



## 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. 2458/2014<sup>\*,\*\*</sup>

<i>Communication submitted by:</i>	M.N. (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	31 July 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 9 September 2015 (not issued in document form)
<i>Date of adoption of decision:</i>	5 November 2021
<i>Subject matter:</i>	Deportation to the country of origin (non-refoulement)
<i>Procedural issues:</i>	Insufficient substantiation; inadmissibility <i>ratione materiae</i>
<i>Substantive issues:</i>	Risk to life and of torture and other cruel, inhuman or degrading treatment; right to a fair trial; freedom of religion; non-discrimination
<i>Articles of the Covenant:</i>	2, 6, 7, 13, 14, 18 and 26
<i>Articles of the Optional Protocol:</i>	2 and 3

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

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



1.1 The author of the communication is M.N.,<sup>1</sup> a national of Afghanistan born on 22 March 1978. His asylum claim was rejected by Denmark on 16 July 2014 and he was ordered to leave the country within 15 days. He claims that by deporting him to Afghanistan, Denmark would violate his rights under articles 2, 6, 7, 13, 14, 18 and 26 of the Covenant. The author requested interim measures from the Committee to halt his deportation. The Optional Protocol entered into force for Denmark on 23 March 1976. The author is represented by counsel, Niels-Erik Hansen.

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

### **Facts as submitted by the author**

2.1 The author is a Hazara born in Logar Province, Afghanistan. From the end of June 2011<sup>2</sup> to around October 2012, the author worked as an "English-Afghan" interpreter for a company called International Management Services, through which he was hired by Combined Team Uruzgan to serve as an interpreter for the Australian military forces in Afghanistan.<sup>3</sup>

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

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

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

2.5 As the author could not go to a court or ask for protection from the Afghan authorities, he decided to flee alone to Kandahar, where an agent helped him to obtain travel documents. While his intention was to reach Canada, he flew to Denmark, where he was arrested by the police upon arrival on 1 November 2013, as his travel documents were recognized as invalid. The author applied for asylum in Denmark on the same day.

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<sup>1</sup> The author has requested anonymity.

<sup>2</sup> The author does not specify an exact date.

<sup>3</sup> The author provides a letter of recommendation dated 17 June 2012 confirming that he worked as an interpreter for the Australian army, as well as a copy of his interpreter card from Combined Team Uruzgan.

<sup>4</sup> No information on the reasons for the search was submitted.

<sup>5</sup> The author indicates that the area where he lived is controlled by the Afghan forces during the day and by the Taliban at night.

<sup>6</sup> The author provides an arrest warrant, issued by the Afghan police, with an unofficial translation.

<sup>7</sup> The author provides the letter from the Taliban in Pashto, with an unofficial translation.

<sup>8</sup> No further information on these facts was provided.

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

2.7 In December 2013, the author was released from prison. He started to participate in baptism and Christianity classes and intended to be baptized on 31 August 2014.<sup>9</sup>

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

2.9 On 16 July 2014, the Refugee Appeals Board rejected his appeal. The Board found that the applicant lacked credibility and that he had not explained convincingly his conversion to Christianity. Combined Team Uruzgan informed the Danish authorities that it did not have employment records under the author's name. Combined Team Uruzgan also explained that the used uniforms and boots were not given in boxes to the employed interpreters; on the contrary, the interpreters had to return their uniforms and equipment upon the termination of their employment. The Board also noted that the author had not sought protection from the Australian authorities prior to his departure,<sup>10</sup> that there was a spelling mistake in the identity card that he had handed in (the name of the camp of employment was misspelled "Camp Holand") and that his family had not experienced further problems.<sup>11</sup> The author also provided differing explanations for his travel to Norway in 2003.<sup>12</sup>

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

### Complaint

3.1 The author claims that by deporting him to Afghanistan, Denmark would expose him to a risk of persecution, based on his religious beliefs, and of being killed or tortured by the authorities or the Taliban, in violation of articles 6 and 7 of the Covenant. The State party must not remove a person to another State if there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant.<sup>13</sup>

3.2 The author also claims that Denmark has violated his rights under article 14 of the Covenant since he has been subject only to an administrative procedure and has been denied access to a court, as no appeal against the decision of the Refugee Appeals Board is possible before the Danish courts. In addition, he contends that his right to a fair trial has been violated, as the Board refused his requests to call a witness<sup>14</sup> who could prove the veracity of his *sur place* motive for claiming asylum (conversion to Christianity) and to enquire about his employment history with International Management Services, the main employer that had recruited him in Afghanistan. The Danish authorities requested an explanation only from Combined Team Uruzgan, which had a reason not to want to help him. With regard to the Board's doubt as to why he had not asked for assistance from the Australian authorities, the

<sup>9</sup> The author provides a letter from the Vicar of Grønnevang Church, Jens Kennet, in which he states that the author is attending Church regularly, serves as an interpreter there and will be baptized on 31 August 2014.

<sup>10</sup> There is no reason to believe that the Australian army would not confirm the employment of the author, as, at the time, Australia was apparently allowing the interpreters who had worked for its forces in Afghanistan to immigrate to Australia.

<sup>11</sup> The author claims that he has not spoken to his family for more than a year and four months.

<sup>12</sup> The author was registered on Eurodac on 27 December 2003 in Norway. His request for asylum in that country was rejected.

<sup>13</sup> General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12; and general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 9.

<sup>14</sup> A missionary who could testify about his faith.

author asserts that the Australian authorities had created the problem for him and when he requested their support, they had refused to help him. By denying his requests, the Board effectively barred him from proving his need for protection in Denmark.

3.3 The author further claims that his right to a fair trial has been violated and that he was subjected to discrimination based on his status as an asylum seeker. In other than asylum cases, the right to have a witness heard is granted under the Danish law. This situation amounts to a violation of articles 2 and 26, read in conjunction with article 14, of the Covenant.

3.4 The author feels offended by the State party's allegation that he is not a true Christian. Among other things, the Board observed that it was strange that the author had started to write and post Christian material on the Internet. If he could remain in Denmark, he would be baptized on 31 August 2014. He had attended a Christian summer camp and hoped to continue to practise his new religion. If he were deported to Afghanistan, he would not be able to practise as a Christian, he would face persecution and risk being killed or tortured because he would be considered to be a "*mortad*". The author's deportation would result in a violation of his right to change his religion and a threat to his life and well-being.

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

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

4.2 It recalls that the author contends that the State party would breach its obligations under articles 6 and 7 of the Covenant by returning him to Afghanistan and that it has violated articles 2, 13, 14 and 26 of the Covenant in its consideration of his asylum application.

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

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

4.5 The full account of the author's statements during the asylum proceedings was reflected in the Board's decision of 16 July 2014. The Board, among other things, could not accept the author's statements on his motives for claiming asylum or the reasons for his departure from Afghanistan and considered them to be fabricated and exaggerated. On the basis of the response from Combined Team Uruzgan to the request of the Danish Ministry of Foreign Affairs, the Board found that the letters of recommendation produced by the author in support of his statement that he had worked as an interpreter for the Australian forces in Afghanistan were fraudulent as no interpreter named M.N. had been employed in the periods stated, and that the persons who had signed the documents did not know the author and had not been employed in the periods stated in the documents. Furthermore, there was a spelling mistake on the identity card produced by the author in support of his statement that he had worked at the camp. In addition, contrary to the author's statement, the Australian authorities indicated that discarded uniforms and boots had not been given away in boxes to the interpreters employed. The Board also considered it peculiar that the author had left the country without his wife, who had refused to divorce him, and that his family had not

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

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

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

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

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

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

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

<sup>17</sup> *X and X. v. Denmark* (CCPR/C/112/D/2186/2012), para. 6.3.

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

4.11 With regard to the author's *sur place* conversion, the Board, in its decision, relied on the variety of information provided about the author's conversion and Christian activities after his arrival in Denmark. Based on an assessment of the credibility of the information on the author's conversion, carried out in accordance with the guidelines of the Office of the United Nations High Commissioner for Refugees,<sup>19</sup> the Board found that it could not accept the author's conversion from Ismaili Islam to Christianity as genuine and had to reject that he would consequently risk persecution justifying asylum under section 7 (1) of the Aliens Act if returned to Afghanistan. In this context, the Board could not conclude that the author had become or risked becoming a person of interest to the Afghan authorities solely because of his weblog activities. The Board referred to the circumstance that the author did not appear to be profiled in any way in Afghanistan, just as the Board could not accept as fact that the alleged conversion was genuine. The information about the author's attendance of a Christian summer camp and his baptism on 12 September 2014 did not cause the Board to revise the legal assessment of his eligibility for asylum. Against that background, the State party finds that the author has failed to establish that he would risk facing circumstances contrary to article 6 or 7 of the Covenant as a consequence of his alleged conversion to Christianity if returned to Afghanistan.

4.12 With regard to the allegations of a violation of article 13, the State party submits that the author has not substantiated this claim in any way. Moreover, article 13 of the Covenant does not confer a right to a court hearing. In *Anna Maroufidou v. Sweden* (communication No. 58/1979), the Committee did not dispute that a mere administrative review of the expulsion order in question was compatible with article 13. In addition, article 13 does not confer a right to appeal.<sup>20</sup> If an asylum seeker, such as the author in the present case, claims that essential new information has come to light as compared with the information available when the Board made its original decision and that this new information may result in a different decision, the Board will make an assessment of whether this new information may lead to the reopening of the proceedings for reconsideration of the case. Accordingly, the decision of 25 November 2014 to refuse to reopen the author's asylum proceedings was made by the Board, as represented by the judge who had chaired the specific board that had made the original decision in the author's case. Against that background, the State party submits that article 13 of the Covenant was not violated in connection with the consideration of the author's asylum case by the Danish authorities.

4.13 Concerning the claims under articles 2 and 26 of the Covenant that the author's right to a fair trial was violated and that he was subjected to discrimination, the State party observes

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<sup>18</sup> *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2.

<sup>19</sup> Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, para. 96; and "Guidelines on international protection No.6: religion-based refugee claims under article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees", para. 34: "Where individuals convert after their departure from the country of origin, this may have the effect of creating a *sur place* claim. In such situations, particular credibility concerns tend to arise and a rigorous and in depth examination of the circumstances and genuineness of the conversion will be necessary."

<sup>20</sup> *X and X v. Denmark*, para. 6.3.

that the author has not been treated differently from any other person applying for asylum in terms of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. With regard to the alleged refusal by the Board to allow a witness who, according to the author, had thorough knowledge of his Christian activities and could provide evidence in support of his *sur place* claim based on his conversion, the State party observes that it is the responsibility of the Board to ensure that all the facts have been brought to light before a decision is made. The Board may examine witnesses. In the present case, the Board found, however, that all the facts of the case had been brought to light as, in addition to the statement given by the author and his counsel's brief, the Board had also received a letter from pastor Per Bohlbro, dated 7 March 2014, and a written statement also from Per Bohlbro, dated 10 July 2014, both of which were appended to the counsel's brief of 11 July 2014 on the author's participation in Christian activities. Accordingly, it was found that all the facts of the case had been brought to light as far as this issue was concerned.

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

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

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

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

5.3 A reference is made to the Committee's decision in *K.H. v. Denmark*,<sup>21</sup> whose author was allowed to stay in Denmark owing to an interim measures request. In that case, the author's asylum proceedings were reopened on 8 November 2018, and the Board had decided to grant K.H. asylum in Denmark because he was in need of protection owing to his conversion to Christianity. In the view of the counsel, the two cases bear some similarities.

5.4 First, both men were fleeing from their countries of origin, they were baptized as Christians during their stay in Denmark, and they were open about their new faith and were

<sup>21</sup> CCPR/C/123/D/2423/2014, paras. 8.6 and 8.7.

devoted Christians. The author of the present case served as an interpreter in Afghanistan for the Australian military forces and in Denmark, at a church, for a great number of Christians. Consequently, he is a known person among the Afghan diaspora in Denmark. Furthermore, he expressed his faith publicly on the Internet (Facebook), which is why he was in great danger upon return to Afghanistan. It was mere chance that he had managed to escape again after returning to Afghanistan.

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

5.6 The author submitted a report by Danish officials dated 15 September 2016 regarding another case, in which the Danish police had tried to deport an Afghan citizen on 14 September 2016, who had stated in the airport of Kabul that he had become a Christian during his stay in Denmark. The Afghan officials then declared that he was not safe and indicated that the Danish police should take him back to Copenhagen. Subsequently, the Danish police tried to convince the Afghan officials that the conversion was not genuine, but was informed that this was not the problem. As the person had shouted out at the airport that he had converted to Christianity, his life would be in danger because people standing nearby had heard him and he would consequently be killed after leaving the airport.

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

#### **Additional comments from the author**

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

6.2 The author recalls the alleged violation of articles 6, 7, 13, 18 and 26 of the Covenant, highlighting his Christian activities in Denmark and the worsening situation in Afghanistan since his deportation in 2014.<sup>22</sup> The author applied for asylum and his asylum application was rejected by the Danish Immigration Service in 2011<sup>23</sup> and by the Refugee Appeals Board in January 2012.<sup>24</sup>

6.3 With regard to his claims of a violation of articles 6 and 7, the author submits that he was baptized in a Christian church after having attended church services and a Christian

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<sup>22</sup> The dates in the author's submission are not correct, since he mistakenly referred to the facts of another case (see para. 7.2).

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.



training programme since June 2013.<sup>25</sup> As a former Muslim from Afghanistan, he risks persecution under sharia, if returned. Consequently, the author has established a prima facie case for the purpose of admissibility.

6.4 The author concludes that his communication should be considered as admissible with regard to the alleged violations of articles 6, 7, 13, 18 and 26 of the Covenant, because he did not get a fair trial in connection with his conversion to Christianity and his fear of persecution on that basis. Since he could not appeal the decision of the Refugee Appeals Board to any other body, it has amounted to a violation of articles 13 and 26 of the Covenant, as the decisions of any other board may be appealed to the ordinary Danish courts. As to the merits, the author considers that the Refugee Appeals Board decision of 6 February 2014<sup>26</sup> amounts to a violation of articles 6, 7, 13 and 18 of the Covenant, since he cannot manifest his religion in Afghanistan.

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

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

7.2 It recalled that, on 27 November 2018, the secretariat had transmitted the author's comments, dated 19 November 2018, to the State party. The State party notes that, on 31 December 2018, the secretariat transmitted another document, dated 26 October 2017, originating from the author's counsel. However, the content of that document did not correspond to the communication at hand and the submissions therein did not seem to originate from the author. Thus, the State party limits its observations to the author's comments dated 19 November 2018.

7.3 The State party observes that the author's comments of 19 November 2018 do not contain any new information regarding the author's personal situation. In particular, the State party notes that no additional information on the author's personal situation after his return to Afghanistan is provided.

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

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

7.6 The State party draws the attention of the Committee to the report published by Landinfo entitled *Afghanistan: Situasjonen for kristne og konvertitter* (Afghanistan: the situation of Christians and converts), of 4 September 2013,<sup>27</sup> on "converts of convenience". According to the report, several sources have stated that even if it becomes known in the country of origin that a person has indicated conversion as his ground for seeking asylum in another country, this does not mean that the person will become vulnerable upon his return, as Afghans in general have great understanding for compatriots who try everything to obtain residence in Europe.

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

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<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> In particular, pages 19 to 22.

7.8 The author finally refers to a memorandum of 15 September 2016 from the Danish police on the deportation to Afghanistan of four asylum seekers. The State party observes in this regard that the author has not established any connection between the author's case and the cases mentioned in the memorandum. The State party further observes that the police returned the author to Afghanistan on 28 February 2017, and that the Afghan authorities accepted the return of the author.

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

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

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

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

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

8.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.<sup>28</sup> The Committee notes that the author unsuccessfully appealed against the negative asylum decision to the Refugee Appeals Board, and that the State party does not challenge the exhaustion of domestic remedies by the author. Therefore, the Committee considers that it is not precluded from examining the communication by article 5 (2) (b) of the Optional Protocol.

8.4 The Committee notes the author's claims that his right to a fair trial and access to a court were violated since a witness who could have testified in support of his claim was not invited to an oral hearing during the asylum procedure and an attestation of employment was not sought from International Management Services, that he suffered discrimination as an asylum seeker because the decisions of the Refugee Appeals Board are the only decisions that become final without the possibility of being appealed against in court, and that the State party has thus violated articles 2, 13, 14 and 26 of the Covenant. In that regard, the Committee refers to its jurisprudence that proceedings relating to the expulsion of aliens do not fall within the ambit of a determination of "rights and obligations in a suit at law" within the meaning of article 14, but are governed by article 13 of the Covenant.<sup>29</sup> Article 13 of the Covenant offers some of the protection afforded under article 14 of the Covenant, but does not itself protect the right of appeal to judicial courts.<sup>30</sup>

<sup>28</sup> See, for example, *Colamarco Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2; *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5; *Riedl-Riedenstein and Scholtz v. Germany* (CCPR/C/82/D/1188/2003), para. 7.2; *Gilberg v. Germany* (CCPR/C/87/D/1403/2005), para. 6.5; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 7.4; and *H.S. et al. v. Canada* (CCPR/C/125/D/2948/2017), para. 6.4.

<sup>29</sup> *P.K. v. Canada* (CCPR/C/89/D/1234/2003), paras. 7.4–7.5.

<sup>30</sup> *Omo-Amenaghawon v. Denmark* (CCPR/C/114/D/2288/2013), para. 6.4; and the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 17 and 62.

8.5 The Committee notes the State party's argument that it did not consider it necessary to call in another witness or adjourn the proceedings pending a response from International Management Services, since the author's arguments were largely inconsistent and not credible. The Committee observes that the Board could not accept the author's statements on his motives for claiming asylum or the reasons for his departure from Afghanistan and considered them to be fabricated and exaggerated. The Board also considered that the letters of recommendation and identification documents produced by the author appeared to be fraudulent and that the author's overall credibility had been undermined by his statement that, in connection with his previous application for asylum in Norway in 2003, he had been paid to obtain asylum for another person, and by the inconsistent statements that he had made to the Norwegian authorities. The Committee also notes that the author failed to provide to the Board a convincing statement that would substantiate the fact that he had converted to Christianity. In the light of the above, the Committee considers that the author's claims of a violation of his right to a fair trial in the context of article 13, and of discrimination, including on the basis of his status as an asylum seeker, under articles 2 and 26, read in conjunction with article 14, of the Covenant, are insufficiently substantiated for the purpose of admissibility and declares this part of the communication inadmissible under article 2 of the Optional Protocol. Recalling the Committee's jurisprudence,<sup>31</sup> the Committee considers the author's claims under article 14 of the Covenant to be inadmissible *ratione materiae*, pursuant to article 3 of the Optional Protocol.

8.6 The Committee further notes the State party's objection to the admissibility of the author's claims under articles 6 and 7 of the Covenant on the grounds that they are manifestly ill-founded. In that regard, the Committee notes the author's argument that the existence of substantial grounds for believing that he would risk being subjected to treatment contrary to articles 6 and 7 of the Covenant, if removed to Afghanistan, has not been properly assessed. The Committee also notes that the author was removed to Afghanistan in February 2017 and that he had subsequently fled to Turkey. In addition, the Committee notes the State party's argument that the existence of a real and personal risk of irreparable harm to the author, if removed to his country of origin, has been properly assessed using the different sources of information available, including the witness statements. The Committee observes that the State party's authorities considered the author's reasons for fleeing Afghanistan and the related asylum motives to be unsubstantiated, taking into account the inconsistencies in his arguments and submissions and his lack of credibility, given that the letters of recommendation from the Australian military forces were considered to be fraudulent and that Combined Team Uruzgan, his alleged employer, could not confirm that the author had worked for it as an interpreter in Afghanistan. The Board found that it could not consider the author's statement that he had been persecuted prior to his departure from Afghanistan a fact because the author's statement on his conflicts prior to his departure from Afghanistan was non-credible and fabricated (paras. 4.5 and 4.10) and the author had also failed to establish that he would risk facing circumstances contrary to article 6 or 7 of the Covenant as a consequence of his alleged conversion to Christianity, if returned to Afghanistan (para. 4.11). The Committee further observes the State party's objection that the author did not present any new information in his request to reopen the asylum proceedings or on any adverse treatment to which he has been subjected following his return to Afghanistan on 28 February 2017.

8.7 While recalling its jurisprudence that certain kinds of abuse by private individuals may be of such scope and intensity as to amount to persecution if the authorities are not able or willing to offer protection,<sup>32</sup> the Committee considers that the author has not convincingly explained the reasons, except for his disagreement with the factual conclusions of the State party,<sup>33</sup> why he fears that his forcible return to Afghanistan would result in a risk of being subjected to treatment contrary to articles 6 and 7 of the Covenant. Accordingly, the Committee considers this part of the communication inadmissible owing to a lack of sufficient substantiation, pursuant to article 2 of the Optional Protocol.

<sup>31</sup> Ibid.

<sup>32</sup> See, for example, *I.K. v. Denmark* (CCPR/C/125/D/2373/2014), para. 9.7; and *Omo-Amenaghawon v. Denmark*, para. 7.5.

<sup>33</sup> *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.4.

8.8 With regard to the indirect claims that article 18 could be violated if the author were removed to Afghanistan, the Committee notes the State party's argument that the author's conversion to Christianity was not genuine, that his *sur place* motive for asylum was not arbitrarily assessed, and that the authorities considered that the author had not been a person of interest to the Afghan authorities and his conversion was not known to impact the enjoyment of the author's rights under article 18 in Afghanistan. Recalling its jurisprudence that article 18 does not have extraterritorial application, unless a risk of its violation would represent irreparable harm such as that contemplated in articles 6 and 7,<sup>34</sup> the Committee considers the author's claims under article 18 of the Covenant to be inadmissible, owing to insufficient substantiation, pursuant to article 2 of the Optional Protocol.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.

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<sup>34</sup> See, for example, *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.5; *I.K. v. Denmark*, para. 8.5; and *C.L. and Z.L. v. Denmark*, (CCPR/C/122/D/2753/2016), para. 7.4.