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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2458/2014*,**

Communication submitted by:	M.N. (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The author
State party:	Denmark
Date of communication:	31 July 2014 (initial submission)
Document references:	Decision taken pursuant to rule 97 (2) of the Committee's rules of procedure, transmitted to the State party on 9 September 2015 (not issued in document form)
Date of adoption of Decision:	5 November 2021
Subject matter:	Deportation to the country of origin (non-refoulement)
Procedural issues:	Inadmissibility – level of substantiation; inadmissibility ratione materiae
Substantive issues:	Risk to life and of torture and other cruel, inhuman or degrading treatment; right to a fair trial; freedom of religion; non-discrimination
Articles of the Covenant:	2, 6, 7, 13, 14, 18 and 26
Articles of the Optional Protocol:	2 and 3

* Adopted by the Committee at its 133rd session (11 October – 5 November 2021).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Arif Bulkan, Wafaa Ashraf Moharram Bassim, Mahjoub El Haiba, Shuichi Furuya, Marcia V.J. Kran ,Kobauyah Tchamdja Kpatcha, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Hélène Tigroudja, Imeru Tamerat Yigezu, and Gentian Zyberi.

1.1 The author of the communication, dated 31 July 2014, is Mr. M.N.[1], an Afghan national born on 22 March 1978. His asylum claim was rejected by Denmark on 16 July 2014 and he was ordered to leave the country within fifteen days. He claims that by deporting him back to Afghanistan, Denmark would violate his rights under articles 2, 6, 7, 13, 14, 18 and 26 of the International Covenant on Civil and Political Rights (Covenant). The author requested interim measures from the Committee to halt his deportation. The first Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976. The author is represented by counsel, Mr. Niels-Erik Hansen.

1.2 On 9 September 2014, the Committee registered the communication, without issuing an interim measures request to refrain from deporting the author to Afghanistan while his communication was under consideration. On 17 September 2014, the author submitted additional information and reiterated his request for interim measures. On 24 October 2014, the Committee decided again not to grant the author's request for interim measures.

The facts as submitted by the author

2.1 The author is a Hazara born in the Logar province, Afghanistan. From the end of June 2011[2] to around October 2012, the author worked as an English-Afghan translator. He worked for the company called "International Management Services" (IMS), and was first hired by "Combined Team Uruzgarn" (CTU), to serve as an interpreter for the Australian military forces in Afghanistan.[3]

2.2 According to the author, the Australian soldiers used to put the used clothes that they would not need again in boxes, and the Afghan employees could take them home. Afghan employees would sometimes sell them on the market. The author sold such boxes twice. In the late summer 2012, the author took a box of used clothes home, with the intention of selling it later on. This box also had two Bibles inside.

2.3 In October 2012, the Afghan authorities[4] searched the author's house and found the two Bibles in the box of clothes. The author claimed that he did not know that the Bibles were in the box and that they belonged to the Australian soldiers. The Afghan authorities therefore requested him to provide a written document by the Australian forces confirming that the books belonged to them. However, the Australian military forces refused to provide the author with such document. According to the author, they were afraid of the trouble it could create, if they were accused of distributing Bibles to the population.

2.4 The Afghan authorities let the mullahs deal with this incident, as they are in charge of religious matters.[5] The author was declared as a "mortard", i.e. a person that is unfaithful to Islam, who should be arrested[6] and executed. On 31 October 2012, the Taliban delivered the author's father-in-law a threatening letter addressed to the author.[7] The mullahs also tried to persuade the author's wife to divorce him. When she refused, they burnt the author's house, and people threw stones at her, causing her an abortion.[8]

2.5 As the author could not go to a court or ask for protection from the Afghan authorities, he decided to flee alone to Kandahar, where an agent helped him get travel documents. While his intention was to reach Canada, he flew to Denmark, where he was arrested by the Police upon arrival on 1 November 2013, since he had no valid travel documents. The author applied for asylum in Denmark on the same day (1 November 2013).

[1] The author has requested anonymity of his identity.

[2] The author does not specify an exact date.

[3] A letter of recommendation by the Australian army, dated 17 June 2012, which confirms that the author worked as an interpreter for them, as well as a copy of his interpreter card from CTU, were provided.

[4] No information on the reasons, why the author's house was searched, were submitted.

[5] The author indicates that the area, he has lived in is controlled by the Afghan forces, during the day, and by the Taliban, at night.

[6] The author provides an arrest warrant, issued by the Afghan Police, with an unofficial translation.

[7] The author provides the letter from the Taliban in Pashto, including an unofficial translation.

[8] No further information on these facts have been provided.

2.6 On 12 November 2013, the author was sentenced to 40 days in prison and prohibited to stay in the country for six years. In prison, the author started to read the Bible and he met Christians, who shared information on Christianity with him and brought him to Church.

2.7 In December 2013, he was released from prison. He started participating in baptism and Christianity classes. The author intended to be baptised on 31 August 2014.[9]

2.8 On 30 April 2014, the Danish Immigration Service denied his request for a residence permit, pursuant to the Aliens Act (Section 7). As reasons for asylum, the author claimed that he would be persecuted or killed by the Taliban, or the Afghan authorities, if returned to Afghanistan, because he was accused of distributing Bibles in Afghanistan before fleeing to Denmark, and also because of his conversion to Christianity pending his asylum application in Denmark.

2.9 On 16 July 2014, the Refugee Appeals Board rejected his appeal. The Board found that the applicant lacked credibility, and that he had not explained convincingly his conversion to Christianity. The company called CTU informed the Danish authorities that they did not have employment records under the author's name. The CTU also explained that the used uniforms and boots were not given in boxes to the employed interpreters but, on the contrary, the interpreters had to give back their uniforms and equipment when their employment terminated. The Board also noted that the author did not seek protection from the Australian authorities prior to his departure[10], that there has been a spelling mistake in the identity card handed-in, since the name of the camp of employment writes "Camp Holand", and that his family had not experienced further problems.[11] The author also provided differing explanations on his travel to Norway in 2003.[12]

2.10 The author has exhausted all available domestic remedies, as the decisions of the Refugee Appeals Board are final. The same matter has not been and is not being examined under another procedure of international investigation or settlement.

The complaint

3.1 The author claims that by deporting him to Afghanistan, Denmark would expose him to a risk of persecution, based on his religious belief, and to a risk of death and/or torture by the authorities or the Taliban, in violation of articles 6 and 7 of the Covenant. The State party must not remove the applicants to another state if "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."[13]

3.2 The author also claims that Denmark has violated his rights under article 14 of the Covenant since he has been subject only to an administrative procedure and has been denied access to a court, as no appeal against the Refugee Appeals Board's decision is possible before the Danish courts. In addition, he contends that his right to a fair trial has been violated, as the Board refused his requests to call a witness[14] who could prove the veracity of his asylum motive sur place (conversion to Christianity), and to enquire about his employment history with the main employer, the International Management Services (IMS), that recruited him in Afghanistan. The Danish authorities requested an explanation only from the CTU, which have a reason not to want to help him. The Board had a doubt about the fact why the author did not ask for assistance from the Australian authorities. The author asserts that the Australian authorities made up the problem for him, and when he requested their support,

[9] The author provides a letter of the Vicar of Grønnevang Church Mr. Jens Kennet, which states he is attending Church regularly, serves as an interpreter there, and will be baptised on 31 August 2014.

[10] There is no reason to believe that the Australian army would not confirm employment of the author at a time when they apparently allowed the interpreters, who had worked for their forces in Afghanistan, to immigrate to Australia.

[11] However, the author claims that he has not spoken to his family for more than a year and four months.

[12] The author is registered on Eurodac-hit on 27 December 2003 in Norway. His request for asylum in the country was rejected.

[13] General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (2004), para. 12; General Comment No. 20: Prohibition of torture or other cruel, inhuman or degrading treatment or punishment (1992), para. 9.

[14] A missionary who could testify about his faith.

they refused to help him. By denying his requests, the Board effectively barred him from proving his need for protection in Denmark.

3.3 The author further claims, that his right to a fair trial has been violated in a discriminatory manner, since he is an asylum seeker. In other than asylum cases, the right to hear a witness is granted under the Danish law. This situation has amounted to a violation of articles 2 and 26, in conjunction with article 14 of the Covenant.

3.4 The author feels offended by the State party's allegation that he is not a true Christian. The Board inter alia observed as strange that the author started to write and post Christian material on the internet. If he could remain in Denmark, he would be baptised on 31 August 2014, as intended. For the last couple of days, he has been attending a Christian summer camp and he hopes to continue to practice his new religion. If he were deported to Afghanistan, he would not be able to practice as a Christian, he will face persecution and risk to be killed or tortured because he is considered as a 'mortard'. The author's deportation would result in a violation of his right to change his religion, and a threat to his life and well-being.

State party's observations on the admissibility and the merits

4.1 On 10 March 2015, the State party submitted its observations on the admissibility and the merits of the communication.

4.2 It recalls that the author has complained that the State party will breach its obligations under articles 6 and 7 of the Covenant by returning him to Afghanistan and that articles 2, 13, 14 and 26 of the Covenant have been violated in connection with the consideration of his asylum application by the Danish authorities.

4.3 The State party submits that the communication should be declared inadmissible, or without merits.

4.4 As regards the principal facts, the Danish Immigration Service (DIS) refused asylum to the author on 30 April 2014. On 16 July 2014, the Refugee Appeals Board (Board) upheld the refusal by the DIS. On 31 July 2014, the author brought the case before the Committee, which was transmitted to the State party for observations on 9 September 2014. By letter of 22 September 2014, the author requested the Board to reopen the asylum proceedings. On 25 November 2014, the author was notified that his request to reopen the asylum proceedings in his case had been refused. The request for reopening was motivated by the author's activities on a weblog, in which the author appeared by name and photo together with a person named E.A., who had been granted asylum as his claims were substantiated and his conversion was deemed genuine. The Board found no basis for reopening the case, nor any basis for extending the time limit for the author's departure. In this regard, the Board considered that no substantial new information or views had been submitted, beyond the information available at the original hearing. On 8 August 2014, the author failed to report at the Sandholm Accommodation Centre, an asylum facility. As a result, the place of residence was registered as unknown. On 26 February 2015, the Danish Police confirmed that this was still the case.

4.5 The full account of the author's statements during the asylum proceedings has been reflected in the Board's decision of 16 July 2014 (annex 1). The Board, inter alia, could not accept the author's statements on his asylum motives and the costs of his departure from Afghanistan and considered them as fabricated and escalating. Based on the response from Combined Team Uruzgan to the request of the Danish Ministry of Foreign Affairs, the Board found as facts that the letters of recommendation produced by the author in support of his statement of having worked as an interpreter for the Australian forces in Afghanistan were fraudulent as no interpreter named M.N. had been employed in the periods stated, and that the persons who had signed the documents did not know the author, and had not been employed in the periods stated in the documents. Further, there was a spelling mistake on the ID card produced by the author in support of his statement of having worked at the camp. In addition, contrary to the author's statement, the Australian authorities indicated that discarded uniforms and boots had not been given away in boxes to the interpreters employed. The Board also considered peculiar that the author left the country without his wife, who refused to divorce him, and that the family did not experience other problems as a result of

the author's conflict with the Taliban and the authorities after he had left the country. Finally, the Board observed that the author's overall credibility has been impacted by his statement that, in connection with his previous application for asylum in Norway in 2003, he was paid to obtain asylum for another person, and by the inconsistent statements made to the Norwegian authorities. The Board further noted that the author failed to provide a convincing statement that would substantiate that he has de facto converted to Christianity. When interviewed on 12 December 2013,[15] the author was asked about his knowledge of the Bible. He stated that he had read the Bible in prison, but did not mention in that connection that he had started taking an interest in Christianity already at that time.[16] Moreover, it has been peculiar that, as soon as he had informed the Danish authorities about his conversion, he started communicating his Christian affiliation on the Internet. Following an overall assessment, the Board found that the applicant has failed to substantiate that he will be at a real risk of persecution or abuse, falling within section 7 of the Aliens Act, in case of return to his country of origin. Accordingly, as there has been no basis for adjourning the proceedings pending a statement from the IMS on the author's employment, or for the purpose of assessing the authenticity of the warrant for his arrest, the Board upheld the decision of the DIS of 30 April 2014.

4.6 The State party has elaborated on the relevant domestic law and procedures, including the organisation and jurisdiction of the Board, legal basis for its decisions and proceedings before it, and reopening of asylum proceedings before the Board.

4.7 Furthermore, the State party submitted comments on factually incorrect or contradictory information in the author's communication to the Committee.

4.8 As regards admissibility, the State party submits that the author has failed to establish a prima facie case for the purpose of admissibility of his communication under articles 2, 6, 7, 13, 14 and 26 of the Covenant, and that the communication should be considered inadmissible. It further submits that the parts of the communication referring to articles 2, 6, 7, 13 and 26 of the Covenant should be considered inadmissible also for being manifestly ill-founded. As regards article 14 of the Covenant, the State party refers to the views adopted by the Committee in *Mr. X and Ms. X. v. Denmark*,[17] in which the Committee stated that proceedings relating to the expulsion of aliens (asylum proceedings) do not fall within the ambit of a determination of 'rights and obligations in a suit at law' within the meaning of article 14(1) of the Covenant. The author's claim under article 14 of the Covenant is therefore inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol.

4.9 On the merits, the State party submits that should the Committee find the communication admissible, it has not been sufficiently established that there are substantial grounds for believing that the return of the author would constitute a violation of article 6 or 7 of the Covenant, or that article 13, or articles 2 and 26, of the Covenant have been violated in connection with the consideration of the author's asylum case by the Danish authorities. In his communication, the author has not provided any new information in regard to his situation in Afghanistan.

[15] The following appears from the report of the interview with the author conducted by the Danish Immigration Service on 12 December 2013, which report the author has accepted: 'The applicant was asked whether he had the Bibles because he was a Christian. The applicant replied in the negative. The applicant was asked whether he had read the Bibles. The applicant stated that he had not read them in Afghanistan, but that he had read the Bible in Denmark because he had wanted to know what was in it that could result in his execution.'

[16] The subsequent report by the Danish Immigration Service in connection with the consultation of the author, which report the author has also accepted, stated: 'The applicant had been released on 10 December 2013, and on 15 December 2013 he had gone to the church of Apostelkirken in Copenhagen. On 22 December 2013, the applicant started attending Grønnevang Church in Hillerød. The applicant was asked why he had not mentioned his interest in Christianity at the previous interview since his interest had to be aroused at that time as the interview took place on 12 December 2013. The applicant stated that he had only read the Bible at that time, but that he had not discovered the good things about Christianity until he had started attending church.'

[17] See communication *Mr. X and Ms. X. v. Denmark* (CCPR/C/112/D/2186/2012), para. 6.3. e.

4.10 The Board found in its decision of 16 July 2014, following an overall specific assessment, that the author had failed to substantiate that he would be at a real risk of persecution or abuse falling within section 7 of the Aliens Act in case of his return to Afghanistan. The Committee, in its jurisprudence, has indicated that the risk must be personal and that there is a high threshold for providing substantial grounds for establishing that a real risk of irreparable harm exists.[18] The Board found that it could not consider the author's statement of being persecuted prior to his departure from Afghanistan a fact because the Board emphasized that the author's statement on his conflicts prior to his departure from Afghanistan had to be set aside as non-credible and fabricated. The documents enclosed with the author's request for reopening his asylum proceedings of 22 September 2014 could not lead to a different assessment. In the present communication, the author did not provide any new information about his circumstances in Afghanistan prior to his departure, hence the author has failed to substantiate that he has been or risked being subjected to persecution in Afghanistan.

4.11 As regards the author's conversion sur place, the Board in its decision relied on the variety of information provided about the author's persuasion and Christian activities after his arrival in Denmark. Based on an assessment of the credibility of the information on the author's conversion, carried out in accordance with the UNHCR guidelines[19], the Board found that it had to reject the genuineness of the author's conversion from Ismaili Islam to Christianity and reject that he consequently risks persecution justifying asylum under section 7 (1) of the Aliens Act, on his return to Afghanistan. In this context, the Board could not find as facts that the author has become or risks becoming a person of interest to the Afghan authorities solely because of his activities on the relevant weblog. The Board referred to the circumstance that the author does not appear to be profiled in any way in Afghanistan, just as the Board could not accept as a fact that the alleged conversion is genuine. The information about the author's attendance of a Christian summer camp and about his baptism on 12 September 2014 did not cause the Board to revise the legal assessment of his eligibility for asylum. Against that background, the State party finds that the author has failed to establish that he risks circumstances contrary to article 6 or 7 of the Covenant as a consequence of his alleged conversion to Christianity if returned to Afghanistan.

4.12 As regards the allegations of a violation of article 13, the State party submits that the author has not substantiated this claim in any way. Moreover, article 13 of the Covenant does not confer a right to a court hearing. In *Anna Maroufidou v. Sweden*[20], the Committee did not dispute that a mere administrative review of the expulsion order in question was compatible with article 13. In addition, article 13 does not confer a right to appeal.[21] If an asylum seeker, like the author in the present case, claims that essential new information has come to light as compared with the information available when the Board made its original decision and that this new information may result in a different decision, the Board will make an assessment of whether this new information may lead to reopening of the proceedings for reconsideration of the case. Accordingly, the Board's decision of 25 November 2014 to refuse reopening of the author's asylum proceedings was made by the Board, as represented by the judge who chaired the specific board that made the original decision in the author's case. Against that background, the State party submits that article 13 of the Covenant was not violated in connection with the consideration of the author's asylum case by the Danish authorities.

4.13 Concerning the claims under articles 2 and 26 of the Covenant, as the author's right to a fair trial was violated in a discriminatory manner, the State party observes that the author has not been treated differently from any other person applying for asylum in terms of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. As regards the alleged refusal by the Board to allow a witness who,

[18] See communication *J.J.M. v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2.

[19] UNHCR Handbook (para. 96) and UNHCR Guidelines of 28 April 2004 (para. 34) state, inter alia: 'Where individuals convert after their departure from the country of origin, this may have the effect of creating a sur place claim. In such situations, particular credibility concerns tend to arise and a rigorous and in depth examination of the circumstances and genuineness of the conversion will be necessary.'

[20] See communication no. 58/1979.

[21] *Mr. X and Ms. X. v. Denmark*, para. 6.3.

according to the author, had thorough knowledge of his Christian life and could prove his sur place claim based on his conversion, the State party observes that it is the responsibility of the Board to ensure that all facts have been brought out before a decision is made. The Board has the possibility to examine witnesses. In the present case, the Board found, however, that all facts of the case had been brought out as, in addition to the statement given by the author himself and to his counsel's brief, the Board had also received a letter from pastor Per Bohlbro, dated 7 March 2014, and a written statement also from Per Bohlbro, dated 10 July 2014, both of which had been appended to the counsel's brief of 11 July 2014 on the author's participation in Christian activities. Accordingly, it was found that all facts of the case had been brought out as far as this issue was concerned.

4.14 As regards the author's observation that the refusal by the Board to hear the IMS, the author's alleged former employer, supports the claim of violation of articles 2 and 26, the State party observes that the author has stated that he was employed by the IMS and that he was offered a job with Combined Team Uruzgan (CTU), which he exercised for 18 months. Against that background, the Danish Immigration Service requested the Ministry of Foreign Affairs to seek specific information about the author's employment with the CTU as an interpreter for the Australian Forces at Camp Holland, as the author had stated that he had worked for this firm and the Australian forces, which had allegedly signed the two letters of recommendation. As appears from the letter from the Ministry of Foreign Affairs dated 10 February 2014, the CTU and the Australian military forces could not confirm the author's employment, and they were confident that the letters of recommendation provided by the author were fraudulent. The author did not appear on the CTU 'roll book' for that period, the persons who had signed the letters of recommendation had advised that they had not provided the letters and had never met the author, and the dates listed in the letters did not align with the deployment dates of the named force element groups.[22] Furthermore, there was a spelling mistake in the ID card produced by the author as the name of the camp was indicated to be 'Camp Holand'. Accordingly, the Board found that there was no basis for adjourning the proceedings pending a statement from the IMS on the author's employment. Against this background, the State party submits that articles 2 and 26 of the Covenant were not violated in connection with the consideration of the author's asylum case by the Danish authorities.

Author's comments on the State party's observations

5.1 On 19 November 2018, the author's counsel submitted that, since no interim measures were granted, the author was deported by the Danish authorities to Afghanistan in February 2017.

5.2 Nonetheless, the author has submitted that, after a dangerous time in Afghanistan as a devoted Christian, he was able to flee again. The counsel has been able to establish contact with the author and has learned that the author was registered as a refugee in Turkey. Although the author has enjoyed some form of protection, he fears expulsion from Turkey to his country of origin. Consequently, the author still requests the Committee to assess this case with regard to his deportation from Denmark to Afghanistan, whether this was a violation of the Covenant.

5.3 A reference is made to the Committee's decision in *Khazem Hossini v. Denmark*,[23] whose author was allowed to stay in Denmark due to interim measures request. In that case, the author's asylum procedure was reopened on 8 November 2018, and the Board decided to grant Mr. Hossini asylum in Denmark because he was in need of protection due to his conversion to Christianity. In view of the counsel, the two cases bear some similarities.

5.4 Firstly, both men were fleeing from their countries of origin, they were baptized as Christians during their stay in Denmark, and they were open about their new faith and were devoted Christians. The author of the present case served in Afghanistan as a translator for the foreign military (Australia), and as a translator in the Danish Church for a great number of Christians. Consequently, he has been a known person amongst the Afghan diaspora in Denmark. Furthermore, he expressed his faith publicly on the internet (Facebook), which is

[22] The letter from the Ministry of Foreign Affairs of 10 February 2014 is appended (annex 3).

[23] Communication no. 2423/2014 (CCPR/C/123/D/2423/2014), paras. 8.6 and 8.7.

why he was in great danger upon return to Afghanistan. It was due to mere chance that he managed to escape again after returning to Afghanistan.

5.5 The Refugee Appeals Board and the Danish government nevertheless rejected the author's sur place conversion as not credible. However, such rejection was done in the same way as in the case of Mr. Hossini. The Board only considered, whether or not they believed that the author was baptised in order to get a residence permit or not. As they concluded that he was baptized only in order to obtain asylum, they forgot to consider what would be the consequences for him on return to his country of origin, which is the core argument in the Hossini case.[24] In that case, the Committee recalled that States parties should give sufficient weight to the real and personal risk that a person might face if deported, and considered that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author would face as a perceived Christian in the country of origin, rather than relying mainly on inconsistencies in statements. The Committee noted in particular that the Board did not assess whether the author's behaviour and activities in connection with, or to justify, his conversion, including his baptism, his active participation in the parish, his knowledge of Christianity, and sharing information with his family of his conversion, could have serious adverse consequences in the country of origin so as to put him at risk of irreparable harm.

5.6 The author annexed a report regarding another case[25]; when the Danish Police tried to deport an Afghan citizen on 14 September 2016, who stated in the airport of Kabul that he had become Christian during his stay in Denmark. The Afghan officials then stated that he was not safe and the Danish Police had to bring him back to Copenhagen. Subsequently, the Danish Police tried to convince the Afghan officials that the conversion was not genuine, but was informed that this was not the problem. As that person shouted out at the airport he had converted to Christianity, his life would be in danger because people standing by had overheard this. He would thus be killed after leaving the airport.

5.7 It follows from this, that in February 2017, when the author was deported, the Danish authorities were well aware of the risk of persecution in Afghanistan, whether or not the author was a real convert or not. The Board and the Danish government thus need to explain in what way an assessment of such risks was made. According to the decision by the Board, it is only stated that the author's statements about his Christianity on the internet made his conversion even more suspicious. Consequently, the author requests the Committee to conclude that his removal by Denmark was in violation of articles 6 and 7 of the Covenant.

Author's further comments

6.1 On 28 December 2018, the author's counsel submitted comments on the State party's observations, initially dated 26 October 2017. He submitted, inter alia, that the claims of a violation of article 14 were in fact intended to be the claims of a violation of article 13 of the Covenant.

6.2 The author recalls the alleged violation of articles 6 or 7, 13, 18 and 26 of the Covenant, pointing out to the author's Christian life in Denmark, and the worsening situation in Afghanistan since the deportation of the author in 2014.[26] The author applied for asylum and his asylum application was rejected in by the Danish Immigration Service in 2011,[27] and by the Danish Refugee Board in January 2012.[28]

6.3 As regards his claims of a violation of articles 6 and 7, the author submits that he was baptized in a Christian Church after having attended Church services and a Christian training programme since June 2013.[29] As a former Muslim from Afghanistan, he risks persecution

[24] Fn. 17.

[25] A report by the Danish officials of 15 September 2016 about the event, which resulted in the man being returned to Denmark.

[26] The dates in the author's submission are not correct, since he mistakenly referred to the facts of another case (see para. 7.2 in that regard).

[27] See fn. 28.

[28] See fn. 28.

[29] See fn. 28.

due to the sharia law, if returned. Consequently, the author has established a prima facie case for the purposes of admissibility.

6.4 The author concludes that his communication should be considered as admissible, in regard to alleged violations of articles 6, 7, 13, 18 and 26 of the Covenant, since he did not get a fair trial as concerns his conversion to Christianity, and his fear of persecution for this reason. Since he could not appeal the decision of the Danish Refugee Board to any other body, it has amounted to a violation of articles 13 and 26 of the Covenant, asserting that any other Board decisions may be appealed to the ordinary Danish courts. As to the merits, the author considers that the Refugee Appeals Board decision of 6 February 2014[30] amounts to a violation of articles 6 and 7, and of article 13, as well as of article 18 of the Covenant, since he cannot manifest his religion in Afghanistan.

State party's additional observations

7.1 On 23 September 2019, the State party reiterated its initial arguments of inadmissibility and lack of merits, dated 10 March 2015.

7.2 It recalled that on 27 November 2018, the Secretariat transmitted the author's additional observations to the Government, dated 19 November 2018. The State party notes that on 31 December 2018, the Secretariat transmitted another document, originating from the author's counsel, dated 26 October 2017 under communication no. 2458/2014. However, the content of this document did not correspond to the communication at hand and the submissions therein do not seem to originate from the author. Thus, the State party limits its observations to the author's additional comments dated 19 November 2018.

7.3 The State party observes that the author's additional comments of 19 November 2018 do not provide any new information regarding the author's personal situation. In this regard, the Government especially notes that the additional observations do not provide any information on the author's personal situation after his return to Afghanistan.

7.4 In his additional comments, the author states that the Board did not consider the consequences for the author, upon his return to Afghanistan, of his alleged conversion to Christianity. In this regard, the Government notes that the Board, in its decisions of 16 July 2014 and 25 November 2014, explicitly and specifically assessed the consequences of returning the author to Afghanistan, including the implications of the author's alleged conversion.

7.5 In this context, the State party also observes that the Board did not find it probable that the author would risk persecution as a consequence of his return to Afghanistan as the Board did not consider the author's conversion from Islam to Christianity to be genuine.

7.6 The State party draws the attention of the Committee to the report published by *Landinfo, Afghanistan: Situasjonen for kristne or konvertitter* (Afghanistan: The situation of Christians and Converts), of 4 September 2013,[31] on 'converts of convenience'. It appears from the report (page 22) that several sources have stated that even if it becomes known in the country of origin that the relevant person has indicated conversion as his ground for seeking asylum in another country, this does not mean that the relevant person will become vulnerable upon his return, as Afghans in general have great understanding for compatriots who try everything to obtain residence in Europe.

7.7 The author has also referred to communication no. 2423/2014, in which proceedings before the Board have been reopened because of the emergence of new and substantial information. In this respect, the State party notes that no new information has emerged in the author's case beyond what the Board has already taken into account in its decisions, that the author did not establish how his case is otherwise comparable to communication no. 2423/2014, and that the author has not established that any errors were made in the Board's evaluation of the author's case.

7.8 The author finally refers to a memorandum of 15 September 2016 from the Danish Police on the deportation to Afghanistan of four asylum seekers. The State party observes in

[30] See fn. 28.

[31] In particular pages 19 to 22.

this regard that the author has not established any connection between the author's case and the cases mentioned in the memorandum. The State party further observes that the Police returned the author to Afghanistan on 28 February 2017, and that the Afghan authorities accepted to receive the author.

7.9 The State party takes note of the fact that, according to information submitted in the author's additional comments of 19 November 2018, the author has left Afghanistan and entered Turkey. The State party reiterates that the author has not submitted any information about his personal situation in general or on any alleged persecution after his return to Afghanistan. The State party does not consider the fact that the author has since left Afghanistan to establish grounds to believe that the author is at real risk of persecution and abuse in Afghanistan.

7.10 The State party maintains that the communication should be considered inadmissible. Should the Committee find the communication admissible, the Government holds that there has been no violation of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

8.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2)(b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.[32] The Committee notes that the author unsuccessfully appealed against the negative asylum decision to the Refugee Appeals Board, and that the State party does not challenge the exhaustion of domestic remedies by the author. Therefore, the Committee considers that it is not precluded from examining the communication by article 5 (2)(b) of the Optional Protocol.

8.4 The Committee notes the author's claims that his right to a fair trial and access to a court were violated since a witness in his support was not invited to an oral hearing during the asylum procedure, and the request for attestation of employment was not sought from the IMS, that he suffered discrimination as an asylum seeker because the decisions of the Refugee Appeals Board are the only decisions that become final without the possibility of being appealed against in courts, and that the State party has thus violated articles 2, 13, 14 and 26 of the Covenant. In that regard, the Committee refers to its jurisprudence that proceedings relating to the expulsion of aliens do not fall within the ambit of a determination of "rights and obligations in a suit at law" within the meaning of article 14, but are governed by article 13, of the Covenant.[33] Article 13 of the Covenant offers some of the protection afforded under article 14 of the Covenant, but does not itself protect the right of appeal to judicial courts.[34]

8.5 The Committee notes the State party's argument that it did not consider it necessary to call in another witness or adjourn the proceedings, pending a response from the IMS, since the author's arguments have been largely inconsistent and not credible. The Committee

[32] See e.g. *Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2; *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5; *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003), para. 7.2; *Gilberg v. Germany* (CCPR/C/87/D/1403/2005), para. 6.5; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 7.4; and Singh et al. v. Canada (CCPR/C/125/DR/2948/2017), para. 6.4.

[33] See *P.K. v. Canada* (CCPR/C/89/D/1234/2003), paras. 7.4 and 7.5.

[34] See *Omo-Amenaghawon v. Denmark* (CCPR/C/114/D/2288/2013), para. 6.4; and the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 17 and 62.

observes that the Board could not accept the author's statements on his asylum motives and the costs of his departure from Afghanistan, and considered them as fabricated and escalating. The Board also considered that the letters of recommendation and identification documents produced by the author appeared fraudulent, and that the author's overall credibility has been impacted by his statement that, in connection with his previous application for asylum in Norway in 2003, he was paid to obtain asylum for another person, and by the inconsistent statements to the Norwegian authorities. The Committee also notes that the author failed to provide to the Board a convincing statement that would substantiate the fact that he had converted to Christianity. In light of the above, the Committee considers that the author's claims of a violation of his right to a fair trial in the context of article 13, and of discrimination, including as an asylum seeker, under article 26 of the Covenant and under article 2, read in conjunction with article 14 of the Covenant, are insufficiently substantiated for the purposes of admissibility and declares this part of the communication inadmissible under article 2 of the Optional Protocol. Recalling the Committee's jurisprudence[35], the Committee considers the author's claims under article 14 of the Covenant to be inadmissible *ratione materiae*, pursuant to article 3 of the Optional Protocol.

8.6 The Committee further notes the State party's objection to admissibility of the author's claim under articles 6 and 7 of the Covenant as manifestly ill-founded. In that regard, the Committee notes the author's argument that the existence of substantial grounds to believe that he would face a risk of treatment contrary to articles 6 and 7 of the Covenant, if removed to Afghanistan, has not been properly assessed, since he can be perceived as Christian due to a suspected distribution of Bibles. The Committee also notes that the author was removed to Afghanistan in February 2017 and that he subsequently fled to Turkey. In addition, the Committee notes the State party's argument that the existence of a real and personal risk of irreparable harm for the author, if removed to his country of origin, has been properly assessed against the different sources of information, including the witness statements. The Committee observes that the State party's authorities considered the author's reasons to flee Afghanistan and the related asylum motives as not substantiated, taking into account the inconsistency and lack of credibility, given that the letters of recommendation by the Australian military forces were considered as fraudulent and the CTU, as an alleged employer, could not confirm that the author served for them as translator in Afghanistan. The Board found that it could not consider the author's statement of being persecuted prior to his departure from Afghanistan a fact because the author's statement on his conflicts prior to his departure from Afghanistan were non-credible and fabricated (paras. 4.5 and 4.10) and that the author has also failed to establish that he risks circumstances contrary to article 6 or 7 of the Covenant as a consequence of his alleged conversion to Christianity, if returned to Afghanistan (para. 4.11). The Committee further observes the State party's objection that the author did not present any new information in his request for re-opening of the asylum procedure, nor on his potentially adverse treatment following his return to Afghanistan on 28 February 2017.

8.7 While recalling its jurisprudence that certain kinds of abuse by private individuals may be of such scope and intensity as to amount to persecution if the authorities are not able or willing to offer protection (against the author's declaration as mortard in Afghanistan in the present case),[36] the Committee considers that the author has not convincingly explained the reasons, except his disagreement with the factual conclusions of the State party,[37] why he fears that his forcible return to Afghanistan would result in a risk of treatment contrary to articles 6 and 7 of the Covenant. Accordingly, the Committee considers this part of the communication inadmissible due to a lack of sufficient substantiation, pursuant to article 2 of the Optional Protocol.

8.8 As regards indirect claims of a risk of violation of article 18, if removed to Afghanistan, the Committee notes the State party's argument that the author's conversion to Christianity has not been genuine, that his sur place motive for asylum has not been arbitrarily assessed, and that the authorities considered that the author had not been a person of profile

[35] Fn. 30.

[36] See e.g. *I.K. v. Denmark*, para. 9.7; and *Omo-Amenaghawon v. Denmark* (CCPR/C/114/D/2288/2013), para. 7.5.

[37] See *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.4.

for the Afghan authorities and his conversion was not known to impact the enjoyment of the author's rights under article 18 in Afghanistan. Recalling its jurisprudence that article 18 does not have extraterritorial application, unless a risk of its violation would represent an irreparable harm such as that contemplated in articles 6 and 7,[38] the Committee considers also the author's claims under article 18 of the Covenant to be inadmissible, due to insufficient substantiation, pursuant to article 2 of the Optional Protocol.

9. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That the decision be transmitted to the State party and to the author.

[38] See e.g. communications *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.5; *I.K. v. Denmark* (CCPR/C/125/D/2373/2014), para. 8.5; and *C.L. and Z.L. v. Denmark*, (CCPR/C/122/D/2753/2016), para. 7.4.