensive care unit dressed in a staff uniform with help from an acquaintance without being noticed by anybody, considering that she was 58 years old at that time and had, according to her own statement, been subjected to torture, including blows and electric shocks, while detained by the police for a week, the consequence being that she lost consciousness and had, according to the hospital staff, suffered a heart attack. Finally, it seems unlikely that the authorities would have used as many resources as stated by the author to search for her after her escape and that she could stay two months in Ingushetia without being contacted by them.

4.8 With respect to the documents produced, the State party observes that the Refugee Appeals Board considered the alleged summonses, the letter from the author's neighbour, the alleged notice of the author as a wanted person and the letter from the Chechen organization Objective and found that it could not attach any evidential importance to the documents because, based on their contents and the time of their appearance, they appeared fabricated for the occasion. The Board found that the author had failed to give a reasonable explanation of why she had not produced documentation in support of her request for asylum earlier,⁸ considering that she had had regular contact with her family in her country of origin after her entry in Denmark in March 2013. The alleged summonses and wanted person notice too were undated and, based on their language and contents, appeared not to be genuine. Therefore, the State party cannot accord said documents any evidentiary value.

4.9 With respect to the submissions made by the author's counsel that the Refugee Appeals Board failed to request an examination for signs of torture despite the author's consent, the State party observes that when the Refugee Appeals Board considers an asylum seeker to fall under section 7 of the Aliens Act, the Board may decide to adjourn proceedings pending the examination of the asylum seeker for signs of torture even when it finds the person's statements, including those relating to torture, to be subject to some uncertainty. The Board normally does not order such an examination when the asylum seeker has appeared not credible throughout the proceedings and the Board therefore has to reject the asylum seeker's statement about torture in its entirety. Because the Board could not accept as fact the information provided by the author concerning her grounds for seeking asylum, it has not requested an examination of the author for signs of torture.

4.10 The Board made a thorough assessment of the author's credibility and found that she had failed to establish a probable risk of persecution or abuse in the Russian Federation, which would justify asylum. The author's communication to the Committee merely showed

⁸ The submission made by the author's counsel that the Danish Immigration Service requested an assessment of the authenticity of those summonses through the Ministry of Foreign Affairs is incorrect. The author's counsel only produced those documents after the Refugee Appeals Board refused asylum on 6 March 2014, so the documents obviously were not considered when the application for asylum was examined by the Service.

her disagreement with the assessment made by the Board. She failed to identify any irregularity in the decision-making process or any risk factors that the Board had failed to take properly into account. The State party believes that the author is actually attempting to use the Committee as an appellate body and have the factual circumstances of her case reassessed. The Committee must give considerable weight to the facts found by the national authorities and the Refugee Appeals Board, which is better placed to assess all the factual circumstances of the author's case.

Authors' comments on the State party's observations

5.1 In her comments of 23 February 2015, the author states that, according to information from her neighbours, the authorities in Chechnya (both federal and local) keep monitoring her house. The local police and federal authorities have also asked the author's brother about her whereabouts but have not delivered any written summonses to him.

5.2 With regard to the summonses, she claims that she delivered them to the State party's authorities as soon as she received them and that she had not known about their existence at an earlier stage. The summonses were given to the author's brother, who gave them to her daughter, but her daughter visits Chechnya only every second month.

5.3 The author also claims that, in 2010, after her son escaped to Denmark, she fled to Ingushetia, where her daughter and son-in-law lived, because the authorities continually came and inquired about her son. At the time, the authorities were not pursuing her, only her son, but she feared that "they would suddenly start causing problems for her", as they often came after close family members of former rebels. The author thus felt harassed by the authorities, although she was not actually assaulted at that time.

5.4 The authorities began to target the author when she returned to Chechnya, moved back to her house and opened a small bread store. They claimed that she was not only a rebel sympathizer, but a rebel herself. After being arrested, during the interrogations, the author refused to sign a statement that she had not only sold bread to the rebels, but also that she had willingly helped the rebels. She was beaten many times with rubber clubs all over her body and finally electricity was administered through her fingers. She still had marks from the beatings on her right arm, where welts could be felt. After the punches and electric shocks, she fainted and has no recollection how she was transported to the hospital.

5.5 According to the State party, the author's son is not a high-profile member of a Chechen rebel group. According to the author, however, a suspected rebel need not have a high profile to be targeted by the authorities.

5.6 The State party finds it unlikely that the author was able to escape from the hospital. The author submits that she was assisted by a young nurse, a friend of her niece. Subsequently, that nurse faced problems and fled Chechnya. The nurse dressed the author in a white lab coat and a white cap. They left the hospital through the main entrance at around noon, a time when there were many people in the facility. The author was taken away by private taxi, a common means of transportation. The trip from the hospital in Grozny to Nazran where the author's daughter lives took about one and a half hours.

5.7 As to her credibility, the author argues that she has been subjected to torture and that people with legal backgrounds are not the best positioned to assess whether torture has taken place. Such an assessment should be made by specialists with the required expertise. She refers to the Committee against Torture finding in *Rong v. Australia*,⁹ according to

⁹ See communication No. 416/2010, *Rong v. Australia*, decision adopted on 5 November 2012, para. 7.5.

which complete accuracy is seldom to be expected by victims of torture. She also stresses that she was not represented by a lawyer before the Danish Immigration Service.

5.8 The author states that the State party's authorities were using outdated information and that, according to the new report of the Government of Denmark on Chechnya, the situation in the country has worsened, persecution of suspected rebels of all levels, not only of the high-profile rebels, is now ordered and that all members of the rebel's family, not only the male relatives, can be targeted by the authorities.¹⁰ The author also claims that the Refugee Appeals Board did not investigate her allegations of torture and was not suited to determine whether she was tortured. It should have ordered a medical examination. She also submits that the decision of the Board does not even address her allegations of torture.

State party's additional observations

6.1 In its observations dated 26 June 2015, the State party recalls its observations of 19 January 2015 and maintains that the author's submission lacked credibility. With respect to the most recent background information on Chechnya, including a report published in January 2015, the State party considers that it does not give a picture of the situation in Chechnya that differs significantly from that which the Board had already when it made its decision on 6 March 2014. It finds that the reference to the most recent background material does not lead to a revised assessment of the case.

6.2 Finally, the State party observes that, even in cases in which the Danish Immigration Service asks an asylum seeker to consent to an examination for signs of torture because he or she claims to be a victim of torture, the asylum seeker cannot expect to be summoned for such examination. As indicated in the State party's observations of 19 January 2015, the Service and the Refugee Appeals Board "will not initiate an examination of an asylum seeker for signs of torture if the asylum seeker's statement on his or her grounds for asylum cannot be considered a fact".

Author's additional observations

7.1 In her observations dated 10 August 2015, the author disagrees that the January 2015 report does not give a picture of the situation in Chechnya that differs significantly from that formed by the Board in 2014. On the contrary, that report contains new and important information on the persecution of family members of insurgents like the author's son.¹¹

7.2 As to the State party's explanation that the Danish Immigration Service does not initiate the examination of an asylum seeker for signs of torture if the asylum seeker's statement on his or her grounds for asylum cannot be considered a fact, the author argues

¹⁰ The report *Security and Human Rights in Chechnya and the Situation of Chechens in the Russian Federation: Residence Registration, Racism and False Accusations* on the Danish Immigration Service's fact-finding mission to Moscow, Grozny and Volgograd (23 April-13 May 2014) and Paris (3 June 2014) was attached to the author's comments.

¹¹ On page 135 of the report *Security and Human Rights in Chechnya* (see footnote 11), it is written that "close relatives are fathers, mothers, brothers and sisters" and that "it would be the exemption if the Chechen authorities would pay that kind of attention to more distant relatives of suspected active insurgents as well as relatives of suspected supports". It is also written that "there has been a breakdown of traditional values in the Chechen society and for examples women can no longer be considered safe from physical violence if they are detained or arrested. However, women are not exposed to beatings and other forms of physical violence if in police custody as often as male detainees".

that this is circular reasoning, because an investigation for torture could confirm if the asylum seeker's statements are wrong or correct.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol to the Covenant.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee takes note of the author's claim that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee has taken note, first, of the author's general claims regarding a possible arbitrary detention she may face if returned to the Russian Federation, in violation of her rights under article 9 of the Covenant. In that connection, the Committee recalls paragraph 12 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The Committee considers that the author has failed to provide sufficient information and factual support regarding this particular claim. In the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate this claim for the purposes of admissibility. Accordingly, it declares that part of the communication inadmissible under article 2 of the Optional Protocol.

8.5 The Committee notes the State party's argument that the author's claims under article 7 of the Covenant should be declared inadmissible as manifestly unfounded since the author has failed to establish a *prima facie* case for the purposes of admissibility owing to insufficient substantiation. However, the Committee considers that the author has adequately explained the reasons for fearing that her forcible return to the Russian Federation would result in a risk, for her, of a treatment incompatible with article 7 of the Covenant.

8.6 Accordingly, the Committee considers that the communication is admissible in so far as it raises issues relating to article 7 of the Covenant and proceeds with the examination of its merits.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

9.2 The Committee must decide, first, whether the author's removal to the Russian Federation would constitute a violation of her rights under article 7 of the Covenant. In this connection, the Committee recalls its general comment No. 31, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk

of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal¹² and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.¹³ Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹⁴

9.3 In the present case, the Committee observes that the reports on the human rights situation in Chechnya and the situation of Chechens in the Russian Federation invoked by the parties¹⁵ indicate, as also confirmed by the Office of the United Nations High Commissioner for Refugees in Moscow, that relatives of suspected insurgents or relatives of alleged supporters of the insurgents would face a lot of pressure by the authorities and that family members could be called in for questioning, which could include everything from a slap in the face to severe beatings depending on the specific circumstances of the case and the individual police officers¹⁶ conducting the interrogations. Those reports also indicate, however, that women are not exposed to beatings and other forms of physical violence in police custody as often as male detainees.

9.4 The Committee notes that in the instant case neither party contests the fact that the author is a Russian national of Chechen origin, that she has not been a member of any political organization and that she has not been politically active. It also notes that the author does not argue that she participated, supported or was otherwise involved in Chechen rebel activities. The Committee notes her claims that she has been perceived by the authorities as a rebel sympathizer because of her son's activities and because of her selling bread to possible rebels, and that as a result she was detained, ill-treated and tortured by the police in November 2012, prior to her departure from the Russian Federation. Against this background, the Committee notes that the Refugee Appeals Board rejected the author's asylum request on 6 March 2014 and her request on 1 July 2014 that her case be reopened, considering that the author had failed to substantiate her claim that she would be at risk of persecution or torture if returned to the Russian Federation.

9.5 The Committee recalls its jurisprudence that important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice,¹⁷ and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine

¹² See communications No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.2; No. 282/2005, *S.P.A. v. Canada*, decision of inadmissibility adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision of inadmissibility adopted on 15 November 2010; No. 344/2008, *A.M.A. v. Switzerland*, decision of inadmissibility adopted on 12 November 2010; No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6; and No. 2347/2014, *K.G. v Denmark*, Views adopted on 22 March 2016, para. 7.2.

¹³ Communications No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18; and No. 2347/2014, *K.G. v Denmark*, Views adopted on 22 March 2016; para 7.2.

¹⁴ *Ibid.*

¹⁵ See, inter alia, *Chechens in the Russian Federation* (see footnote 8) and *Security and Human Rights in Chechnya* (see footnote 11).

¹⁶ See *Security and Human Rights in Chechnya* (see footnote 8), sect. 4.8, "Family members to active members of the illegal armed groups and family members to supporters of the illegal armed groups".

¹⁷ See communications No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.3; and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

whether such a risk exists.¹⁸ In the instant case, the Committee observes that the Danish Immigration Service refused the author's asylum request, that the author appealed that decision and that the Refugee Appeals Board upheld the former decision. The Committee notes that, in examining the author's asylum request, the Board reviewed the author's allegations making a specific and individual risk assessment, taking into due consideration reports containing information concerning the situation of Chechens in the Russian Federation.

9.6 It further notes the Refugee Appeals Board's assessment that the situation of the author's son (who was granted asylum in 2010 owing to his conflict with the authorities between 1999 and early 2010 and who has not been an active insurgent since then) does not in itself form a basis for granting asylum to the author; that the fact that the author has been contacted by the authorities because of her son's situation does not form a basis for granting asylum to the author; that the author's son left the country in February 2010 and that the author was subsequently contacted by the authorities several times to ask for her son's whereabouts without, however, exposing her to abuse on those occasions; that the author's son was not a high-profile member of a Chechen rebel group and that the author does not belong to a group at particularly high risk of being abused by the Chechen authorities should she return to her home region; and that she moved to Ingushetia after her son's departure because she was tired of being contacted by the authorities, she then moved back to Chechnya because she preferred to go home and she stayed there even though the authorities continued to contact her at home and inquire about her son.

9.7 The Committee notes that the author has not been politically active herself but appears to be a very low-profile individual; she had no connection to the Chechen rebels, according to the information submitted by her, nor had she come into any conflict because of her son's circumstances. The Committee notes the State party's assessment that it appears unconvincing that the author would have become a person of interest to the authorities merely for having sold bread outside her home to passers-by whose identity was unknown to her, whereas the episode with the arrest and torture in detention could not be accepted as fact because the events described, when seen in isolation, appear unlikely and in view of the information provided by the author on her personal circumstances, and the background information; the author's statement about her escape from a hospital to which she had been taken after having been tortured and consequently having suffered a heart attack also appeared to lack credibility. The Committee notes that the Board could not attach evidentiary importance to the documents provided by the author because, based on their contents and the time of their submission, and being undated, they appeared fabricated for the occasion.

9.8 The Committee notes that the Refugee Appeals Board normally does not order an examination for signs of torture when an asylum seeker has appeared not credible and that the Board therefore rejects the asylum seeker's statement about torture in its entirety. The Committee also notes that, according to the State party, the author's medical records did not indicate that she had been tortured but that she had trouble sleeping, suffered from nightmares and headaches, was worried and wanted to see a psychologist. The author challenges the assessment of evidence and factual conclusions reached by the Board, claiming that the background information used by the Board was outdated and did not accurately reflect the situation of close relatives, both male and female, of people who are considered rebels, and reiterated that she was not examined for signs of torture even though she gave her consent for such an examination to be carried out. Based on the material on

¹⁸ See communications No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 11.4; and No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

file, however, the Committee considers that the facts before it do not permit to conclude that the assessment of evidence and factual conclusions reached by the Board in the author's case were manifestly unreasonable or arbitrary. In the light of the above, the Committee cannot conclude that the information before it shows that the author would face a personal and real risk of treatment contrary to article 7 of the Covenant if she were removed to the Russian Federation.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to the Russian Federation would not violate her rights under article 7 of the Covenant.
