



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2345/2014\*, \*\*

<i>Communication submitted by:</i>	M.M. (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	7 February 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 11 February 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	14 March 2019
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Procedural issue:</i>	Insufficient substantiation of claims
<i>Substantive issues:</i>	Right to life; torture, cruel, inhuman or degrading treatment or punishment; non-refoulement; protection of aliens against arbitrary expulsion; right to a fair and public hearing by a competent, independent and impartial tribunal; right to freedom of religion or belief; right to the equal protection of the law
<i>Articles of the Covenant:</i>	6, 7, 13, 14, 18 and 26
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is M.M., an Afghan national born in 1993. His request for asylum in Denmark was rejected and, at the time of submission of the communication, he was in detention awaiting deportation to Afghanistan. At that time, the author claimed that, by forcibly deporting him to Afghanistan, Denmark would violate his

\* Adopted by the Committee at 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 Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



rights under articles 6, 7, 14, 18 and 26 of the Covenant. In the subsequent submission of 30 November 2015, the Committee was informed that the author was claiming a violation of article 13 instead of article 14 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The author is represented by counsel.

1.2 When submitting the communication, on 7 February 2014, the author requested that, pursuant to rule 92 of its rules of procedure, the Committee request the State party to refrain from deporting him to Afghanistan while his case was being considered by the Committee. On 11 February 2014, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to accede to the request. The author was forcibly returned to Afghanistan on 10 February 2014.

### **Factual background<sup>1</sup>**

2.1 The author is an ethnic Hazara of the Shia Muslim faith from Mazar-e-Sharif in Afghanistan, where he lived with his parents and sister. When he was about 9 years old, his mother died. When the author was about 10 years old, his father was kidnapped by the Taliban. Subsequently, he and his sister moved in with his maternal uncle in Mazar-e-Sharif, where he stayed for about two months before fleeing to Kabul. The author went to school for a few years and subsequently worked as a tailor and a carpenter's apprentice in Kabul. He was not a member of any political or religious associations or organizations or politically active in any other way. On an unspecified date, the author left Afghanistan in order to seek asylum in Sweden because he wanted "a peaceful life and an education".

2.2 The author entered Denmark on 5 February 2011 without any valid travel documents. The same day, he was stopped by the police in Denmark for illegal residence and applied for asylum. As his initial grounds for asylum, the author referred to his fear of the reaction of his maternal uncle and his uncle's spouse if he returned to Afghanistan, because, on an unspecified date, at least six years prior to his arrival in Denmark, he had apparently hit the uncle's son and had thrown a stone at his head.<sup>2</sup> On 27 May 2011, the Danish Immigration Service rejected the author's asylum application pursuant to section 7 of the Danish Aliens Act.

2.3 For the purpose of his counsel's brief of 11 January 2012, in connection with the hearing of the case before the Refugee Appeals Board, the author told his counsel that he had been forced to be a slave and a "dancing boy" in Kabul;<sup>3</sup> first – for about two to three months – by A.S., a brother of the author's employer, and later – for approximately the same period of time – by A.N., a pimp. In this context, the author stated that he had been held in captivity and had been forced to take part in sexual activities, originally by order of A.S. and later by A.N., until he managed to escape after having stabbed A.N. in the throat with a knife. A fight between him and A.N. was apparently seen by another dancing boy,<sup>4</sup> who had been brought to A.N.'s house by A.S. at the same time as the author.

2.4 On 16 January 2012, the Board upheld the refusal of the Danish Immigration Service to grant asylum. The Board accepted the author's original statements to the Danish Immigration Service (see para. 2.2 above) as facts. The Board found that the initial grounds for asylum could not justify asylum or protection status pursuant to section 7 of the Aliens Act. The Board could not accept as facts the author's statements about the grounds for asylum invoked during the Board hearing, that he had been a dancing boy in Kabul. The Board thus found that the author had failed to substantiate his grounds for asylum and it did not accept his statements as facts. Moreover, the Board took into consideration that the

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<sup>1</sup> The facts on which the present communication is based have been reconstructed on the basis of the author's own incomplete account, the decisions of the Refugee Appeals Board of 16 January 2012 and 6 February 2014 and other supporting documents available on file.

<sup>2</sup> These initial grounds for asylum are recorded in the author's asylum registration report and his application form of 10 February 2011, the report of the asylum interview conducted by the Danish Immigration Service on 11 May 2011 and the report of the author's statement at the Refugee Appeals Board hearing on 16 January 2012.

<sup>3</sup> A "dancing boy" (*bacha bāzī*) is a slang term in Afghanistan for young male adolescents or boys who are forced into sexual relations with older men.

<sup>4</sup> First name is available on file.

author had given non-committal, evasive and vague replies – even to simple and uncomplicated questions – during the Board hearing. The Board observed in that connection that it appeared unlikely that the author could have been held in some sort of captivity for several months with another dancing boy without having any knowledge of the other boy's background, including ethnicity, and the Board also considered it unlikely that the author had been unable to free himself from his involuntary stays with A.S. and A.N., respectively. Accordingly, the Board found that the statement appeared to have been fabricated for the occasion.

2.5 The Board thus found that the author would not be at a specific and individual risk of persecution falling within section 7 (1) of the Aliens Act or at a real risk of the death penalty or being subjected to torture or inhuman or degrading treatment or punishment under section 7 (2) of the Aliens Act in the event of his return to Afghanistan.

2.6 By letters received on 13 and 27 August 2012, the author requested the Board to reopen his asylum proceedings. In the letter received on 13 August, the author referred to the conflict with his maternal uncle as a consequence of the incident with his uncle's son. The author again recounted details of his stay in Kabul as a dancing boy with A.S. and A.N., respectively, and about his flight from A.N. He stated that he had always searched for a way to escape, in vain. After having stabbed A.N. in the throat and escaped through the open door, the author decided to flee from Afghanistan because A.N. was powerful and had weapons, and could easily kill him. In the letter received on 27 August, the author again requested the Board to reopen his case. He explained that he had not stated that he had been a dancing boy at his first interview for cultural reasons and because he had been ashamed.

2.7 On 31 July 2013, the author applied to the Danish Immigration Service for financial support for an assisted voluntary return to his country of origin. The same day, the author signed a declaration waiving his application for asylum, including his request for the reopening of his asylum proceedings by the Board. On 7 August 2013, the Danish Immigration Service approved the author's application for financial support for his assisted voluntary return.

2.8 By a letter received by the Board on 8 August 2013, the author again requested the reopening of his asylum proceedings, thereby revoking his previous waiver. According to the letter, the police had forced him to confirm by his signature that he was willing to depart voluntarily from Denmark. The author also stated that his return to Afghanistan would be dangerous for him and that he was unlikely to survive there. The author stated that one of his close friends,<sup>5</sup> who had been staying in the same asylum centre, had returned to Kabul about two months earlier. His friend had contacted the author on 6 August 2013 and told him that his own life was in danger because of the author. The friend said that he had been kidnapped by three people who had subjected him to torture for 24 hours, that they had obtained all the information they could about the author, and that the author's enemies were pursuing the author. His friend had also said that they had found him and the author through Facebook and that it was the author's mistake of using his real name on Facebook that had revealed his friend's whereabouts.

2.9 On 14 August 2013, the Danish Immigration Service was informed by the Refugee Appeals Board that the author had submitted a request for the reopening of his asylum proceedings. By letter of 14 August 2013, the Danish Immigration Service requested the author to submit to it any comments to the information from the Board, and further informed him that the Danish Immigration Service considered his request to reopen asylum proceedings to indicate that the author no longer wanted to cooperate in his departure. The Danish Immigration Service received no comment from the author on that occasion.

2.10 On 27 September 2013, the Aliens Division of the National Police informed the Board that the author had failed to appear for his assisted voluntary return to Afghanistan on 26 August 2013, arranged by the International Organization for Migration, and that he had been reported on the same date as having failed to appear at the asylum centre where he was staying. On 30 August 2013, the Danish Immigration Service revoked its approval of the financial support for the author's assisted voluntary return.

<sup>5</sup> Name is available on file.

2.11 On 1 November 2013, the Board refused to examine the author's request to reopen his asylum proceedings under section 33 (8) of the Aliens Act because the author had failed to appear.

2.12 By letter of 11 December 2013, the Danish Refugee Council requested the Board to reopen the author's asylum proceedings. In that connection, the Council referred to the author's conversion to Christianity after the Board's dismissal of his appeal. According to the Council, the author had stated when interviewed by them on 10 December 2013 that he felt that Christian culture in Denmark was very different from Islamic culture in Afghanistan. The author further stated that his interest in Christianity had developed during his stay in Turkey, where his friend had had a Bible. His friend had told the author about Christianity and replied to questions about it, and had also said that he himself had converted to Christianity. The author had started going to church six months after his arrival in Denmark. In June 2013, the author had started attending services regularly at the free evangelical Kronborgvejens Church Centre, and he had been baptized in that church on 13 October 2013. The author added that he now went to church every Sunday, that he prayed alone or with friends and that he read the Bible in Farsi every day. The author explained that he feared being killed upon his return to Afghanistan because he had converted to Christianity. He added that he and his friend<sup>6</sup> had experienced religious harassment at the asylum centre and had been called infidels by other asylum seekers. At the asylum centre, the author had also been subjected to physical violence committed by a Chechen and an Afghan.<sup>7</sup>

2.13 A certificate of baptism and a memorandum prepared by a minister of the Kronborgvejens Church Centre were enclosed with the request to reopen the author's asylum claim submitted by the Danish Refugee Council. The Council further submitted that, in its opinion, the author met the conditions for being granted a residence permit under section 7 (1) of the Aliens Act. In that respect, the Council referred to the Board's previous decisions in cases concerning Christian converts from Afghanistan, stating that, although it had not yet been established at that time whether the Afghan authorities had learned about the author's conversion, it could not be ruled out that there was a risk that the Afghan authorities would learn about the author's conversion if he was returned to Afghanistan. According to the Council, it would be difficult for the author, having converted, to conceal his new affiliation if he was returned to Afghanistan. Moreover, because he would return from a European country, his behaviour would attract more attention among the local population, so that even the smallest non-compliance with religious norms and principles would leave the author in a particularly vulnerable situation. The Council additionally submitted that, according to previous decisions made by the Board in cases involving Christian converts, the author could not be required to hide his religious beliefs to avoid problems in his country of origin.

2.14 In its decision of 6 February 2014, the Board stated on the basis of the above that it did not find any grounds for reopening the case, nor any grounds for extending the time limit for the author's departure. In that connection, the Board took into consideration the fact that no substantial new information or views beyond the information available at the original hearing by the Board had been submitted.

2.15 The Board also found that, in the event of his return to Afghanistan, the author would not be at any risk of persecution falling within section 7 (1) of the Aliens Act due to his conversion because the Board could not accept as a fact that the author's conversion was genuine. The Board observed in that respect that, during the original asylum proceedings, the author had not disclosed his interest in Christianity – which had arisen already during his stay in Turkey prior to his entry into Denmark, according to the request for the reopening of the case – whether to the police, the Danish Immigration Service, his legal counsel or the Board. In its assessment of the information on the author's conversion, the Board also took into account, as appears from the reasoning of its decision of 16 January 2012, the fact that, during the asylum proceedings, the author had given elaborate and inconsistent statements concerning his grounds for seeking asylum, and he had also

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<sup>6</sup> First name is available on file.

<sup>7</sup> No further details provided by the author.

given non-committal, evasive and vague replies even to simple and uncomplicated questions. The Board further observed that the author had also failed to draw attention to his interest in Christianity in his reopening requests received by the Board on 13 August 2012 and 8 August 2013.

2.16 Upon an overall assessment, the Board found that it had not been substantiated that the author would risk persecution justifying asylum under section 7 (1) of the Aliens Act or risk the death penalty or being subjected to torture or inhuman or degrading treatment or punishment under section 7 (2) if he was returned to Afghanistan.

### **The complaint**

3.1 The author claims that his deportation from Denmark to Afghanistan would constitute a violation of his rights under articles 6, 7, 14, 18 and 26 of the Covenant. In that connection, the author submits, inter alia, that he did not mention anything about his Christian faith during the original asylum proceedings because he was not a Christian at that time, that as proof of his conversion to Christianity he has produced a certificate of baptism, that the Board should make an assessment of the credibility of his conversion, and that the argument about his lack of credibility during the original asylum proceedings cannot be applied to the grounds of conversion.

3.2 In support of his submission, the author refers to the Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Afghanistan, published by the Office of the United Nations High Commissioner for Refugees (UNHCR) on 6 August 2013, according to which individuals with, inter alia, the following profiles may be in need of international protection: individuals associated with, or perceived as supportive of the Government of Afghanistan and the international community, including the international military forces; men and boys of fighting age; individuals perceived as contravening the Taliban's interpretation of Islamic principles, norms and values; and members of (minority) ethnic groups. The author explains that, owing to his travel to Europe, if he were returned to Afghanistan, he would certainly be perceived as having contravened Islamic rules and as being supportive of the Government and/or the international community. Moreover, the author has converted to Christianity. He further claims that, given his age, he risks being forced to fight for either the Government or the Taliban, and that he also risks being sexually abused.<sup>8</sup> The author adds that he cannot seek protection from his family, and that he belongs to an ethnic minority group, the Hazara, from Mazar-e-Sharif.

3.3 The author also claims that, pursuant to the UNHCR Eligibility Guidelines and contrary to the assessment made by the Board in its decisions of 16 January 2012 and 6 February 2014, he needs international protection as a young ethnic Hazara from Mazar-e-Sharif. Furthermore, the UNHCR Eligibility Guidelines make it clear that numerous factors should be taken into account in the evaluation of the availability of internal flight or relocation alternatives in Afghanistan. In that connection, the author submits that the failure of the Board to take those factors into consideration in taking its decisions of 16 January 2012 and 6 February 2014 and in maintaining the initial order, obliging the author to leave Denmark, constitutes a violation of articles 6 and 7 of the Covenant.

3.4 The author also submits that his rights under article 14 of the Covenant have been violated, since a decision on his asylum application taken by the Board under the administrative procedure could not be appealed to a judicial body (CERD/C/DEN/CO/17, para. 13). For him, this also raises the question of discrimination under article 26 of the Covenant, since under the State party's law, decisions of a great number of administrative boards, which have the same composition as the Refugee Appeals Board, can be appealed before the ordinary courts. The author also argues that his new *sur place* asylum grounds, that is, his conversion to Christianity while in Denmark, was only examined and dismissed by a person who was part of the Board's secretariat, with the approval of the Board's Chair. Therefore, it was not the Board as such that made the decision to reject the request of the Danish Refugee Council to reopen the author's asylum proceedings.

<sup>8</sup> The author does not provide further details on this matter.

3.5 The author further submits that, despite several requests from the Danish Refugee Council for a rapid decision due to his imminent forcible return, the Board did not make its decision until shortly before the forcible return. He refers to previous decisions of the Committee in this regard.<sup>9</sup>

3.6 In his subsequent submission of 30 November 2015, counsel informed the Committee that the author was claiming a violation of article 13 instead of article 14 of the Covenant. He argued, in particular, that the author's risk of persecution and suffering of irreparable harm upon return to Afghanistan had not been assessed in accordance with the procedural guarantees of this article, since he was unable to appeal the decisions of the Board to a judicial body.

#### **State party's observations on admissibility and the merits**

4.1 On 11 August 2014, the State party submitted its observations on admissibility and the merits of the author's communication.

4.2 The State party recalls the facts on which the present communication is based and the author's claims, and submits that the communication should be declared inadmissible. Should the Committee declare the communication admissible, the State party submits that no provisions of the Covenant would be violated if the author were deported to Afghanistan.

4.3 The State party describes the structure, composition and functioning of the Board, which it considers to be an independent and quasi-judicial body,<sup>10</sup> and the legal basis of its decisions.<sup>11</sup>

4.4 As to the admissibility of the communication, the State party argues that the author has failed to establish a prima facie case for the purpose of admissibility with respect to the alleged violation of articles 6 and 7 of the Covenant since it has not been established that there are substantial grounds for believing that his life will be in danger or that he will be in danger of being subjected to torture if returned to Afghanistan. The communication is therefore manifestly ill-founded and should be declared inadmissible.

4.5 The State party recalls that article 14 of the Covenant lays down the principle of due process, including the right to have access to the courts in the determination of a person's rights and obligations in a suit at law. It follows from the Committee's jurisprudence that proceedings relating to the expulsion of an alien 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), but are governed by article 13 of the Covenant.<sup>12</sup> Against this background, the State party submits that asylum proceedings fall outside the scope of article 14 of the Covenant, and that this part of the communication should therefore be considered inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol.

4.6 On the merits, the State party submits that the author has not sufficiently established that his return to Afghanistan would constitute a violation of articles 6 and 7 of the Covenant. The State party recalls in this regard that its obligations under articles 6 and 7 of the Covenant are reflected in section 7 (2) of the Aliens Act, under which a residence permit will be issued to an alien upon application if the alien risks the death penalty or being subjected to torture or cruel, inhuman or degrading treatment or punishment if he or she returned to his or her country of origin.

4.7 As far as the assessment of the author's credibility is concerned, the State party refers to findings made by the Board in its decision of 16 January 2012 (see paras. 2.4–2.5 above). The State party submits that the Board's decision under section 7 (1) and (2) of the Aliens Act was made on the basis of a specific and individual assessment of the author's asylum grounds combined with its background knowledge on the general situation in Afghanistan and the specific details of the case. Therefore, there is no basis for challenging the Board's assessment that the author has failed to substantiate his grounds for asylum and

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<sup>9</sup> *A.E. v. Denmark* (CCPR/C/115/D/2320/2013) and *M.A. v. Denmark* (CCPR/C/119/D/2240/2013).

<sup>10</sup> *Ahmed et al. v. Denmark* (CCPR/C/117/D/2379/2014), paras. 4.1–4.3.

<sup>11</sup> Aliens Act, sects. 7 (1)–(2) and 31 (1)–(2).

<sup>12</sup> *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 8.5.

that the author's additional grounds for asylum, that he had been a dancing boy in Kabul, was fabricated for the occasion.

4.8 The State party observes in this regard that it was not until the consultation with his counsel for the purpose of drafting the counsel's brief of 11 January 2012 that the author, following consultation with the staff at his asylum centre, provided the information that he had allegedly been kept captive as a dancing boy for a total of four months by two different persons. The statement about this was thus produced a whole year after the author's arrival in Denmark and after the author had had three opportunities to give evidence about his grounds for asylum; first to the police upon his entry, then when interviewed for the asylum registration report and finally at the asylum interview conducted by the Danish Immigration Service. The author also had the opportunity to claim these asylum grounds on the asylum application form. Moreover, at the asylum interview conducted by the Danish Immigration Service on 11 May 2011, the author stated when directly asked that he had had no conflicts prior to his departure other than those that he had already mentioned.

4.9 The State party also observes that it is to be expected that the author, who is not illiterate and has had some years of schooling, would have been able to give a precise and specific reply to the questions asked, which were simple and uncomplicated, if he had himself experienced the incidents constituting his grounds for asylum. Moreover, the author's explanations of why the information was only produced at such a late stage in the asylum proceedings appear inconsistent. According to the counsel's brief of 11 January 2012, the author provided information about his additional grounds for asylum following consultation with an employee at the asylum centre, whereas the author stated at the Board hearing on 16 January 2012 that he had told a doctor about it.

4.10 As to the author's reference to the UNHCR Eligibility Guidelines (see para. 3.2 above), the State party submits that the fact that the author is a young man of Hazara ethnicity cannot in itself justify asylum. The State party further observes that, according to the report of the Danish Immigration Service, nothing indicates that the Taliban is forcibly recruiting young people since many volunteers join the Taliban. It is equally unlikely that the Taliban will attempt to forcibly recruit ethnic Hazaras, considering that these two groups do not trust each other, and that the Taliban will therefore not trust Hazaras as soldiers.<sup>13</sup> The State party submits, therefore, that the author has failed to substantiate that the Taliban will attempt to forcibly recruit him upon his return to Afghanistan. Moreover, the author is a young unmarried male of working age with no health problems. The author stated when interviewed by the Danish Immigration Service on 11 May 2011 that he was not involved in politics. The author also stated that he had never experienced any problems with the Afghan authorities. In that connection, the State party observes that the author never referred to his ethnicity as justifying asylum during the asylum proceedings in Denmark.

4.11 The State party also observes that, since the author does not appear to have been conspicuous in any way, there is no basis for revising the Board's assessment that the author will not be at a specific and individual risk, solely as a result of his age and ethnicity, of being persecuted or subjected to the death penalty, torture or inhuman or degrading treatment or punishment under section 7 (1) or (2) of the Aliens Act by the Afghan authorities, the Taliban or others in Afghanistan.

4.12 In the light of the foregoing, the State party concludes that there is no basis for doubting, let alone setting aside, the assessment made by the Board in its decisions of 16 January 2012 and 6 February 2014 that the author has failed to substantiate that his return to Afghanistan would put him at risk of being subjected to persecution or abuse justifying asylum, and thus that returning the author would not constitute a violation of either article 6 or article 7 of the Covenant.

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<sup>13</sup> *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process, Report from Danish Immigration Service's Fact-finding Mission to Kabul, Afghanistan, 25 February to 4 March 2012* (Copenhagen, 2012), pp. 26–29. According to the report, the Taliban mainly recruit ethnic Pashtuns.

4.13 Regarding the author's submission that the Board has failed to decide on the issue of an internal flight alternative (see para. 3.3 above), the State party observes that this issue is irrelevant, considering that the Board has found in its two decisions on the case – and continues to find – that the author would not be at a specific and individual risk of being subjected to persecution or abuse justifying asylum under section 7 (1) or (2) of the Aliens Act upon his return to Afghanistan.

4.14 With regard to the risk faced by the author upon his return to Afghanistan due to his conversion to Christianity (see para. 3.1 above), the State party observes that even though the author cannot be required to hide or keep secret his religious beliefs in order to avoid problems in his country of origin as a consequence of his religious beliefs, it still remains crucial to the matter of granting or not granting asylum to the author whether he has a well-founded fear of persecution by authorities or private individuals in Afghanistan as a consequence of his religious beliefs.

4.15 The State party submits in that connection that the Board took into account in its refusal of 6 February 2014 to reopen the author's case that he had not at any time during the initial asylum proceedings disclosed his interest in Christianity (see para. 2.15 above). However, it appears from the request for reopening that the author had started going to church in Denmark half a year after his arrival in Denmark and more than half a year before the hearing before the Board on 16 January 2012, at which the author gave evidence before the Board, aided by counsel and an interpreter. Additionally, it appears from the memorandum prepared by the minister of the Kronborgvejens Church Centre that the author had attended church services regularly since 2013.

4.16 The State party argues that it follows from section 40 of the Aliens Act that asylum seekers must substantiate their grounds for seeking asylum. This entails an obligation for the asylum seeker to provide information on all matters relevant under asylum law, such as an interest in Christianity leading to church attendance. It must be assumed to be common knowledge among Danish immigration lawyers and asylum seekers in particular that conversion from Islam to Christianity is a valid and relevant justification for seeking asylum. Moreover, the author was asked about his religious affiliation several times in connection with the examination of his application for asylum in Denmark and stated each time that he was a Muslim. He was also told several times that it was important that he disclose all matters that might be relevant for the determination of his application for asylum.

4.17 The State party observes in that connection that the author saw reason to disclose his second grounds for asylum, that he had been a dancing boy in Kabul, at the oral Board hearing on 16 January 2012, which argues against his ignorance about the importance of providing all relevant information under asylum law. Hence, the author had the opportunity to tell about his interest in Christianity and his dissociation with Islam at the Board hearing, but he chose not to do so. Only in mid-December 2013 – when the forced return of the author was about to be effected – did the author disclose that he had converted to Christianity. In that connection, the State party observes that no explanation has been given as to why the author chose not to disclose that he was a Christian until almost two years after the Board's decision in the original asylum proceedings.

4.18 The State party does not consider credible the author's explanations in his initial submission of 7 February 2014 to the Committee that he had not mentioned anything about his Christian faith during the original examination of his asylum application because he was not a Christian at that time, not least in view of the fact that the author has stated himself, according to the case information, that he had become interested in Christianity already in Turkey and that he had started going to church half a year before the Board hearing on 16 January 2012. In addition, in his letters requesting that his asylum case be reopened, received by the Board on 13 August 2012, 27 August 2012 and 8 August 2013, the author did not disclose his Christian affiliation, although by the time of his last letter, and according to his later statements, the author was already attending church regularly.

4.19 In the light of the foregoing, the State party finds no reason to revise the Board's assessment that the author's conversion to Christianity was not genuine. The State party



submits, therefore, that there are no grounds for establishing that the return of the author to Afghanistan would constitute a breach of article 18 of the Covenant.

4.20 As to the author's claims under articles 14 and 26 of the Covenant (see para. 3.4 above), the State party submits that it follows from section 48 of the rules of procedure of the Refugee Appeals Board<sup>14</sup> that the chair of the individual board, a legal judge, will decide on the matter of the reopening of an asylum case when, according to the contents of the request for reopening, there is no reason to assume that the Board will change its decision. Accordingly, it was the Chair of the Board that first heard the case who approved the relevant decision and not the staff member who formally signed it.

4.21 The State party observes in this connection that the author has been treated no 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. Since he has not elaborated any further on the circumstances on which this part of the communication is based, the State party submits that the author has failed to establish a *prima facie* case for the purpose of admissibility with respect to the alleged violation of article 26 of the Covenant because it has not been established that there are substantial grounds for believing that the author has been subjected to discrimination. Thus, this part of the communication should be declared inadmissible.

#### **Author's comments on the State party's observations**

5.1 On 30 November 2015, the author's counsel informed the Committee that, despite the author's forcible return to Afghanistan, he would continue to represent the author before the Committee since the power of attorney given to him remained in force. He also stated that the author was claiming a violation of article 13 instead of article 14 of the Covenant in that the author was only allowed an administrative procedure to assess his asylum grounds and was denied access to the courts to appeal the Board's rejection of his request to reopen the asylum proceedings.

5.2 The author's counsel does not have any comments in relation to the assessment of the author's initial asylum grounds by the Danish Immigration Service and the Refugee Appeal Board.

5.3 The author's counsel recalls that the author's new *sur place* asylum ground, his conversion to Christianity in Denmark, was only examined and dismissed by a person who was part of the Board's legal staff, with the approval of the Board's Chair. Therefore, it was not the Board as such that made the decision to reject the request of the Danish Refugee Council to reopen the author's asylum proceedings on the grounds that it could not be accepted as a fact that the author's conversion was genuine. The author should have benefited from a new oral hearing before the Danish Immigration Service,<sup>15</sup> which would have allowed him to explain his new *sur place* asylum grounds, and he would then have had access to the Board as the second instance to take a decision on the matter. The lack of possibility for the author to prove in the framework of a new oral hearing before the Board that his conversion to Christianity was genuine constitutes a separate violation of article 13 of the Covenant.

5.4 The author's counsel also argues that the lack of possibility for the author to appeal against the rejection of his new *sur place* asylum grounds also amounts to discrimination proscribed under article 26 of the Covenant. He submits, in particular, that in the entire Danish administrative system only new *sur place* asylum grounds are examined by the Board as the first and only instance of the asylum proceeding and that the Board's negative decisions could only be appealed to United Nations treaty bodies or to the European Court of Human Rights.

<sup>14</sup> Executive Order No. 1651 of 27 December 2013 on Rules of Procedure for the Refugee Appeals Board.

<sup>15</sup> According to the author's counsel, as of 12 January 2012, the Danish Immigration Service is precluded from receiving requests for reopening of the asylum proceedings after a decision is taken by the Refugee Appeals Board.

5.5 The author's counsel submits that the security situation in Afghanistan is extremely dangerous. He recalls in this regard the author's references to the UNHCR Eligibility Guidelines (see paras. 3.2–3.3 above). In addition, he refers to the interview with the Minister for Refugees and Repatriation of Afghanistan published on 21 February 2015.<sup>16</sup> In that interview, the Minister appealed to Norway and all other European countries to halt deportations to Afghanistan, especially of women and children. The Minister specifically stated that these countries "should not deport anyone because we cannot take care of them here". He explained that memorandums of understanding signed by Afghanistan with some European countries back in 2011 "clearly stated that those refugees who [were] coming from dangerous provinces [would] not be returned". It was also agreed in these memorandums that women and children would not be returned to Afghanistan. According to the Minister, most of those currently being returned came from "very dangerous" provinces and could not go back to them. The Minister observed that the 7 million Afghans who were living in exile could not all be resettled in Kabul, which was considered to be safe by the departing countries.

5.6 The author's counsel argues in that connection that so-called non-believers are persecuted even in Kabul, and refers to a killing of a young woman accused of blasphemy by a mob, without the local police stepping in or trying to protect her.<sup>17</sup> Furthermore, the author, who comes from the unsafe area of Mazar-e-Sharif, can no longer expect to be resettled in Kabul due to the great number of Afghan returnees taking up residence in that city. Therefore, the author's life is constantly in danger due to his conversion to Christianity, and the decision of the Danish asylum authorities not to reopen his asylum proceedings constitutes a violation of articles 6 and 7 of the Covenant.

5.7 The counsel further submits that, at the beginning of March 2015, the Afghan authorities officially communicated to the Danish authorities their request to stop deportations to Afghanistan and to renegotiate the tripartite memorandum of understanding between Afghanistan, Denmark and UNHCR of 18 October 2004.<sup>18</sup> Nevertheless, the Danish authorities continue to deport asylum seekers whose claims were rejected to Afghanistan.

5.8 With regard to the State party's observations on the admissibility of the communication, the counsel submits that the author's claims under articles 6, 7, 13, 18 and 26 of the Covenant should be declared admissible because he did not receive a fair trial with regard to his conversion to Christianity and his fear of persecution due to this new *sur place* asylum grounds. Since the author could not appeal the Board's decision of 6 February 2014 to any other body in Denmark, it constitutes a violation of articles 13 and 26 of the Covenant. With regard to the State party's observations on the merits, the Board's decision of 6 February 2014 as such has resulted in a violation of the author's rights under articles 6 and 7 of the Covenant, that is, the prohibition of refoulement, and a violation of the author's right under article 18 of the Covenant to manifest his religion, since it is not possible in Afghanistan.

#### **State party's additional observations**

6.1 On 28 February 2016, the State party provided additional observations to the Committee and submitted that the submission of the author's counsel of 30 November 2015 had not provided any essential new or specific information on the author's situation. The State party therefore generally refers to its observations of 11 August 2014.

6.2 Furthermore, the State party observes that, in his initial submission to the Committee, the author claimed that Denmark had also violated article 14 of the Covenant. In this respect, the State party submitted in its observations of 11 August 2014 that asylum proceedings fell outside the scope of that article. The State party notes that the author's counsel has subsequently invoked a violation of article 13 of the Covenant due to the

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<sup>16</sup> Available at <https://kabulblogs.wordpress.com/2015/02/21/afghan-minister-for-refugees-and-repatriation-stop-deportation-to-afghanistan/>.

<sup>17</sup> No further details provided by counsel.

<sup>18</sup> Available at [www.unhcr.org/subsites/afghancrisis/430d7bec2/tripartite-memorandum-understanding-mou-islamic-transitional-state-afghanistan.html](http://www.unhcr.org/subsites/afghancrisis/430d7bec2/tripartite-memorandum-understanding-mou-islamic-transitional-state-afghanistan.html).

impossibility of appealing the Refugee Appeals Board's rejection of the request to reopen the author's asylum proceedings before a court. In response to this claim, the State party refers to the Committee's jurisprudence, which states that article 13 offers some of the guarantees afforded by article 14 (1) of the Covenant, but not the right to appeal<sup>19</sup> or the right to a court hearing.<sup>20</sup> Since the author has not elaborated any further on the circumstances on which this part of the communication is based, the State party submits that he has failed to establish a prima facie case for the purpose of admissibility of his claims under article 13 of the Covenant, as required by rule 96 (b) of the Committee's rules of procedure. This part of the communication is therefore manifestly ill-founded and should be declared inadmissible.

6.3 Regarding the reopening of asylum proceedings, the State party generally observes that, when the Board has decided a case, the asylum seeker may request the Board to reopen the asylum proceedings. The power to decide on the reopening of an asylum case is vested in the Chair, who is always a judge, of the panel that made the original decision in the case when, according to the contents of the request for reopening, there is no reason to assume that the Board will change its decision, or the conditions for being granted asylum must be deemed evidently satisfied.<sup>21</sup> The Chair may also decide to reopen a case and remit it to the Danish Immigration Service relying on his powers as Chair. The Chair may further decide that the panel that previously decided the case is to decide on the reopening of the case either at a hearing or by deliberations in writing, that the case is to be reopened and considered at a new oral hearing by the panel that previously decided the case, and with all parties to the case present, or that the case is to be reopened and considered at a hearing by a new panel.<sup>22</sup> If a basis is found for reopening a case, the time limit for departure will be suspended pending the rehearing of the case. The Board will also assign counsel to represent the asylum seeker.

6.4 The Board's secretariat assists the Executive Committee in drafting decisions, which become final when endorsed by the Board's Chair. Subsequently, the decision is signed by an employee of the secretariat and delivered to the asylum seeker. Accordingly, both formally and in practice, decisions on reopening requests are made by the chair of the relevant panel. The circumstance that a decision is signed by an employee of the secretariat does not alter this fact. The legislation on the consideration of requests to reopen asylum cases is thus clear and leaves no doubt about the competence of the Board. Consequently, there is no basis for claiming that decisions refusing requests to reopen are made by the Board's secretariat. Therefore, the author has failed to establish a prima facie case for the purpose of admissibility of his claim under article 26 of the Covenant as it has not been established that there are substantial grounds for believing that the author has been subjected to discrimination. This part of the communication should therefore be declared inadmissible.

6.5 With regard to the author's alleged conversion to Christianity, the State party recalls that, in its decision of 6 February 2014, the Board had not been able to consider as a fact that the author's conversion from Islam to Christianity was genuine. As regards the assessment of evidence made by the Board on the author's alleged conversion and his other grounds for asylum, the State party refers to its observations of 11 August 2014 in their entirety.

6.6 The State party also draws the Committee's attention to the fact that public debate in Denmark in general and among asylum seekers in particular has focused considerably on the significance of conversion, typically from Islam to Christianity, to the outcome of an asylum case. It is therefore common knowledge among asylum seekers and other parties within the field of asylum that information on conversion is considered grounds for asylum that may, depending on the circumstances, result in the granting of residence if the

<sup>19</sup> *Mr. X and Ms. X v. Denmark* (CCPR/C/112/D/2186/2012), para. 6.3.

<sup>20</sup> See *Maroufidou v. Sweden* (CCPR/C/12/D/58/1979). In this communication, the Committee did not dispute the assertion that an administrative review of a decision expelling an alien from Sweden did not amount to a violation of article 13 of the Covenant.

<sup>21</sup> See sect. 53 of the Aliens Act and rule 48 of the rules of procedure of the Refugee Appeals Board.

<sup>22</sup> See rule 48 (2) of the rules of procedure of the Refugee Appeals Board.

conversion is genuine and if it is accepted as a fact that the asylum seeker will practise his new faith upon return to his country of origin and therefore will be at such a risk of persecution in that country as to justify asylum.

6.7 Furthermore, the attention of the Committee is drawn to a report by the Norwegian Country of Origin Information Centre, Landinfo, on the situation of Christians and converts in Afghanistan published on 4 September 2013 (in Norwegian). Towards the end of the report, several sources state that, even if it becomes known in the country of origin that a person has indicated conversion as his grounds for seeking asylum in another country, this does not mean that the person will become vulnerable upon return, since Afghans show great understanding for compatriots who try anything to obtain residence in Europe. The State party adds that paragraph 36 of the UNHCR Guidelines on International Protection: Religion-Based Refugee Claims under Article 1 A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees states, inter alia, that so-called “self-serving” activities do not create a well-founded fear of persecution on a Convention ground in the claimant’s country of origin, if the opportunistic nature of such activities will be apparent to all, including the authorities there, and serious adverse consequences would not result if the person were returned.<sup>23</sup>

6.8 With reference to its observations of 11 August 2014, the State party reiterates its position that, in the event of the author’s return to Afghanistan, the author would not risk abuse contrary to article 7 of the Covenant because he has no family and because of his age and ethnicity. The State party recalls that the author is an ethnic Hazara from Mazar-e-Sharif in the Balkh Province, in which Hazaras make up 10 per cent of the population. Moreover, in Bamian, the largest city in the southern part of Balkh Province, Hazara is the dominant ethnicity. Accordingly, the State party finds that the general situation in Afghanistan, including in Kabul, is not in itself of such nature that, for that reason alone, the author meets the conditions for being granted asylum.<sup>24</sup>

6.9 The State party observes that the author was forcibly returned to Afghanistan on 10 February 2014 and that the Afghan authorities agreed to take him back (see para. 5.5 above).

6.10 In conclusion, the State party submits that, when rendering its decisions, the Refugee Appeals Board made a thorough assessment of the author’s specific circumstances and the background information available. In the State party’s opinion, the author’s communication merely reflects that the author disagrees with the Board’s assessment of his specific circumstances and background information. In his communication, the author also failed to identify any irregularity in the decision-making process or any risk factors that the Board failed to take properly into account. The author is trying to use the Committee as an appellate body to have the factual circumstances put forward in support of his claim for asylum reassessed by the Committee. However, the Committee must give considerable weight to the findings made by the Board, which is better placed to assess the factual circumstances in the author’s case. There is no basis for doubting, let alone setting aside, the assessments made by the Board, according to which the author has failed to establish that there are substantial grounds for believing that he would be in danger of being killed or subjected to torture or to cruel, inhuman or degrading treatment or punishment if he was returned to Afghanistan. Against this background, the return of the author to Afghanistan would not constitute a violation of articles 6, 7 and 18 of the Covenant.

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<sup>23</sup> See also *X. v. Norway* (CCPR/C/115/D/2474/2014), para. 7.6.

<sup>24</sup> See the judgments delivered by the European Court of Human Rights on 12 January 2016 in *A.G.R. v. the Netherlands* (application No. 13442/08), para. 59; *A.W.Q. and D.H. v. the Netherlands* (application No. 25077/06), para. 71; *M.R.A. and Others v. the Netherlands* (application No. 46856/07), para. 112; *S.D.M. and Others v. the Netherlands* (application No. 8161/07), para. 79; and *S.S. v. the Netherlands* (application No. 39575/06), para. 66.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

7.1 Before considering any claim 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.

7.2 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.

7.3 The Committee notes the author's claim that he has exhausted all domestic remedies available to him. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

7.4 As to the State party's argument that the author's claim under article 6 of the Covenant should be declared inadmissible owing to insufficient substantiation, the Committee notes that the information submitted to it does not provide sufficient grounds to believe that the author's forcible return to Afghanistan would expose him to a real risk of a violation of his right to life. The author's contentions in this respect are general allegations mentioning the risk of being killed because of his conversion to Christianity, without advancing however any arguments in support of his claim. In these circumstances, the Committee considers that the author has not sufficiently substantiated his claims under article 6 of the Covenant and therefore declares this part of the communication inadmissible pursuant to article 2 of the Optional Protocol.

7.5 The Committee notes the author's claim under article 13 of the Covenant that he was unable to appeal the negative decisions of the Board to a judicial body. In that regard, the Committee refers to its jurisprudence, according to which this provision offers asylum seekers some of the protection afforded under article 14 of the Covenant, but not the right of appeal to judicial bodies.<sup>25</sup> The Committee therefore concludes that the author has failed to sufficiently substantiate this particular claim under article 13 of the Covenant, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7.6 The Committee further notes that the author also claimed a violation of articles 13 and 26 of the Covenant, since the decision of 6 February 2014 refusing to reopen his asylum proceedings was made by the Board's secretariat with the approval of the Board's Chair and not by the Board. The Committee also takes note of the State party's arguments that the author's asylum proceedings, including his request that his case be reopened, were conducted in conformity with Danish law and that he had been treated no differently than any other person applying for asylum. The Committee observes that the author had the opportunity to submit and challenge evidence concerning his forcible return to Afghanistan and had his asylum application examined by the Danish Immigration Service and reviewed by the Board and by the Board's Chair, who, inter alia, examined the new *sur place* asylum grounds and evidence submitted by the author. The Committee considers, consequently, that the author has not sufficiently substantiated his claims concerning the procedure before the Board under articles 13 and 26 of the Covenant for purposes of admissibility, and that this part of the communication must therefore be declared inadmissible in accordance with article 2 of the Optional Protocol.

7.7 Finally, the Committee notes the State party's argument that the author's claims with respect to articles 7 and 18 of the Covenant should be declared inadmissible owing to insufficient substantiation. However, the Committee considers that, for the purposes of admissibility, the author has adequately explained the reasons why he fears that his forcible return to Afghanistan would result in a risk of treatment contrary to article 7 of the

<sup>25</sup> For example, *Omo-Amenaghawon v. Denmark* (CCPR/C/114/D/2288/2013), para. 6.4; and *S.Z. v. Denmark* (CCPR/C/120/D/2625/2015), para. 7.12. See also 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.

Covenant based on his conversion from Islam to Christianity and therefore finds the author's claim under article 7 admissible. In this context, the Committee notes that the other grounds for seeking asylum presented by the author to the State party's authorities at different stages of the asylum proceedings, namely his fear of the reaction of his maternal uncle and his uncle's spouse upon return to Afghanistan, as well as his fear of the retaliation by a pimp whom he allegedly stabbed in the throat with a knife, are not part of the present communication to the Committee (see para. 5.2. above). As for the allegations concerning a violation of article 18, the Committee considers that they cannot be dissociated from the author's allegations under article 7 with regard to the risk of harm that he faces in Afghanistan as a result of his conversion from Islam to Christianity, which must be determined on the merits.<sup>26</sup>

7.8 Therefore, the Committee declares the communication admissible, insofar as it raises issues under articles 7 and 18 of the Covenant, based on the author's conversion from Islam to Christianity, and proceeds with its consideration of the merits.

#### *Consideration of the merits*

8.1 The Committee has considered the 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.

8.2 The Committee notes the author's claim that his forcible return to Afghanistan would result in a risk of treatment contrary to article 7 of the Covenant based on his conversion from Islam to Christianity.

8.3 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 when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant (para. 12). The Committee has also indicated that the risk must be personal<sup>27</sup> and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>28</sup> Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>29</sup>

8.4 The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists,<sup>30</sup> unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>31</sup>

8.5 The Committee notes that it is uncontested in the present communication that the author was baptized on 13 October 2013 and regularly attended church services in Denmark between June 2013 and his forcible return to Afghanistan in February 2014. It also notes the finding of the Refugee Appeals Board that it could not accept as a fact that the author's conversion to Christianity was genuine, despite the existence of a certificate of baptism and a memorandum prepared by a minister of the Kronborgvejens Church Centre. The Board specifically observed in this respect that, during the original asylum proceedings, the author had not disclosed his interest in Christianity – which had arisen already during his stay in Turkey prior to his entry into Denmark, according to the request to reopen the case – whether to the police, the Danish Immigration Service, his legal counsel or the Board. In its assessment of the information on the author's conversion, the Board has also taken into account, as appears from the reasoning of its decision of 16 January 2012, that during the asylum proceedings the author had given elaborate and inconsistent statements on his

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<sup>26</sup> For example, *X v. Denmark*, para. 8.4.

<sup>27</sup> *K. v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3; *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2; and *X v. Denmark*, para. 9.2.

<sup>28</sup> *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

<sup>29</sup> *Ibid.* See also *X v. Denmark*, para. 9.2.

<sup>30</sup> See *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4 and *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

<sup>31</sup> For example, *K. v. Denmark*, para. 7.4.

grounds for seeking asylum, and he had also given non-committal, evasive and vague replies even to simple and uncomplicated questions. The Board further observed that the author had also failed to draw attention to his interest in Christianity in his requests to reopen his asylum claim received by the Board on 13 August 2012 and 8 August 2013.

8.6 In this regard, the Committee considers that when an asylum seeker submits that he or she has converted to another religion after his or her initial asylum request has been dismissed in the country of asylum, it may be reasonable for the States parties to conduct an in-depth examination of the circumstances of the conversion.<sup>32</sup> However, the test for the Committee remains whether, regardless of the sincerity of the conversion, there are substantial grounds for believing that such conversion may have serious adverse consequences in the country of origin so as to create a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant. Therefore, even when it is found that the reported conversion is not genuine, the authorities should proceed to assess whether, in the circumstances of the case, the asylum seeker's behaviour and activities in connection with, or to justify, his or her conversion, such as attending a church, being baptized or participating in proselytizing activities, could have serious adverse consequences in the country of origin so as to put him or her at risk of irreparable harm.<sup>33</sup>

8.7 In the present case, the Committee notes the State party's reference to the report by Landinfo on the situation of Christians and converts in Afghanistan (see para. 6.7 above) in support of its argument that, even if it becomes known in the country of origin that the author has indicated conversion as his grounds for seeking asylum in another country, it does not mean that he will become vulnerable upon his return, since there is a widespread understanding among Afghans for compatriots who try anything to obtain residence in Europe. Furthermore, according to the UNHCR Guidelines on International Protection (see para. 6.7 above), "self-serving" activities do not create a well-founded fear of persecution in one's country of origin if the opportunistic nature of such activities will be apparent to all, including the authorities there, and serious adverse consequences would not result if the person were returned.

8.8 The Committee also notes that, although the author generally contests the assessment and findings of the Danish authorities as to the risk of harm he faces in Afghanistan, he has not presented any evidence to substantiate his allegations under articles 7 and 18 of the Covenant. The Committee also considers that the information at its disposal demonstrates that the State party took into account all the elements available when evaluating the risk of irreparable harm faced by the author upon his return to Afghanistan and that the author has not identified any irregularity in the decision-making process. The Committee also considers that, while the author disagrees with the factual conclusions of the State party's authorities and with their decision not to reopen his case, he has not shown that the Board's decision of 6 February 2014 was arbitrary or manifestly erroneous, or amounted to a denial of justice.

8.9 While not underestimating the concerns that may legitimately be expressed with respect to the general human rights situation in Afghanistan, the Committee considers that the evidence and circumstances invoked by the author have not adduced sufficient grounds for demonstrating that his forcible return to Afghanistan was contrary to articles 7 and 18 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's forcible return to Afghanistan did not violate his rights under articles 7 and 18 of the Covenant.

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<sup>32</sup> UNHCR, Guidelines on International Protection: Religion-based Refugee Claims under Article 1 A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, para. 34.

<sup>33</sup> *S.A.H. v. Denmark* (CCPR/C/121/D/2419/2014), para. 11.8.