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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2672/2015*, **

Communication submitted by:	J.F.H. (represented by counsel, Rabih Azad-Ahmad)
Alleged victim:	The author
State party:	Denmark
Date of communication:	23 January 2015 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 9 November 2015 (not issued in document form)
Date of adoption of Views:	29 March 2019
Subject matter:	Deportation from Denmark to Italy; inhuman and degrading treatment
Procedural issues:	Exhaustion of domestic remedies; level of substantiation of claims
Substantive issues:	Cruel, inhuman or degrading treatment or punishment upon return to country of first asylum, family rights
Articles of the Covenant:	7 and 23
Articles of the Optional Protocol:	2 and 5 (2) (b)

Decision on admissibility

1.1 The author of the communication is J.F.H., an ethnic Kurd and Syrian national, born on 2 June 1992 in Aleppo, Syrian Arab Republic. He is residing in Denmark and subject to a deportation order to Italy. He claims to be a victim of a violation by Denmark of his rights under article 7 of the Covenant. He is represented by counsel, Rabih Azad-Ahmad. The Optional Protocol entered into force for the State party on 23 March 1976.

* Adopted by the Committee during its 125th session (4–29 March 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

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1.2 On 9 November 2015, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided not to issue a request for interim measures under rule 92 of the Committee's rules of procedure.

Factual background

2.1 The author fled the Syrian Arab Republic in 2012, and was registered in the European Asylum Dactyloscopy Database (EURODAC) on 25 October 2012, in Italy, and on 7 December 2012, in Germany. The author claims that he was deported from Germany to Italy under the Dublin III Regulation[1] on an unspecified date. In Italy, he received no assistance and was forced to live in the streets, and exposed to violence and crime.

2.2 As a result of the deficient living conditions in Italy, the author returned to the Syrian Arab Republic in May 2013, where he stayed at the house of a doctor until 2014. In June 2014, the author fled the Syrian Arab Republic again because he wanted to avoid being called recruited by the Syrian army or by rebel movements.

2.3 On 17 June 2014, the author arrived in Denmark, where his paternal aunt lives, and applied for asylum two days later. By letter of 28 July 2014, the Italian authorities informed the Danish Immigration Service that the author had been granted refugee status in Italy. The author claims that he was not informed of that decision. The author provides a copy of a medical certificate from the Daer Sem Surgical Hospital referring to his hospitalization from 8 to 12 September 2013. He claims to have no other proof or supporting document of his interim residence in the Syrian Arab Republic because he was hiding from State authorities.

2.4 On 14 January 2015, in Denmark, the Refugee Appeals Board rejected the author's asylum application, based on paragraph 7, subsection 3 of the Aliens Act, according to which a residence permit may be denied if the foreigner has already gained protection in another country or if the foreigner already has a close connection to another country where the foreigner is assumed to be able to gain protection. That provision gives the Government of Denmark the power to send people like the author to Italy, without any humanitarian consideration. Like the Immigration Service, the Board found that, in Italy, the author would be protected from refoulement and that he would receive protection and would have access to basic social and economic rights. Lastly, the Board found the author's allegation regarding his time in the Syrian Arab Republic in 2013 and 2014 unreliable and constructed especially for the occasion.

2.5 The author claims to have exhausted domestic remedies because the Refugee Appeals Board upheld the decision of the Danish Immigration Services to reject his asylum application in Denmark.

The complaint

3. The author claims that his deportation to Italy would put him at risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment, given the social and economic conditions for "Dublin" returnees in Italy. He claims that these conditions are of such nature to amount to a violation of article 7 of the Covenant. The poor reception conditions and integration prospects in Italy apply even to people with recognized refugee status.[2] He argues that he has explained the systemic deficiencies of the Italian refugee system that affects "Dublin" returnees, and that the Refugee Appeals Board must consider whether the Italian authorities offer guarantees of protection.

[1] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

[2] The author cites the judgment by the European Court of Human Rights in *Tarakhel v. Switzerland* (application No. 29217/12), 4 November 2014, para. 60.

State party's observations on admissibility and merits

4.1 On 9 May 2016, the State party submitted its observations on the admissibility and merits of the communication. The State party claims that the communication should be considered inadmissible for lack of sufficient substantiation of the author's risk of being subjected to torture or other form of cruel, inhuman or degrading treatment or punishment upon his return to Italy.

4.2 The State party describes the proceedings before the Refugee Appeals Board.[3]

4.3 The State party informs the Committee that, pursuant to paragraph 7, subsection 3 of the Aliens Act, the question on the issue at stake in the author's asylum application was to determine whether Italy could be considered the author's first country of asylum. The State party recalls that, on 28 July 2014, the Italian authorities informed the Danish authorities that the author had been granted refugee status in Italy. Also, on 14 January 2015, the Refugee Appeals Board had rejected the author's asylum application and found that the author would be protected against refoulement in Italy, and that it would be possible for him to enter and stay lawfully in Italy, and that his personal integrity and safety had to be assumed to be guaranteed to the extent necessary in that country. That decision entailed an assessment of whether the social and economic conditions in Italy would allow the author to enjoy, to some extent, basic rights, making reference to chapters II to V of the Convention relating to the Status of Refugees and to Office of the United Nations High Commissioner for Refugees (UNHCR) Executive Committee conclusion No. 58 (1989). The State party submits, however, that it cannot be required to ensure that the asylum seeker enjoys exactly the same social living standards as the country's own nationals; rather, it must ensure that their personal integrity are protected. Moreover, the State party submits that the Refugee Appeals Board had found that Italy can be considered a first country of asylum in a number of cases, on the basis of most recent background information on the conditions of refugees in Italy. The State party also observes that Italy is bound by the European Convention on Human Rights and the Covenant. Lastly, the State party observes that the author's allegation that he stayed in the Syrian Arab Republic in 2013 and 2014, which was found to be not credible and fabricated for the occasion, is irrelevant to the assessment of whether Italy can be considered a country of first asylum.

4.4 The State party notes that the author has not produced any new information in his complaint to the Committee, and that all relevant background information was made available to and considered by the Refugee Appeals Board in its decision of 14 January 2015. After a thorough assessment of the relevant background information and the author's individual circumstances, the Board concluded that the author was not at risk of treatment contrary to article 7 of the Covenant. Concerning the author's reference to the Dublin Regulation and the UNHCR Recommendations on Important Aspects of Refugee Protection in Italy of July 2013, the State party observes that the recommendations relate mainly to reception conditions in Italy for asylum seekers, and therefore not to aliens who have been granted residence. Furthermore, the State party observes that the author has also made reference to the case law of the European Court of Justice, which is of relevance to asylum seekers, including to "Dublin" returnees to Italy, and not to persons who, like the author, have already been granted refugee status.

4.5 On the basis of an overall assessment of the background information available and the information submitted by the author, the State party concludes there is no basis to suggest that the author would be at a particular risk of being subjected to treatment contrary to article 7 of the Covenant because of the general social and economic conditions of "Dublin" returnees or refugees in Italy. As a person with a recognized refugee status, the author has access to a renewable residence permit and is entitled to, inter alia, a travel document for aliens, to work, to family reunion, and to benefit from the general schemes for social assistance, health care, social housing and education under Italian national law. The State party supports its allegations by making reference to a recent case of the European Court of Human Rights that, "in the absence of exceptionally compelling humanitarian grounds against removal, the fact that the applicant's material and social

[3] See *O.H.A. v. Demark* (CCPR/C/117/D/2379/2014), paras. 4.1–4.3.

living conditions would be significantly reduced if he or she were to be removed from the contracting State is not sufficient in itself to give rise to breach of article 3", or that, "while the general conditions (…) in Italy of asylum seekers, accepted refugees and aliens who have been granted a residence permit for international protection or humanitarian purposes may disclose some shortcomings (…), it has not shown to disclose systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group of people."[4] Moreover, the State party informs the Committee that, according to information provided by the Italian authorities, the author would be able to enter Italy and, potentially, request a renewal of his residence permit in the event it had expired. According to information provided in the *Asylum Information Database Country Report*: Italy published in January 2015, refugees have the same right to receive medical treatment as Italian nationals. The State party also submits that the facts of a decision of the Committee in another case against Denmark markedly differ from the present one, because that case concerned the deportation of a single mother with three minor children to Italy.[5] In the present case, the issue at stake is the deportation of a single, young and healthy man with a recognized refugee status. Lastly, regarding the author's allegations of violence suffered from the acts of Italian officials or of being exposed to violence and theft because forced to live in the streets, the State party submits that the author may report any of these complaints before Italian domestic bodies.

4.6 The State party submits that the author's communication merely reflects that he disagrees with the assessment of his specific circumstances and the background information considered by the Refugee Appeals Board. In his communication, the author failed to identify any irregularity in the decision-making process or any risk factor that the Refugee Appeals Board had failed to take properly into account. The State party also submits that the Committee must give considerable weight to the findings of fact made by the Refugee Appeals Board, which is better placed to assess the factual circumstances of the author's case. Hence, the author has failed to establish that there are substantial grounds for believing that he would be in danger of being subjected to inhuman or degrading treatment or punishment if deported to Italy.

Author's comments on the State party's observations

5.1 On 30 August 2016, the author submitted his comments on the State party's observations. The author reiterates his previous arguments and insists that Italy does not have the capacity to house the number of refugees currently present in country due to the increased number of Syrian refugees arriving there.

5.2 The author informs the Committee that his brother is currently living in Denmark, where he has applied for asylum. Hence, the deportation of the author by the State party to Italy would also entail a violation of article 8 of the European Convention on Human Rights concerning his right to family life. The author claims to have the right to have his asylum application processed in Denmark, where he has a documented family member.

Additional submissions by the parties

6.1 On 21 December 2016, the State party argued that the author's additional observations of 30 August 2016 seemed to provide no essential new and specific information on the author's personal situation.

6.2 Concerning the author's claims about his right to family life because his brother is currently living in Denmark, the State party informs the Committee that the author's brother was in fact granted residence in Denmark on 7 April 2015 under paragraph 7, subsection 1 of the Aliens Act. The State party submits that this circumstance cannot independently lead to a different assessment of the author's case, including the assessment that Italy, where the author had already been granted residence as a recognized refugee, can be considered the author's country of first asylum.

[4] European Court of Human Rights, *Samsam Mohammed Hussein and others v. the Netherlands* and Italy (application No. 27725/10), 2 April 2013, paras. 71 and 78.

[5] See *Warda Osman Jasin et al. v. Denmark* (CCPR/C/114/D/2360/2014), para. 8.4.

6.3 The State party also observes that the Dublin III Regulation governs the transfer of asylum seekers between Member States, and that the author does not fall within the scope of the Regulation because he is a recognized refugee in Italy. Moreover, the State party submits that the issue of family reunification is of no relevance to the author's asylum claim.

7. On 9 August 2017, the author reiterates his non-refoulement claims, as well as his claims based on his right to family life.

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 the communication is admissible under the Optional Protocol to the Covenant.

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

8.3 The Committee takes note of the author's allegation relating to his right to family life. However, it notes that this issue has never been raised before national authorities. Therefore, the Committee considers the new claim based on article 23 of the Covenant inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

8.4 The Committee notes the author's statement that decisions by the Refugee Appeals Board of Denmark 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 with regard to the author's claim based on article 7 of the Covenant, as required by article 5, paragraph 2 (b) of the Optional Protocol.

8.5 The Committee notes the author's allegation that his return to Italy would put him at risk of being subject to torture or other cruel, inhuman or degrading treatment. The author bases his allegation on general social and economic conditions for refugees in Italy.

8.6 The Committee also notes that the Refugee Appeals Board considered the personal and social circumstances of the author and the general situation of recognized refugees in Italy, and concluded that the author's allegations about being forced to travel back to the Syrian Arab Republic because of the general conditions of asylum seekers or refugees in Italy as non-credible and fabricated for the occasion.

8.7 The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of a case unless it can be established that such an assessment was arbitrary or amounted to a manifest error or denial of justice.[6] In the present case, the author has not explained why the decision by the Refugee Appeals Board would be contrary to this standard, nor has he provided substantial grounds to support his claim that his removal to Italy would expose him to a real and personal risk of irreparable harm in violation of article 7 of the Covenant. In particular, the Committee notes that the author has failed to provide any concrete and detailed information about his personal situation in Italy in 2013. The Committee accordingly concludes that the author has failed to sufficiently substantiate his claim of violation of article 7 for purposes of admissibility and finds his communication inadmissible pursuant to article 2 of the Optional Protocol.

9. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 and 5 (2) (b) of the Optional Protocol;

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

[6] See *Manzano et al. v. Colombia* (CCPR/C/98/D/1616/2007), para. 6.4, *L.D.L.P v. Spain* (CCPR/C/102/D/1622/2007), para. 6.3 and *Cañada Mora v. Spain* (CCPR/C/112/D/2070/2011), para. 4.3.