



International Covenant on Civil and Political Rights

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Communication No. 2393/2014

Views adopted by the Committee at its 114th session (29 June-24 July 2015)

<i>Submitted by:</i>	K (represented by Marianne Volund)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Denmark
<i>Date of communication:</i>	19 May 2014
<i>Document references:</i>	Special Rapporteur's rules 92 and 97 decision, transmitted to the State party on 16 June 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	16 July 2015
<i>Subject matter:</i>	Expulsion of the author to his country of origin
<i>Procedural issues:</i>	Level of substantiation of claims; incompatibility <i>ratione loci</i> and <i>ratione materiae</i> with the provisions in the Covenant
<i>Substantive issues:</i>	Prohibition of torture or cruel, inhuman or degrading treatment or punishment, right to freedom of opinion and expression
<i>Articles of the Covenant:</i>	7 and 19
<i>Articles of the Optional Protocol:</i>	2



Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (114th session)

concerning

Communication No. 2393/2014*

Submitted by: K¹ (represented by Marianne Volund)
Alleged victim: The author
State Party: Denmark
Date of communication: 19 May 2014

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 16 July 2015,

Having concluded its consideration of communication No. 2426/2014, submitted to it by Mr K under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1.1 The author of the communication is Mr. K, an Afghan national born on 1 June 1987. He is facing deportation from Denmark to Afghanistan. He claims that his forced return to Afghanistan would entail a violation of articles 7 and 19 of the Covenant. He is represented by counsel, Marianne Volund.

1.2 On 19 May 2014, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, requested that the State party refrain from returning the author to Afghanistan while his communication was pending before the Committee. On 20 May, the State party suspended the execution of the deportation order against the author. On 19 November, the State party requested that interim measures be

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.
Pursuant to rule 91 of the Committee's rules of procedure, Sarah Cleveland did not participate in the consideration of this communication.

¹ The author has requested that his name be kept confidential.

lifted (see para. 4.11 below). On 31 March 2015, the Special Rapporteur on new communications and interim measures decided to deny the request to lift interim measures.

Factual background

2.1 The author is an Afghan Sunni Muslim of Pashtun ethnicity. Between December 2006 and May 2011, he worked as an interpreter for the American forces in Afghanistan, specifically in the provinces of Kandahar, Nuristan, Jalalabad and Maidan Wardak.² He asserts that, during that time, he received threats over the phone on various occasions owing to his work for the United States military forces in Afghanistan.³ He argues that the Taliban also disseminated so-called “night letters” in the streets, on three different occasions, in which his name was mentioned as an “example of a traitor”. He further notes that his cousins called the author’s father and told him that the author “should not be collaborating with the infidels”.

2.2 The author argues that he left Afghanistan because of all those threats. The author travelled to Germany lawfully to attend a seminar, and from Germany he travelled to Denmark, where he arrived on 30 May 2011. On 1 June 2011 he requested asylum in Denmark. He was interviewed by the Danish police on 7 June and he filled out an application form at the Danish Immigration Service (DIS) on 9 June. On 4 and 31 January 2012, the author had two interviews with the DIS. On 17 February 2012, the DIS rejected the author’s request for asylum.

2.3 On 24 June 2013, the Refugee Appeals Board (RAB) rejected the author’s appeal against the decision handed by the DIS. The RAB questioned the author’s credibility, arguing that he had provided contradictory and at times evasive accounts to several questions during his interviews with the DIS and during the hearing before the RAB. The RAB noted, in particular, that the author had not mentioned the “night letters” allegedly sent by the Taliban in his asylum application and had said in his initial interview that the “night letters” referred generally to “those who collaborated with the Americans” being severely punished. It was only during the Board hearing that he author stated that his name had been mentioned in three of those “night letters”. When asked about those discrepancies and about the way in which he became aware of the existence of such letters, the author had provided an evasive and unconvincing explanation, noting that he had accidentally learned about the letters through his work as an interpreter. The RAB further questioned the author’s account over the phone threats received from the Taliban, as well as threats received from local population and from his cousins through the author’s father. The RAB noted that, in his second interview with the DIS, the author argued that he was in conflict with the local population, who accused interpreters of being responsible for killings, but he

² The author provides a memorandum from the United States Department of Defence — Combined Security Command in Afghanistan, dated 10 June 2011, notifying the Mission Essential Personnel — the agency serving the Department of Defence and having employed the author — of the return of the author’s passport upon expiration of an “Absent without leave” period. The author also provides a letter of recommendation by a United States Army official supporting his visa application. In this letter, the official acknowledges that he had been the author’s direct supervisor and that he had remained in contact with him and with Regional Corps Advisory Command-Central since the United States official’s departure from Afghanistan in August 2009 and that it was “his understanding from both that the threats against [the author] escalated and, as a result, [the author] made the decision to flee Afghanistan on an official trip to Germany”.

³ No precise information is provided on the content of these alleged threats. According to the factual background established in the decision by the Refugee Appeals Board of 24 June 2013, the author alleged having received around 20 threats between 2008 or 2009 and the end of 2010. Additionally, the author allegedly received, via his father, several threats from his cousins by phone since 2007 and until his departure from Afghanistan.

only received a “scolding”. Later at the hearing before the RAB, the author argued that he was persecuted by the local population. Finally, the RAB found that the author had lied about his travel route, explaining that he had paid an agent and that he had never been issued a passport. The RAB concluded that the author’s explanation of his reasons for seeking asylum could not justify granting asylum.

2.4 The author challenges the alleged inconsistencies found by the RAB in his statements. He admits having forgotten to mention the “night letters” in his asylum application form but notes that he later contacted a representative of the Red Cross and told them that he wished to add that information. The Red Cross representative called the Danish police and was informed that any additional information should be provided during the interview with the DIS.⁴ The author also notes that, in his hearing before the RAB, he complemented his previous statements regarding the letters saying that three of the “night letters” contained his name as an example of a traitor. With regard to the alleged threats from the Taliban and the local population, the author argues that his statements were not contradictory and that it had been a translation problem, as the author considers “scolding as equivalent to personal threats”. As to the alleged threats from his cousins, the author notes that the fact that he had first referred to “relatives” and later to “cousins” does not constitute any contradiction. Finally, the author notes that giving a false travel route should not be taken as the basis for a rejection of his asylum claim.

2.5 By letter of 4 April 2014, the author requested that the RAB reopen his case. The RAB denied that request by decision of 19 May 2014, stating that the author had not submitted any essential new information. The RAB therefore considered that there was no basis for reopening the proceedings or extending the time limit for the author’s departure. The RAB noted that its decision rejecting the author’s request for asylum had been based on both his personal circumstances as well as background information available to the RAB, including general conditions for interpreters in Afghanistan, and had concluded that the author had failed to render probable that he would be at an actual risk of being subjected to persecution or abuse by the Taliban or other persons solely because of his work as an interpreter for the international forces in the event of his return to Afghanistan.

2.6 The author argues that, since decisions by the Danish RAB are not subject to appeal before national courts according to the Danish Aliens Act, he has exhausted all national domestic remedies available to him. He notes that, in its concluding observations on the seventeenth periodic report of Denmark (CERD/C/DEN/CO/17), the Committee on the Elimination of Racial Discrimination recommended that asylum seekers be granted the right to appeal against decisions of the RAB (see *ibid.*, para. 13).

The complaint

3.1 The author claims that his deportation to Afghanistan would place him under severe risk of being subjected to inhuman or degrading treatment or punishment in violation of article 7 of the Covenant. He claims that, having worked for the United States military forces for five years in different Afghan regions, he is perceived by the Taliban as a traitor and is at risk of assault or abuse both by the Taliban and the local population. The author refers to the report on the DIS fact-finding mission to Kabul to support the statement that

⁴ The author attaches a letter by S.M.E. from the Red Cross, stating that she had assisted the author in his application, and in particular, in calling the police to request how to add information to his application.

employees from western companies working for international forces in Afghanistan are at high risk of assault or murder, with interpreters being at particularly high risk.⁵

3.2 The author also claims that his deportation to Afghanistan would violate article 19 of the Covenant. He notes that the right to freedom of expression includes the work as an interpreter with the United States Army, which is perceived by the Taliban as an act of political expression and treason.

State party's observations on admissibility and merits

4.1 In its submission of 19 November 2014, the State party challenges the admissibility and merits of the communication. The State party notes that it is for the author to establish a *prima facie* case for the purposes of admissibility. The State party argues that the author's claim under article 7 is manifestly ill-founded and should therefore be declared inadmissible for lack of sufficient substantiation.

4.2 With regard to the author's claim under article 19, the State party notes that this claim is not based on any treatment that the author allegedly suffered in Denmark or in a territory under Danish jurisdiction. The State party notes that Denmark cannot be held responsible for alleged violations of article 19 by other States. Therefore, the State party argues that the Committee lacks jurisdiction over this claim and should declare it inadmissible for being incompatible with the provisions of the Covenant. The State party cites jurisprudence by the European Court of Human Rights establishing the exceptional character of extraterritorial protection of rights contained in the Convention for the Protection of Human Rights and Fundamental Freedoms.⁶ The State party also notes that the Committee has never considered a complaint on its merits regarding the deportation of a person who feared violation of other provisions than articles 6 and 7 of the Covenant in the receiving State. The State party argues that extraditing, deporting, expelling or otherwise removing a person in fear of having his rights under other provisions such as article 19 of the Covenant violated by another State party will not cause an irreparable harm as that contemplated by articles 6 and 7. The State party concludes that this part of the communication should be declared inadmissible *ratione loci* and *ratione materiae*.

4.3 The State party alleges that, should the communication be considered admissible under article 7, the facts as presented by the author do not reveal a violation of this provision.

4.4 The State party notes that, when assessing whether conditions for granting a residence permit are met under the Danish Aliens Act,⁷ the RAB takes into account the existence of a well-founded fear of being subjected to specific, individual persecution of a certain severity if returned to the country of origin. In determining whether the fear is well-founded, the RAB takes into account the information on persecution prior to the asylum seeker's departure from his or her country of origin and, most importantly, what the asylum seeker's personal situation will be in case of his return to his or her country of origin. The State party contends that the author's statements regarding his persecution before his

⁵ Denmark, DIS, *Report on the DIS fact-finding mission to Kabul: Afghanistan: country of origin information for use in the asylum determination process, 25 February to 4 March 2012*.

⁶ The State party cites the Court's judgement in the cases *Soering v. the United Kingdom* of 7 July 1989 (application No. 14038/88) and the decision as to the admissibility of *Z. and T. v. the United Kingdom* of 28 February 2006 (application No. 27034/05).

⁷ The State party informs the Committee that, pursuant to section 7 (1) of the Danish Aliens Act, a residence permit will be issued to an alien upon application if they fall within the Convention relating to the Status of Refugees. Pursuant to section 7 (2) of the Aliens Act, a residence permit will also be issued to an alien if they risk being subjected to death penalty or torture or ill-treatment.

departure were considered implausible by the RAB. The State party adds that no new information has been brought to the Committee.

4.5 The State party notes that the RAB did find as a proven fact that the author had been employed as an interpreter for the United States forces in Afghanistan and that he therefore belonged to a group of persons who “might generally be at risk of abuse by the Taliban and other groups fighting against international and Afghan authorities”. However, the RAB found that this could not by itself justify granting a residence permit. When assessing the specific case in conjunction with the general background information, the author must be at a specific and individual risk of persecution if returned to Afghanistan. The State party cites a judgement by the European Court of Human Rights in *H and B v. the United Kingdom* concerning an Afghan national who had been employed as interpreter for the United States forces in Afghanistan, where the Court rejected the claim that the author would not be safe in Kabul because of his profile and the security situation there. The Court found that it could not consider that the author would be in risk in Kabul solely because of his previous work as an interpreter for the United States forces but should instead examine the individual circumstances of his case, the nature of his connections and his profile. The Court concluded that the author had failed to demonstrate that his return to Afghanistan would violate article 3 of the European Convention on Human Rights.⁸

4.6 In the present case, the State party notes that the author had, neither during his interview with the Danish police nor in his asylum application, stated that he had received any concrete threats in the form of “night letters”. The author stated during his interview with the DIS that he had not mentioned this before because he had wanted to mention it during the interview with the DIS. In his hearing before the RAB, he stated that he had been afraid to write about this because the information “could have become available to unauthorized persons”. In his complaint to the Committee, the author has maintained that he forgot to include the information about the letters in the asylum application and had later contacted the Red Cross for assistance. Additionally, the State party notes that the author has provided conflicting statements regarding the nature of these letters (whether they were general or referred to him specifically), the authorship and the source of the letters. In that regard, the State party notes that the author informed the DIS that the Afghan army had delivered the letters, but later at the hearing before the RAB, the author stated that the United States army had collected the letters in the street. Additionally, the author stated, during his interview with the DIS, that the letters had been signed under the names of mullahs and found in three different provinces, but during the same interview, he said that they had been signed by Commander Baljol and that all the letters had been found in the province of Takhar. The State party concludes that the author’s statements regarding the concrete threats against him are inconsistent. The RAB had concluded that the author’s statements regarding the “night letters” were inconsistent and fabricated.

4.7 The State party argues that the author’s statements regarding the alleged “conflicts” experienced in Afghanistan before his departure were also inconsistent. In his application, the author stated that he had received several threats over the phone, as did his relatives and his father. In his interview with the DIS, the author stated that he had had a conflict with the Taliban as a result of his work as an interpreter. In his second interview with the DIS, the author stated that he had also had personal conflicts and received personal threats from the local population. However, the author never mentioned any threats from local population to the RAB. The State party concludes that, in his contact with Danish authorities, the author has continuously given inconsistent statements regarding his issues in Afghanistan.

⁸ Judgement of 9 March 2013 (applications Nos. 70073/10 and 44569/2011)

4.8 Finally, the State party notes that the RAB found that the reasons given by the author for having provided a false travel route were unconvincing.

4.9 The State party argues that the author is attempting to use the Committee as an appellate body and to have the facts of the case reassessed by the Committee. The State party notes that the Committee should give due weight to the findings of fact by the RAB, which is better placed to assess the factual circumstances in the author's case.

4.10 The State party adds that the RAB assigns free counsel to support asylum seekers in their claims, and that proceedings before the RAB include an oral hearing with the asylum seeker, their counsel and an interpreter, as well as a representative of the DIS.

4.11 The State party informs the Committee that, following the Committee's request for interim measures, the RAB suspended the time limit for the author's departure from Denmark until further notice. Based on all the above, the State party requests that the Committee review its request for interim measures.

Author's comments on the State party's observations

5.1 On 27 March 2015, the author submits his comments on the State party's observations on the admissibility and merits. The author notes that the State party has not provided any new information that would justify that the Special Rapporteur on new communications and interim measures review his decision to grant interim measures.

5.2 The author punctuates that the decision by the RAB was adopted by a majority of its members and that therefore not all of its members agreed with the decision.

5.3 The author challenges the State party's statement that the author had written in his application that his relatives had received threats, and states that in fact he wrote that *he* had received threats from these relatives.

5.4 With regard to the "night letters", the author insists that he had not provided conflicting statements. He notes that it was only three days after having submitted his asylum application form, after he had participated in a course at the asylum centre, that he learned that the information contained in the form was confidential and that it was at that moment that he had contacted the Red Cross and requested assistance to include important information that he had left out of the application. The author adds that information provided to the police during questioning cannot be used as reliable evidence. The author notes that, in two letters by United States officials in Afghanistan (attached to the author's initial communication), they confirm that the author and his family "faced numerous threats ... as a result of his employment with the US and International Security Assistance Forces" and the author had "received credible threats via night letters from the Taliban" on at least three occasions.

5.5 The author notes that the English translation "Refugee Appeals Board" is not precise as the RAB is in fact an administrative body — not a court — and its procedures do not require a legal counsel to assist the asylum seeker, its meetings are closed, witnesses are not allowed except under very limited circumstances, interpreters are not required to have any specific training, and one out of the five members of the Board is appointed by the Ministry of Justice. Additionally, its decisions are not subject to appeal before national courts.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

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

6.3 The Committee notes the author's statement that decisions by the Danish Refugee Appeals Board are not subject to appeal and that therefore domestic remedies have been exhausted. This has not been challenged by the State party. Therefore, the Committee considers that domestic remedies have been exhausted as required under article 5 (2) (b).

6.4 The Committee considers that the author has failed to sufficiently substantiate his claim, for purposes of admissibility, that his deportation to Afghanistan would violate his right to freedom of expression under article 19 of the Covenant, and particularly his right to work as an interpreter for the United States forces in Afghanistan. The Committee therefore declares that part of the communication inadmissible pursuant to article 2 of the Optional Protocol.

6.5 With regard to the author's claim under article 7, the Committee notes the State party's challenge to the admissibility of such claim for lack of sufficient substantiation. The Committee notes, however, that the author has adequately explained, for the purposes of admissibility, the reasons for fearing that his return to Afghanistan would result in a risk of treatment incompatible with article 7 of the Covenant, based on his past experience as an interpreter for the United States forces in Afghanistan. The Committee therefore finds the author's claim under article 7 admissible under article 2 of the Optional Protocol.

6.6 In the light of the above, the Committee declares the communication admissible insofar as it appears to raise issues under article 7 of the Covenant, and proceeds to its examination on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's argument that, if returned to Afghanistan, he would risk being subjected to ill-treatment by the Taliban and the local population for having worked for five years as an interpreter for the United States military forces in Afghanistan, which would immediately garner him classification as a traitor. He claims that he received several threats while in Afghanistan from the Taliban, from his cousins and from the local population. The author also invokes a DIS report that recognizes that interpreters working for international forces can be at risk of being targeted by the Taliban. The State party has challenged the admissibility and substance of that claim, and considered the author's statements regarding the alleged threats received before his departure from Afghanistan to be inconsistent and implausible on several grounds. That same conclusion was also reached by the RAB by decision of 24 June 2013.

7.3 The Committee recalls its general comment No. 31(2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant (see *ibid.*, para. 12). The Committee has also indicated that the risk must be personal⁹ and that

⁹ See, among others, communications No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.2, and No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹⁰

7.4 The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.¹¹

7.5 The Committee notes that the Danish RAB thoroughly examined each of the author's claims, and particularly analysed the alleged threats allegedly received by the author in Afghanistan, and found them to be inconsistent and implausible on several grounds. The author challenges the assessment of evidence and the factual conclusions reached by the RAB, but he does not explain why that assessment would be arbitrary or otherwise amount to a denial of justice.

7.6 As to the author's general statements regarding the lack of guarantees of proceedings before the RAB, the Committee notes that the author had access to counsel and participated in the oral hearing with the assistance of an interpreter provided by the RAB. Therefore, the Committee considers that the author has not justified how these proceedings would have amounted to a denial of justice in his case.

7.7 The Committee takes note of the author's claim that he would be at a general risk of being targeted by the Taliban if returned to Afghanistan. However, the Committee considers that the author has failed to provide substantial grounds to support that he would be exposed to a personal risk if returned to Afghanistan, based solely on his past experience as an interpreter for the United States forces. Therefore, the Committee considers that the author has not justified that his return to Afghanistan would expose him to irreparable harm in violation of article 7 of the Covenant.

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the author's removal to Afghanistan would not violate his rights under article 7 of the Covenant.

¹⁰ See communications No. 2007/2010, *X v. Denmark*, para. 9.2, and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

¹¹ See, among others, communications No. 2272/2013, *P.T. v. Denmark*, para. 7.3; No. 2053/2011, *B.L. v. Australia*, Views adopted on 16 October 2014, para. 7.3; No. 2049/2011, *Z. v. Australia*, Views adopted on 18 July 2014, para 9.3.