United Nations CRC/C/85/D/49/2018

# Convention on the Rights of the Child

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**Committee on the Rights of the Child**

## Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 49/2018*, **

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| *Communication submitted by:* | L.I. (represented by counsel, N.E. Hansen) |
| *Alleged victim:* | B.I. |
| *State party:* | Denmark |
| *Date of communication:* | 17 July 2018 |
| *Date of adoption of decision:* | 28 September 2020 |
| *Subject matter:* | Deportation of a mother and her daughter to North Macedonia, where the child would allegedly be at risk of honour killing |
| *Procedural issues:* | Exhaustion of domestic remedies; substantiation of claims |
| *Substantive issues:* | Best interests of the child; non-refoulement; right to life; right to acquire a nationality; right to preserve identity; non-discrimination |
| *Articles of the Convention:* | 2, 3, 6, 7 and 8 |
| *Article of the Optional Protocol:* | 7 (e) and (f) |

1.1 The author of the communication is L.I., a national of North Macedonia born in 1989. She submits the communication on behalf of her daughter, B.I., born on 15 February 2015. The author claims that by deporting her daughter to North Macedonia, the State party concerned would violate her daughter's rights under articles 2, 3, 6, 7 and 8 of the Convention. The author is represented by counsel. The Optional Protocol on a communications procedure entered into force for Denmark on 7 January 2016.

1.2 On 20 July 2018, the Committee, acting through its working group on communications, denied the author's request for interim measures, pursuant to article 6 of the Optional Protocol and rule 7 of its rules of procedure under the Optional Protocol. The interim measures in question would have entailed suspension of the deportation of the author

* Adopted by the Committee at its eighty-fifth session (14 September 2020–1 October 2020).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho Assouma, Hynd Ayoubi Idrissi, Bragi Gudbrandsson, Olga A. Khazova, Gehad Madi, Philip Jaffé, Benyam Dawit Mezmur, Otani Mikiko, Luis Ernesto Pedernera Reyna, José Ángel Rodríguez Reyes, Ann Marie Skelton, Velina Todorova and Renate Winter.

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and her daughter to North Macedonia while the case was under consideration by the Committee.

**Facts as submitted by the author**

2.1 The author, at the time pregnant with her first child, entered Denmark on 4 February 2015 as part of a family reunification programme[1] to reunite with her Macedonian husband residing in Denmark. On 15 February 2015, the author gave birth to a baby girl, B.I. The author submits that on 28 February 2015, her husband attempted to kill their daughter by placing a pillow over her face. The author contends that the motive behind the attempted killing was that the father was dissatisfied with the sex of their child.

2.2 The author reported the incident to the police and moved with her child into a women's shelter. The High Court of Eastern Denmark subsequently sentenced the father of B.I. to five years of forced psychiatric treatment. The Danish authorities granted the author a temporary visa so that she could testify in the proceedings against her husband. The visa expired on 7 May 2015.[2]

2.3 On 2 October 2015, the author applied for asylum for herself and B.I., alleging, inter alia, that she was afraid that her father-in-law would kill her and her daughter if they were forced to return to the author's home country. She submitted that the problems with her father-in-law had begun after her husband had had brain surgery on 18 December 2012, after which his personality had changed. The author further stated that her father-in-law had threatened to kill her and B.I. if she hurt his son, on at least three or four occasions.

2.4 On 9 October 2015, the Danish Immigration Service rejected her asylum application, having deemed it to be "manifestly unfounded" under section 53b of the Aliens Act. The reasons for the rejection were, inter alia, that the motives behind the application were not considered to justify asylum status pursuant to section 7 of the Aliens Act. The Immigration Service noted that, if the author and B.I. were returned to North Macedonia, the author should seek the authorities' protection if her father-in-law subjected her or her daughter to physical assaults or threats. The Immigration Service further noted that the author had not reported her father-in-law's threats to the local police, and nor had she shown why the police in North Macedonia would lack the will and the capability to protect her against her father-in-law.

2.5 As a consequence of the processing of the claim through the "manifestly unfounded" urgent procedure, the author and B.I. were not given the right to appeal the decision to the Danish Refugee Appeals Board, which the author contends is in itself discriminatory. The author submits that the Danish Immigration Service, in making its decision, which also included a rejection of B.I.'s claim for asylum, did not make an individual assessment of the risk that B.I. would face if she were forced to return to North Macedonia. The author further submits that the decision was focused only on the threat posed by B.I.'s father, while disregarding the threat posed by other family members in North Macedonia, in particular the author's father-in-law, who the author submits may attempt to kill B.I. as a revenge for the author having reported her husband to the police.

2.6 Following the rejection of the asylum application, the author and B.I. applied for residence on humanitarian grounds. The Immigration Appeals Board rejected the application on 6 November 2018, stating, inter alia, that neither the author nor B.I. had formed independent ties with Denmark so strong that they justified the granting of residence.

2.7 The author also submits that B.I. suffers from brain damage and her development lags behind that of other children of the same age. This circumstance has been documented in an educational psychology assessment drafted by the Danish Red Cross and submitted to the Immigration Appeals Board. The report prompted the Immigration Appeals Board to reopen proceedings to assess the author's residence request on humanitarian grounds. The report,

[1] The State party notes in its submission dated 4 March 2019 (para. 4.1.1) that it was a visa-waiver entry.

[2] It appears from the documents in the case file, inter alia the Danish Immigration Service decision of 9 October 2015, that on 14 July 2015 the author applied for asylum in Sweden, which requested the Danish authorities to take her back as a consequence of her Danish visa. On 7 September 2015 the Danish authorities accepted to take her back, and on 2 October 2015 she returned to Denmark.

which concluded that the motor competencies, language competencies and social competencies of B.I. did not correspond to her age, stated that a psychologist had diagnosed B.I. with F84.0 infantile autism. In the letter attached to the report sent to the Immigration Appeals Board on 10 July 2018, the author further submitted that it was not certain whether the disorder had developed due to B.I.'s father's assault on her. In a decision dated 12 February 2019, the Immigration Appeals Board upheld its decision of 6 November 2018.

2.8 The author further submits that on 6 July 2018 she requested the Danish Immigration Service to reopen her and B.I.'s asylum case since she had received new information that the Danish police had been contacted by her father-in-law regarding the date and time for the deportation. A police report dated 4 July 2018 confirmed the incident. On 10 July 2018, the Immigration Service rejected the request to reopen the asylum case as it did not consider that there was any significant new information.

**Complaint**

3.1 The author claims that the State party would violate B.I.'s rights under articles 2, 3, 6, 7 and 8 of the Convention if she were removed to North Macedonia.

3.2 The author submits that a return to North Macedonia would constitute a serious risk to B.I.'s life, survival and development and would not be in her best interests. It would thus constitute an infringement of articles 3 and 6 of the Convention. The author fears that her former father-in-law may try to kill B.I. as revenge for the author having reported B.I.'s father to the police for attempted murder of B.I. She has also stated that the Danish authorities have failed to make an individual assessment of B.I.'s asylum and residence claims.

3.3 The author further submits that since B.I.'s birth was never registered in North Macedonia, she will not have access to the social protection or medical treatment that she needs, in violation of articles 7 and 8 of the Convention. The author submits that due to the brain damage that B.I. suffered when her father tried to kill her, she is in need of special care and hospital treatment, which she may not receive in North Macedonia.

3.4 Finally, the author claims that article 2 of the Convention would be violated if B.I. were sent back to North Macedonia, as the lack of access to appeal to another administrative body or the courts constitutes discrimination.

3.5 The author submits that due to the absence of a right to appeal in the "manifestly unfounded" urgent procedure, the decision of the Danish Immigration Service is final, and she has thus exhausted all available domestic remedies.

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

4.1 In its observations of 4 March 2019, the State party submits that the communication is inadmissible for failure to exhaust domestic remedies, in line with article 7 (e) of the Optional Protocol. The State party contends that the author has not brought either the decision of the Danish Immigration Service of 9 October 2015 or the decision of the Immigration Appeals Board of 12 February 2019 before domestic courts. The State party submits that even if the Immigration Service has examined the case under the "manifestly unfounded" procedure, the decision can still be brought before the courts, in accordance with the general rule of the right to judicial review found in section 63 of the Constitution of Denmark. The author has therefore not exhausted all available domestic remedies.

4.2 The State party also submits that the author has failed to establish a prima facie case for the purpose of admissibility of the communication under the Convention, that is in accordance with article 7 (f) of the Optional Protocol.

4.3 As to the merits of the case, the State party submits that the author has not sufficiently established that it would constitute a violation of articles 3, 6, 7 or 8 of the Convention to remove B.I. to North Macedonia, or that the lack of administrative appeal constitutes discrimination in violation of article 2 of the Convention.

4.4 The State party recalls that the Committee has held that it generally falls within the jurisdiction of the national courts to examine the facts and evidence of a case, unless such

examination is clearly arbitrary or amounts to a denial of justice.[3] The State party submits that the author has failed to identify any irregularity in the decision-making process or any risk factors that the Danish authorities have failed to take properly into account. The State party notes in this connection that both the asylum and the residence applications were given thorough consideration by the Danish Immigration Service and the Immigration Appeals Board.

4.5 With regard to the author's claim that the State party has failed to properly assess B.I.'s individual reasons for asylum, in particular the risk of being subjected to "honour killing" (femicide), the State party contends that B.I.'s young age – less than 1 year old – at the time that the risk assessment was first conducted, justified the assessment being interconnected with that of the mother.[4] The State party therefore contends that there is no basis for setting aside the assessment made by the domestic authorities of the facts and evidence of the case.

4.6 With regard to the alleged violation of article 6 of the Convention, the State party notes that the author relies upon a potential violation of the Convention due to circumstances that the author risks suffering if returned. The State party reiterates that this issue has already been invoked and properly assessed in connection with the asylum proceedings before the Danish Immigration Service.

4.7 The State party notes in this connection that the Committee, in its general comment No. 6 (2005), recommends that States refrain from returning a child to a country where there are substantial grounds for believing that he or she would be subjected to a real risk of irreparable harm, such as those contemplated under articles 6 and 37 of the Convention. Against this background, the State party concludes that a violation only occurs if a child is removed and exposed to a real risk of irreparable harm. The State party submits that the author has not provided any new and specific information, different from that already provided and thoroughly assessed, to substantiate her claim in this regard.

4.8 With regard to the right of the child to have his or her best interests taken as a primary consideration, under article 3 of the Convention, the State party contends that, given B.I.'s young age when her case was first assessed, her grounds for asylum were interconnected with her mother's and B.I.'s asylum claim was therefore assessed together with her mother's. The State party contends that the absence of an explicit reference to the Convention in the decision does not imply that the Danish Immigration Service did not take the Convention into account.

4.9 The State party further submits that the same best interests assessment was included in the decision to reject the author's and B.I.'s application for residence under section 9c (1) of the Aliens Act on 12 February 2019. In the decision, the Immigration Appeals Board referred to its own jurisprudence regarding children forming independent ties with Denmark and the best interests of the child. However, in this case, the Immigration Appeals Board did not consider that B.I. had formed such strong ties with Danish society as to independently justify the granting of residence in Denmark under section 9c (1) of the Aliens Act out of regard for her best interests.

4.10 Finally, the State party contends that article 3 of the Convention does not establish an obligation on States parties other than the country of nationality of the child. Accordingly, a State party in which a child has held temporary residence is not under an obligation to ensure the continued stay and home conditions of that child, and nor can an independent immigration right of the child, based on a desire to enjoy better living conditions, be deduced from that article.

4.11 The State party notes that during the examination of the case before the Immigration Appeals Board, B.I. was diagnosed with infantile autism. The State party submits, however, that this fact does not entail a positive obligation on Denmark to secure continuous conditions for the child's development. In the view of the State party, the author failed to invoke any

[3] The State party cites, inter alia, *A.A.A. v. Spain* (CRC/C/73/D/2/2015); and European Court of Human Rights, *X v. Sweden* (application No. 36417/16), judgment of 9 January 2018, para. 47.

[4] In this respect, the State party refers to the Committee's Views in *A.Y. v. Denmark* (CRC/C/78/D/7/2016), para. 8.12; and European Court of Human Rights, *R.C. v. Sweden* (application No. 41827/07), judgment of 9 March 2010, para. 47.

grounds to give reason to believe that B.I. would be exposed to a serious, rapid and irreversible decline in her state of health upon return to North Macedonia. In this connection, the State party also notes that the Immigration Appeals Board, in its decision of 12 February 2019, emphasized that infantile autism was not a life-threatening illness and that it would not be disproportionate or incompatible with the international obligations of Denmark to reject the author's application for residence.

4.12 The State party notes that, according to its information, citizenship in North Macedonia may be acquired by origin (art. 3 of the Act on Citizenship), and that both of the author's parents at the time of her birth were nationals of North Macedonia. The State party therefore submits that the author has not substantiated her claim that the return of the author with her daughter, both Macedonian nationals, would in any way risk violating articles 7 or 8 of the Convention, regardless of the fact that the author was born in Denmark.

4.13 Finally, the State party rejects the author's claim that the lack of access to appeal of the decision of the Danish Immigration Service constitutes discrimination in violation of article 2 of the Convention, and refers to the Committee's Views in *K.Y.M. v. Denmark* (CRC/C/77/D/3/2016, para. 10.3) and to the Views of the Human Rights Committee in *E.P. and F.P. v. Denmark* (CCPR/C/115/D/2344/2014, para. 8.5 ff.). The State party contends that the author's submission is made in a very general manner, without establishing the existence of a link between the author's or B.I.'s origin or other status and the alleged absence of appeal proceedings against the decision of the Immigration Service.

**Issues and proceedings before the Committee**

*Consideration of admissibility*

5.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure under the Optional Protocol, whether the communication is admissible under the Optional Protocol.

5.2 The Committee notes the State party's arguments that the communication is inadmissible under article 7 (e) of the Optional Protocol, as the author has not requested a judicial review of the decisions of the Danish Immigration Service nor of the decision of the Immigration Appeals Board. However, the Committee notes the author's arguments that a request for judicial review would not have suspended her and her daughter's deportation. The Committee considers that, in the context of the imminent expulsion of the author and her daughter to North Macedonia, any remedies that do not suspend the execution of the existing deportation order against them cannot be considered effective.[5] Therefore, the Committee considers that the communication is admissible under article 7 (e) of the Optional Protocol.

5.3 The Committee notes the author's argument that B.I.'s deportation is not in her best interests and would constitute a violation of articles 3 and 6 of the Convention. The Committee recalls that assessment of the existence of a risk of serious violations of the Convention in the receiving State should be conducted in a child- and gender-sensitive manner,[6] that the best interests of the child should be a primary consideration in decisions concerning the return of a child, and that such decisions should ensure that the child, upon return, will be safe and provided with proper care and enjoyment of rights.[7] The best interests of the child should be ensured explicitly through individual procedures, as an integral part of any administrative or judicial decision concerning the return of a child.[8]

5.4 The Committee considers that it is generally for the organs of States parties to review and evaluate facts and evidence in order to determine whether a risk of a serious violation of

[5] In this regard, see the Committee's Views in *N.B.F. v. Spain* (CRC/C/79/D/11/2017), para. 11.3.

[6] Committee on the Rights of the Child, general comment No. 6 (2005), para. 27.

[7] Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 (2017) of the Committee on the Rights of the Child, paras. 29 and 33.

[8] Ibid., para. 30.

the Convention exists upon return, unless it is found that such evaluation was clearly arbitrary or amounted to a denial of justice.[9]

5.5 In the present case, the Committee observes that the Danish Immigration Service, in its decision dated 9 October 2015, thoroughly examined the author's claims based on the information regarding the risk for irreparable harm that B.I. might be exposed to if returned to North Macedonia. It also notes the State party's argument that in view of B.I.'s young age at the time of the proceedings she was unable to make any statements during the interview with the Immigration Service. The author therefore provided any relevant information on B.I.'s behalf.

5.6 The Committee considers that, although the author disagrees with the decisions taken by the national authorities, she has not demonstrated that the examination of the facts and evidence by these authorities was clearly arbitrary or amounted to a denial of justice. Consequently, the Committee considers that the author's claims under articles 3 and 6 of the Convention have not been sufficiently substantiated and declares them inadmissible under article 7 (f) of the Optional Protocol.

5.7 With regard to the author's claims under articles 7 and 8 of the Convention, the Committee notes the State party's uncontested argument that, as a daughter of two Macedonian citizens, B.I. will be entitled to acquire citizenship of North Macedonia. In the absence of any other information in the file, the Committee considers that the author has not sufficiently substantiated her claim that B.I.'s rights under these provisions would be violated as a result of her removal from Denmark. The Committee therefore finds that these claims are manifestly unfounded and also declares them inadmissible under article 7 (f) of the Optional Protocol.

5.8 The Committee notes the author's claim based on article 2 of the Convention that her daughter was discriminated against because her case was only handled by the Danish Immigration Service, without any access to an appeal. The Committee observes, however, that the author's claim is general in nature and does not demonstrate that the lack of an appeal against the Immigration Service decision of 9 October 2015 would be based on the author's or her daughter's origin or any other discriminatory grounds. Therefore, the Committee considers that this claim is manifestly ill-founded and inadmissible under article 7 (f) of the Optional Protocol.

6. The Committee therefore decides:

(a) That the communication is inadmissible under article 7 (f) of the Optional Protocol;

(b) That the present decision shall be transmitted to the author of the communication and, for information, to the State party.

[9] *U.A.I. v. Spain* (CRC/C/73/D/2/2015), para. 4.2; and *Z.Y. and J.Y. v. Denmark* (CRC/C/78/D/7/2016), para. 8.8.