United Nations CCPR/C/123/D/2423/2014

International Covenant on Civil and Political Rights

Distr.: General
7 September 2018

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2423/2014*, **, ***

Communication submitted by:	K.H. (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The author
State party:	Denmark
Date of communication:	14 April 2014 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 11 June 2014 (not issued in document form)
Date of adoption of Views:	16 July 2018
Subject matter:	Deportation to the Islamic Republic of Iran
Procedural issues:	Level of substantiation of claims
Substantive issues:	Risk of torture or cruel, inhuman or degrading treatment or punishment; non-refoulement
Articles of the Covenant:	2, 6, 7, 13, 14 and 26
Article of the Optional Protocol:	2

1.1 The author of the communication is K.H., a national of the Islamic Republic of Iran born on 18 May 1988. He is seeking asylum in Denmark and is subject to deportation to the Islamic Republic of Iran following the Danish authorities' rejection of his application for refugee status. He claims that by forcibly deporting him to the Islamic Republic of Iran, Denmark would violate his rights under articles 6 and 7 of the Covenant. He also claims that his rights under articles 2, 13, 14 and 26 of the Covenant have been violated in connection with the hearing of his asylum case by the Danish authorities. The Optional Protocol entered into force for Denmark on 23 March 1976. The author is represented by counsel.

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

*** An individual opinion by Committee members Christof Heyns, Marcia V.J. Kran and Yuval Shany is annexed to the present Views.

1.2 On 11 June 2014, pursuant to rule 92 of the Committee's rules of procedure, the Special Rapporteur on new communications and interim measures requested the State party to refrain from deporting the author to the Islamic Republic of Iran while his case was under consideration by the Committee. On 24 January 2017 and 13 September 2017, the Special Rapporteur decided to deny the State party's requests to lift interim measures.

The facts as submitted by the author

2.1 From 2004 to 2007, the author worked as a guard in the Basij militia. His task was to collect information about persons passing through specific controlled areas. He also had administrative duties at the base, including the processing of mail. During 2007 and 2008, he undertook military service for 15 months. In 2008, he resumed his work with the Basij, being involved this time in administrative tasks at the Basij base. After the presidential elections of 2009, he was requested to collect information about individuals who had participated in a demonstration. He was also ordered to fabricate false information about people being detained at the base. As he did not feel comfortable with collecting such information and with fabricating false information, he tried to gradually reduce his work for the Basij and subsequently carried out only a few administrative tasks for the movement. In early 2012, he was contacted by his superior, who requested him to come to the base to perform administrative tasks. However, he sought to avoid those tasks by explaining that he was busy with his regular employment. In July 2012, a Basij member came to his house while he was at work and asked his wife to inform him that he was needed at the Basij base. The author decided to leave the Islamic Republic of Iran to avoid having to join the Basij militia again.

2.2 On 8 July 2012, the author fled the Islamic Republic of Iran illegally — without a passport and by paying an agent to organize his departure and pay the border guards — and went to Turkey. On 1 September 2012, he fled from Istanbul to Denmark. He entered Denmark on 2 September 2012 with a forged passport and a forged French visa. He applied for asylum on 3 September 2012, referring to his fear of being arrested and tortured if returned to the Islamic Republic of Iran because the Basij suspected him of disclosing confidential information to Western countries and to political opponents of the Iranian regime. He also declared that he feared disproportionate punishment because he had left the Islamic Republic of Iran.

2.3 On 4 January 2013, the Danish Immigration Service dismissed the author's application for a residence permit.

2.4 In February 2013, the author met a woman named Z.A. who told him about the Christian message. Through Z.A., he was introduced to meetings on Skype where he met a pastor and became familiar with Christianity. On 8 April 2013, the author was baptized. He then cited his conversion to Christianity as a ground for asylum, in his appeal against the decision of the Danish Immigration Service. On 30 May 2013, the Danish Refugee Appeals Board upheld his appeal and sent the case back to the Immigration Service.

2.5 On 23 December 2013, the Danish Immigration Service again dismissed the author's application for a residence permit. That decision was appealed to the Danish Refugee Appeals Board.

2.6 On 27 March 2014, the Danish Refugee Appeals Board rejected the author's request for asylum, as it found that he had failed to substantiate that he would be at risk of persecution or abuse as a result of his refusal to work for the Basij any longer. In regard to his conversion to Christianity, the majority of the Board members found that the author had failed to establish that his conversion was genuine, despite the certificate of baptism of 8 April 2013, his active participation in parish work, declarations produced by the pastor and the Pentecostal Church, and his explanation that he had met a person named Z.A. with whom he had had a conversation about Christianity in December 2012. The author also declared that he had decided to convert to Christianity following that conversation. However, the majority of the Board members dismissed his statements and argued that his interest in Christianity began after a negative decision by the Danish Immigration Service regarding his asylum request. The majority of the Board members concluded that his

conversion was a means to obtain asylum rather than being genuinely motivated by a new faith.

The complaint

3.1 The author claims that, if returned to the Islamic Republic of Iran, he risks persecution both as a former member of the Basij who fled without permission and on account of his conversion to Christianity. He alleges that he could face detention and torture during his interrogation for leaving the Basij without permission, and that he could be tried and sentenced to death for converting to Christianity in violation of sharia law — in violation of articles 6 and 7 of the Covenant.

3.2 The author also claims a violation of articles 13 and 14, read in conjunction with articles 2 and 26, of the Covenant, on the grounds that he only had access to an administrative procedure and not to courts. He refers to the response from the Government of Denmark to the concluding observations of the Committee on the Elimination of Racial Discrimination, in which the State party justified the denial of access to courts on the grounds that the Refugee Board was a court-like organ.[1] He also refers to the concern expressed by that Committee "that decisions by the Refugee Board on asylum requests are final and may not be appealed before a court" and to the Committee's recommendation "that asylum seekers be granted the right to appeal against the Refugee Board's decisions".[2]

3.3 The author reiterates that he officially converted to Christianity in April 2013, that is, after the decision of the Danish Immigration Service, but before the Danish Refugee Appeals Board hearing. Therefore, this additional ground for asylum was considered only by the Refugee Appeals Board, in March 2014. This means that the Refugee Appeals Board was not an appeal board when considering his conversion, and he was therefore deprived of an appeal in respect of this issue. In any situation under Danish law, other than for asylum seekers, such a decision would be subjected to a review on appeal by a higher body or court. In the author's case, his fear of persecution on the grounds of having converted from Islam to Christianity has been assessed by only one "legal body" — the so-called Refugee Appeals Board.

3.4 The author considers that if the Danish Refugee Appeals Board were indeed an appeals board, it should have sent the matter back to the Danish Immigration Service in order for the Immigration Service to assess this new ground for asylum. The inability to lodge an appeal before the regular courts against the Refugee Board decision therefore amounts to a violation of articles 2 and 26, read in conjunction with articles 13 and 14, of the Covenant.

3.5 Finally, the author contends that whether or not he showed an interest in Christianity before or after the first decision by the Danish Immigration Service cannot be used as a factor in assessing his religious convictions. Since he was in great personal pain, he sought help from other sources, a process which is well known to many converts. Therefore, the majority of the Board members should have not held this against him. Had he wanted to fake his religious convictions, he could have declared that he was a converted Christian when entering Denmark. The author therefore asks how one is "allowed" to develop one's personal faith without being accused of lying.

State party's observations on admissibility and the merits

4.1 On 11 December 2014, the State party submitted its observations on the admissibility and the merits of the communication. It submits that the communication should be declared inadmissible. Should the Committee declare it admissible, the State party submits that the Covenant will not be violated if the author is returned to the Islamic Republic of Iran, and that articles 2, 13, 14 and 26 of the Covenant have not been violated in connection with the hearing of the author's asylum case by the Danish authorities. Moreover, the author's claim under article 14 is inadmissible *ratione materiae*.

[1] See CERD/C/DEN/CO/17/Add.1, para. 12.

[2] See CERD/C/DEN/CO/17, para. 13.

4.2 The State party describes the structure, composition and functioning of the Danish Refugee Appeals Board,[3] as well as the legislation applying to asylum proceedings.[4] It then submits that the author has failed to establish a prima facie case for the purposes of admissibility under articles 2, 6, 7, 13 and 26 of the Covenant, in the absence of substantial grounds for believing that he is in danger of being deprived of his life or subjected to inhuman or degrading treatment if returned to the Islamic Republic of Iran, or that those provisions have been violated in connection with the consideration of the author's asylum case by the Danish authorities. These parts of the communication are therefore manifestly unfounded and should be declared inadmissible.

4.3 As far as article 14 of the Covenant is concerned, the State party recalls the Committee's practice of considering 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.[5] Against this background, this part of the communication should be declared inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol.

4.4 The author's complaint under articles 2, 13, 14 and 26 of the Covenant is an abuse of the right of submission. The author's argument that his rights under these articles have been violated because his conversion was considered only at one instance, by the Danish Refugee Appeals Board, is not correct. In May 2013 the Refugee Appeals Board transmitted the case to the Danish Immigration Service for reconsideration, based on new information related to the author's conversion to Christianity, and on 23 December 2013 the Immigration Service issued a new decision on the matter. The author's asylum claim based on conversion has therefore been considered on two occasions. Furthermore, the author only attached to his communication the decision of the Immigration Service dated 4 January 2013 but not that of the Immigration Service dated 23 December 2013, while the author's counsel for the present communication also represented him before the Refugee Appeals Board on 27 March 2014. In that capacity, he had access to all the decisions adopted at the different instances. Moreover, in his brief prepared for the purposes of the Board hearing on 27 March 2014,[6] the author's counsel referred to the content of both decisions of the Immigration Service.

4.5 A correct statement of the facts, comprising information on the original decision made by the Danish Immigration Service, the subsequent transmittal of the case for reconsideration, the new interview, and the new decision made by the Immigration Service on 23 December 2013, is also included in the grounds for the decision made by the Danish Refugee Appeals Board on 27 March 2014, which was delivered to the author and his counsel at the Board hearing. Against this background, the author's allegation that the authorities have violated articles 2, 13, 14 and 26 of the Covenant in connection with the consideration of the author's alleged conversion to Christianity should be declared inadmissible, because it relies on a factually incorrect basis and constitutes an abuse of the right of submission under rule 96 (c) of the Committee's rules of procedure.

4.6 Regarding the merits of the communication, the author has failed to establish that his return to the Islamic Republic of Iran would violate articles 6 and 7 of the Covenant, and that articles 2, 13 or 26 of the Covenant have been violated in connection with the hearing of his asylum case. The State party refers to the Committee's general comment No. 6 (1982) on the right to life, where both negative and positive components of article 6 of the Covenant have been discussed — that is, the right of a person not to be deprived of his life arbitrarily or unlawfully by the State or its agents, as well as the obligation of the State

[3] See *Obah Hussein Ahmed v. Denmark* (CCPR/C/117/D/2379/2014), paras. 4.1–4.3.

[4] The State party refers to sections 7 (1)–(3) and 31 (1)–(2) of the Aliens Act.

[5] The State party refers to *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 8.5; and *Mr. X and Ms. X v. Denmark* (CCPR/C/112/D/2186/2012), para. 6.3.

[6] The State party contends that the brief reads as follows: "It is observed that the case has been remitted for reconsideration by the Danish Immigration Service as my client has converted to Christianity after the original refusal of asylum by the Danish Immigration Service. In addition to his original ground for seeking asylum based on his country of origin, my client now also has a *sur place* asylum claim based on a risk of persecution because he has abandoned Islam."

party to adopt measures that are conducive to protecting life. In the Committee's jurisprudence, States parties are under an obligation not to extradite, deport, expel or otherwise remove a person from their territory where the necessary and foreseeable consequence of the deportation would be a real risk of irreparable harm, such as that contemplated in article 7 of the Covenant, whether in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.[7] The State party's obligations under articles 6 and 7 of the Covenant are reflected in section 7 (1) and (2) of its Aliens Act, according to which a residence permit will be issued to an alien if he or she risks the death penalty or being subjected to torture or ill-treatment if returned to his or her country of origin.

4.7 The author has not provided any new information to the Committee that has not already been reviewed by the Danish Refugee Appeals Board. In its decision of 27 March 2014, the Refugee Appeals Board considered that the author had failed to establish that he had been persecuted before his departure from the Islamic Republic of Iran for not wanting to work for the Basij militia any longer. In that respect, the Refugee Appeals Board emphasized that the author's statements on his conflict prior to his departure from the Islamic Republic of Iran had to be set aside as non-credible.[8] The author has thus failed to substantiate that he was subjected to a risk of persecution prior to his departure from the Islamic Republic of Iran because of a conflict with the Basij. Therefore, the author will not risk abuse falling within the scope of articles 6 or 7 of the Covenant if he returns to the Islamic Republic of Iran.

4.8 With regard to the author's alleged conversion to Christianity, the Danish Refugee Appeals Board made a specific and individual assessment of the author's submissions and the statements at the Board hearing and in the written material, including the reports of the author's interviews conducted by the Danish Immigration Service, but found that there was no basis for granting the author a residence permit under section 7 of the Aliens Act. As appears from the Refugee Appeals Board's decision of 27 March 2014, the majority of the members found that the author had failed to establish that his conversion to Christianity was genuine, despite the certificate of baptism dated 8 April 2013 and declarations produced by the pastor and the Pentecostal Church, as well as his knowledge of the Christian faith.

4.9 The determination as to whether the author's activities during his stay in Denmark are assumed to derive from a genuine Christian persuasion depends, in particular, on the assessment of the author's statements about his religious persuasion as compared with the other circumstances relied upon in the case. This approach is in line both with paragraph 96 of the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*,[9] and with paragraph 34 of the "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

[7] See *A.A.I. and A.H.A. v. Denmark* (CCPR/C/116/D/2402/2014), para. 6.5; and *X v. Denmark*, para. 9.2.

[8] The Refugee Appeals Board found that the author had failed to substantiate that he would be at risk of persecution or abuse falling within sect. 7 (1) and (2) of the Aliens Act as a result of his refusal to continue to work for the Basij. It emphasized that the author's statement on his membership of the Basij must be dismissed due to lack of credibility on essential points because, inter alia, the author had made different statements on his period of membership and on his work for the movement. At the asylum interview conducted by the Danish Immigration Service, the author stated that he had been put under pressure to fabricate information about demonstrators, whereas during the proceedings before the Refugee Appeals Board, he stated that he had not let himself be put under pressure to fabricate such information at any time.

[9] Paragraph 96 reads: "A person may become a refugee *sur place* as a result of his own actions, such as associating with refugees already recognized, or expressing his political views in his country of residence. Whether such actions are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances. Regard should be had in particular to whether such actions may have come to the notice of the authorities of the person's country of origin and how they are likely to be viewed by those authorities."

of Refugees" which states, inter alia, that "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."

4.10 Having explaining the elements taken into account by the Danish Refugee Appeals Board when assessing whether a conversion should be deemed genuine,[10] the State party indicates that the Refugee Appeals Board considered that the author's factual knowledge did not demonstrate a genuine and deep conviction. According to the Refugee Appeals Board's decision of 27 March 2014, the majority of its members attached considerable importance to the author's inconsistent statements on his original ground for asylum and to the fact that his statements on his conversion differed on essential points. This was the case, in particular, in respect of his family's reaction to his conversion and the time of his first meeting with Z.A., another asylum seeker who according to his statement had introduced him to Christianity, and the issue of when the author considered himself to have converted. Against that background, it was the opinion of the majority of the members of the Refugee Appeals Board that the author had not shown any interest in the Christian faith until after his application for asylum had been refused by the Danish Immigration Service, and therefore the majority of them found that the author's conversion was not the result of a natural development within him.

4.11 The State party places special emphasis on the moment at which the author had his first conversation with Z.A., given that he has stated several times that the conversation made a deep impression on him and that it was from that day that he went from being a practising Muslim to perceiving himself as a Christian. That conversation, therefore, had great significance for the author, according to his own statement, but he still made inconsistent statements to the Danish immigration authorities as to when it took place.

4.12 In particular, when interviewed by the Danish Immigration Service on 19 November 2013 about his new asylum claim based on conversion, the author stated, inter alia, that his conversation with Z.A. had taken place in February 2013, and that he had met her *after* he had received the refusal from the Immigration Service, even if he did not recall exactly how long after. During the review of the interview report, the author stated again that he had become a Christian in February 2013 after his conversation with Z.A. When asked, he confirmed that his conversation with Z.A. had occurred after he had received the refusal from the Immigration Service. However, at the hearing before the Danish Refugee Appeals Board on 27 March 2014, the author stated that he had met Z.A. in December 2012 — that is, *before* the first refusal by the Immigration Service, on 4 January 2013 — and declared that this was also what he had stated when interviewed by the Immigration Service on 19 November 2013. Considering the importance that the author has attached to his first conversation with Z.A., according to his own statements, as well as his educational and personal background, the State party finds that the author must be expected to be able to better recall the exact date of the conversation. This applies even more so because the author has repeatedly stated that his entire development as a Christian was based on that conversation. The State party also finds that the decision made by the Immigration Service on 4 January 2013 refusing asylum to the author is an event of such significance that the author must be expected to be able to recall the timing of the two events relative to each other.

4.13 The State party also draws attention to the fact that, further to his statement at the Danish Refugee Appeals Board hearing of 27 March 2014 that he had met Z.A. in December 2012, the author was asked why he had not mentioned her when he was subsequently interviewed by the Danish Immigration Service on 3 January 2013, and he replied that, at the time, he had been in the process of reading the Bible. However, the

[10] The Danish Refugee Appeals Board makes an overall assessment of the circumstances of each asylum case in which an asylum seeker claims to have converted, including the asylum seeker's educational background, knowledge of Christianity, motives for the conversion, considerations of the consequences of converting and participation in religious activities, as well as the asylum seeker's general credibility and the entire process preceding the conversion. Statements from persons who have met the asylum seeker in a church context are also included in the analysis.

author mentioned nothing about Z.A. or any interest in Christianity at the asylum screening interview conducted by the Immigration Service on 3 January 2013. On the contrary, he stated that he was a Muslim. The State party considers that this is inconsistent with the author's own statements to the Immigration Service on 19 November 2013 that his conversation with Z.A. had affected him so deeply that he had felt like a Christian immediately thereafter. Moreover, the fact that the author requested letters of support for his asylum claim from pastors immediately before the hearing at the Refugee Appeals Board and the interview at the Immigration Service supports the view that he was very aware of the significance that this information might have for his asylum case, and that his conversion did not convey a genuine and deep conviction.

4.14 Therefore, the State party agrees with the Danish Refugee Appeals Board that the author's conversion to Christianity is not genuine and is not the result of a natural development within the author himself. The State party refers to the case law of the European Court of Human Rights, which considers that "the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned".[11] The State party also refers to a specific case against Denmark, where the Court observed that in the proceedings before the Danish Immigration Service and the Refugee Appeals Board, "the applicant was represented by a lawyer and he was given the opportunity to submit written observations and documents. His arguments were duly considered and the authorities' assessment in this regard must be considered adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources."[12] The State party further refers to the Committee's findings in a communication concerning Denmark, in which the Committee stated that "the authors' refugee claims were thoroughly assessed by the State party's authorities, which found that the authors' declarations about the motive for seeking asylum and their account of the events that caused their fear of torture or killing were not credible" and also observed "that the authors have not identified any irregularity in the decision-making process, or any risk factor that the State party's authorities failed to take properly into account".[13]

4.15 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 a ground for asylum, but the issue must be assessed on a case-by-case basis. The State party therefore submits that, in the present case, the return of the author to the Islamic Republic of Iran will not constitute a violation of articles 6 or 7 of the Covenant.

4.16 Regarding the author's allegation that the absence of access to judicial review of the decisions made by the Danish Refugee Appeals Board constitutes a violation of articles 2, 13 and 26 of the Covenant, the State party observes that article 13 does not confer a right to a court hearing. Thus, in *Maroufidou v. Sweden*, the Committee did not dispute that a mere administrative "review" of the expulsion order in question was compatible with article 13.[14] Also, in *Mr. X and Ms. X v. Denmark*, the Committee stated that article 13 did not confer a right to appeal.[15] The State party also recalls that the author's asylum application was examined by two instances — the Danish Immigration Service and the Danish Refugee Appeals Board.

4.17 Finally, as regards articles 2 and 26 of the Covenant, the State party generally observes 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

[11] See European Court of Human Rights, *R.C. v. Sweden* (application No. 41827/07), judgment of 9 March 2010, para. 52.

[12] See European Court of Human Rights, *M.E. v. Denmark* (application No. 58363/10), 8 July 2014, para. 63.

[13] See *Mr. X and Ms. X v. Denmark*, para. 7.5.

[14] See *Maroufidou v. Sweden* (CCPR/C/12/D/58/1979).

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

or social origin, property, birth or other status. Against this background, the State party submits that articles 13 and 26 of the Covenant were not violated in connection with the hearing of the author's asylum case by the Danish authorities, whether read independently or in conjunction with article 2 of the Covenant.

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

5.1 In his comments of 18 November 2016, the author maintains that his return to the Islamic Republic of Iran would breach articles 6 and 7 of the Covenant. He submits that his allegations are duly substantiated and asserts that he fled the Islamic Republic of Iran because of his opposition to the Government — he refused to work for the Basij — and that he also fears persecution on return because he converted to Christianity in Denmark. Since he left the Islamic Republic of Iran, the level of persecution of those opposing the Government or those who violate sharia law has not changed. The author also recalls that the decision of the Danish Refugee Appeals Board was not unanimous, and that his claim cannot therefore be considered as manifestly unfounded. Some members of the Refugee Appeals Board upheld the existence of a threat to his life, which seems to clearly establish a prima facie case for the purposes of admissibility for articles 6 and 7 of the Covenant.

5.2 The author also considers that the communication should be declared admissible in respect of article 13 of the Covenant, because as part of a fair trial, any person should have the right to appeal on matters concerning life and death. Moreover, since all other decisions by any board under Danish law can be appealed before the Danish court system, the author has been subjected to discrimination under article 26 of the Covenant. The author alleges that there are many court-like boards under Danish law which make legal decisions, but all those decisions can be appealed before the courts in accordance with section 63 of the Constitution of Denmark. The State party has not been able to mention any other body or board governed by a similar provision as that contained in section 56 (8) of the Aliens Act. Thus, his claim under article 26 of the Covenant should also be declared admissible.

5.3 Regarding the State party's argument that the complaints under articles 2, 13, 14 and 26 of the Covenant should be declared inadmissible for abuse of the right of submission, the author agrees that the Danish Immigration Service did take the issue of conversion into consideration. He thus acknowledges that in the initial communication he mistakenly argued that the Danish Refugee Appeals Board failed to allow transmittal of the case to the Immigration Service as the first instance, and agrees that there is no violation with regard to the issue of transmitting the case back to the Immigration Service. However, he submits that his allegations under these articles should be held admissible, given that the Refugee Appeals Board's decisions cannot be contested before the domestic courts. He affirms that the State party has not disputed that it is not possible to appeal against the Board's decisions before the courts.

5.4 As regards the merits, the author contests the position of the State party that "credibility" considerations are at the core of the refugee assessment and that the reality of the situation in the Islamic Republic of Iran is therefore of minor importance. It is a fact that the author has never had a passport issued by the Iranian authorities and that he fled the Islamic Republic of Iran illegally. It is also a fact that he was baptized in Denmark and that he demonstrated particular knowledge about the Christian religion. This was not disputed by the Danish authorities. Therefore, he will be questioned upon his arrival in the Islamic Republic of Iran and punished for his illegal departure. The author affirms that already in the airport there is a special court that sentences Iranian citizens who fled the Islamic Republic of Iran illegally. In this connection, his former membership of the Basij will be discovered, and he will be interrogated further about his stay in a Western country and about his conversion to Christianity.

5.5 The author submits that a minority of the Danish Refugee Appeals Board members wanted to grant him protection, while the majority used the rejection of his first asylum ground as non-credible to also reject his new, *sur place* motive as non-credible. He therefore considers that the majority of the members of the Refugee Appeals Board dismissed his second ground for asylum because they did not believe his first ground. He submits that this stands in great contrast to a number of cases before the Committee, where

the State party decided to reopen the case on the basis of the new *sur place* asylum motive and granted asylum without using the general credibility argument against the applicant.[16]

5.6 Therefore, the author considers that the Danish Refugee Appeals Board's decision of 27 March 2014 is manifestly unreasonable and arbitrary.

Additional submission from the State party

6.1 On 11 April 2017, the State party provided further observations to the Committee, generally referring to its observations of 11 December 2014. The State party reiterates that the author failed to establish a prima facie case for the purposes of admissibility and that the communication should be declared inadmissible for the reasons already mentioned. In particular, the State party interprets the author's comments to mean that he has waived his claim under article 14 and that the part of his communication relating to articles 2, 13 and 26 concerns only the circumstance that the decision of the Danish Refugee Appeals Board cannot be appealed before the courts. However, the State party maintains that the author has failed to establish a prima facie case for the purposes of admissibility of those claims.

6.2 As to the author's allegations that he will be persecuted by the Iranian authorities if he is returned, on account of his former membership with the Basij, the State party recalls that in its decision of 27 March 2014, the Danish Refugee Appeals Board could not accept as a fact the author's statement that he had been persecuted at the time of his departure from the Islamic Republic of Iran. The Refugee Appeals Board dismissed essential elements of the author's account of his conflict prior to his departure as being non-credible, including his statement regarding his membership and work for the Basij. The circumstance whereby the author may have left the Islamic Republic of Iran illegally cannot by itself lead to the conclusion that he must be deemed to risk persecution or abuse in case of return. In that connection, background information states that an Iranian person who seeks to return to the Islamic Republic of Iran without a passport will be granted a *laissez-passer* by the Iranian embassy and — if no adverse interest has previously been manifested by the Iranian State — he or she will not face any real risk of persecution upon return on account of having left the country illegally and/or being a failed asylum seeker.[17] This background information also indicates that it is not a criminal offence in the Islamic Republic of Iran for any Iranian to ask for asylum in another country, and a person who has left the Islamic Republic of Iran illegally and who is not registered on the list of people who cannot leave the Islamic Republic of Iran will not face problems with the authorities upon return — though the persons may be fined. A person who has committed a crime and has left the Islamic Republic of Iran illegally will only be prosecuted for the crime previously committed and not for leaving the country illegally.[18]

6.3 The Danish Refugee Appeals Board took into account the author's general credibility when assessing the evidence but also considered the circumstances of his alleged conversion. Accordingly, in their reasoning for refusing the author's application for asylum, the majority of the Board's members did not merely focus on the Board's dismissal of his initial grounds for asylum as being non-credible.

6.4 The circumstance whereby an asylum seeker has been baptized and has participated in various religious activities does not in and of itself render it probable that he or she has actually converted. The majority of the members of the Danish Refugee Appeals Board found that the author had failed to substantiate that his conversion to Christianity was genuine, despite the certificate of baptism, the pastors' declarations that he produced and his knowledge of the Christian faith. In their assessment of the author's general credibility, the majority of the members of the Refugee Appeals Board attached considerable importance to the author's inconsistent statements on his activities for the Basij and on his

[16] The author's counsel refers to other similar cases that he has brought against Denmark, which were submitted to the Committee and were subsequently discontinued.

[17] Decision by the Upper Tribunal (Immigration and Asylum Chamber) of the United Kingdom of 10 May 2016 in *S.S.H. and H.R. v. Secretary of State for the Home Department* ([2016] UKUT 00308 (IAC)), para. 33.

[18] Home Office (United Kingdom), "Country information and guidance: Iran: Illegal exit", July 2016, para. 5.

conversion. In particular, it noted that those statements had been different on essential points, such as his family's reaction to his conversion, the time of his first meeting with Z.A. and the time when he considered himself to have converted. Against that background, the Refugee Appeals Board was of the opinion that the author had not shown any interest in the Christian faith until after his application for asylum had been refused, and therefore the majority of the Board members found that his conversion had not been the result of a "natural development" within him.

6.5 The Danish Refugee Appeals Board has reopened other cases when essential new information has come to light after the initial Board hearing. The author's communication to the Committee has not brought to light any essential new information. The author has also not identified any similarities between the cases that he cited — some of which appear unidentifiable — and his own case, nor has he pointed to any errors or omissions in the examination of his case or in the assessment of evidence by the Refugee Appeals Board.

6.6 When rendering its decision, the Danish Refugee Appeals Board took into account all relevant information. It recalls the Committee's established jurisprudence,[19] according to which considerable weight should be given to the assessment conducted by the State party, and it is generally for States parties to review and evaluate facts and evidence, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice. In the present case, the author simply challenges the assessment and conclusions reached by the Refugee Appeals Board, without establishing that they were arbitrary or amounted to a manifest error or denial of justice. The author has also failed to identify any irregularity in the decision-making process or any risk factors that the Board failed to take properly into account. It took almost two years for the author to reply to the State party's observations, without offering any new information. Against this background, the State party submits that the return of the author to the Islamic Republic of Iran would not constitute a violation of article 6 or 7 of the Covenant.

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 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. The Committee notes that the author unsuccessfully appealed against the negative asylum decision to the Danish 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 under article 5 (2) (b) of the Optional Protocol.

7.4 As to the author's claim that his ground for asylum based on his conversion to Christianity was considered only by one instance and was thus deprived of an appeal, the Committee notes the State party's argument that this part of the communication is based on factually incorrect information and the author's acknowledgement thereof. The Committee also notes that the author withdrew this part of his complaint and that he presented it as a complaint against the fact the Board's decisions could not be contested before the domestic courts (see para. 5.3 above).

[19] See *A.S.M. and R.A.H. v. Denmark* (CCPR/C/117/D/2378/2014), para. 8.3; *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.3; *N. v. Denmark* (CCPR/C/114/D/2426/2014), para. 6.6; *K. v. Denmark* (CCPR/C/114/D/2393/2014), paras. 7.4 and 7.5; *Mr. X and Ms. X v. Denmark*, para. 7.5; and *Z v. Denmark* (CCPR/C/114/D/2329/2014), para. 7.4.

7.5 In this connection, the Committee notes the author's claim that he suffered discrimination as an asylum seeker because the decisions of the Danish Refugee Appeals Board are the only decisions that become final without the possibility of being appealed against in courts, and that the State party has thus violated articles 2, 13, 14 and 26 of the Covenant. In that regard, the Committee refers to its jurisprudence that proceedings relating to the expulsion of aliens do not fall within the ambit of a determination of "rights and obligations in a suit at law" within the meaning of article 14, but are governed by article 13, of the Covenant.[20] 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.[21] The Committee considers that the author's claim of discrimination is insufficiently substantiated for the purposes of admissibility and declares that part of the communication inadmissible under article 2 of the Optional Protocol.

7.6 Finally, the Committee notes the State party's challenge to admissibility on the grounds that the author's claim under articles 6 and 7 of the Covenant is unsubstantiated. 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 the Islamic Republic of Iran would result in a risk of treatment contrary to articles 6 and 7 of the Covenant. Therefore, the Committee declares the communication admissible insofar as it raises issues under articles 6 and 7 and proceeds to 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, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's claim that returning him to the Islamic Republic of Iran would expose him to a risk of irreparable harm, in violation of articles 6 and 7 of the Covenant. The Committee notes the author's argument that he would face persecution by the Iranian authorities because he refused to continue to work for the Basij — an Iranian militia — and because he fled the Islamic Republic of Iran illegally. It also notes the information provided by the State party regarding the treatment received, upon their return, by persons who fled the Islamic Republic of Iran illegally. According to country information on illegal exit from the Islamic Republic of Iran published by the Home Office of the United Kingdom of Great Britain and Northern Ireland in July 2016, an Iranian person who seeks to return to the Islamic Republic of Iran without a passport will not face any real risk of persecution on account of having left the country illegally and/or being a failed asylum seeker, unless adverse interest has previously been manifested by the Iranian authorities in respect of the person concerned.[22] The State party also indicates that the Islamic Republic of Iran does not criminalize failed asylum seekers as it is not a criminal offence in the Islamic Republic of Iran for any Iranian to ask for asylum in another

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

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

[22] The State party refers to para. 5.1.2 of the report by the Home Office (United Kingdom) entitled "Country information and guidance: Iran: Illegal exit", of July 2016, in which a Director General of Consular Affairs at the Ministry of Foreign Affairs of the Islamic Republic of Iran is quoted as stating that "a person who has left the Islamic Republic of Iran illegally and who is not registered on the list of people who cannot leave the Islamic Republic of Iran will not face problems with the authorities upon return, though the person may be fined" and that "a person who has committed a crime and has left the Islamic Republic of Iran illegally will only be prosecuted for the crime previously committed and not for leaving the country illegally". The State party also refers to para. 33 of the decision by the Upper Tribunal (Immigration and Asylum Chamber), of the United Kingdom, in *S.S.H. and H.R. v. Secretary of State for the Home Department*, which mentions that "an Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of his article 3 rights on return to the Islamic Republic of Iran on account of having left the Islamic Republic of Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to the Islamic Republic of Iran nor after the facts (i.e. of illegal exit and being a failed asylum seeker) have been established. In particular, there is not a real risk of prosecution leading to imprisonment."

country.[23] The Committee also notes the author's statement regarding his conversion from Islam to Christianity, including his baptism and active participation in parish activities, and the alleged risk of persecution that he may face from his family and the authorities should he be returned to the Islamic Republic of Iran.

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[24] and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.[25] Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.[26] 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,[27] unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.[28]

8.4 The Committee notes the finding of the Danish Refugee Appeals Board that the author failed to substantiate that he would be at a risk of persecution or abuse by the Iranian authorities as a result of his refusal to continue to work for the Basij, and that he lacked credibility. The Committee also notes that the majority of the Refugee Appeals Board members found that the author had failed to substantiate that his conversion was genuine, despite the existence of a certificate of baptism, witness depositions and letters of support. In this connection, the Committee observes that the author first declared that the said conversation took place after the negative decision by the Danish Immigration Service, but then affirmed that it had actually taken place before that decision (see para. 4.12). The Committee also notes that the majority of the Board members found inconsistencies in the author's statements in regard to his family's reaction to conversion and the time of his first meeting with Z.A. The Committee further notes that when informed about a new ground for asylum based on the author's conversion, the Refugee Appeals Board decided to transmit the case back to the Immigration Service for reconsideration, which allowed the author to have this new ground assessed at the usual two regular degrees of jurisdiction in asylum matters, and that the issue was analysed in detail in the decisions adopted.

8.5 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 an in-depth examination of the circumstances of the conversion to be carried out by the authorities.[29] However the test 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 sincere, the authorities should proceed to assess whether, in the circumstances of the case,

[23] See para. 5.1.1 of "Country information and guidance: Iran: Illegal exit", where a Head of the Passport and Visa Department is quoted as stressing that "the Iranian Constitution allows for Iranians to live where they wish. It is not a criminal offence in the Islamic Republic of Iran for any Iranian to ask for asylum in another country… Approximately 60 per cent of Iranians who have asylum in other countries travel back and forth between the Islamic Republic of Iran and other countries."

[24] See *K. v. Denmark*, para. 7.3; *P.T. v. Denmark*, para. 7.2; and *X v. Denmark*, para. 9.2.

[25] See *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

[26] Ibid. See also *X v. Denmark*, para. 9.2.

[27] See *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4; and *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

[28] See, for example, *K. v. Denmark*, para. 7.4.

[29] Office of the United Nations High Commissioner for Refugees, "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. Available at www.unhcr.org/afr/40d8427a4.pdf.

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.[30]

8.6 In the present case, the Committee observes that it is not contested that, after starting to have contact on Skype with a pastor who taught him about Christianity, the author was baptized on 8 April 2013, participates actively in parish work, and has informed his family about his conversion. The majority of the Board members also conceded that the author has knowledge of the Christian faith. Nonetheless, the Committee notes that the Board's majority focused its reasoning on the sincerity of the conversion, concluding that the author had failed to establish that his conversion was genuine because of inconsistencies in his statements, such as the date of his first meeting with Z.A., the moment when he considered himself to have converted and his family's reaction to his conversion.

8.7 In this connection, the Committee recalls that States parties should give sufficient weight to the real and personal risk that a person might face if deported, and considers 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 Islamic Republic of Iran, rather than relying mainly on a matter of conflicting dates. The Committee notes in particular that the Danish Refugee Appeals 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 his informing 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.[31] In view of the above, the Committee considers that the State party failed to adequately assess the author's real, personal and foreseeable risk of returning to the Islamic Republic of Iran as a convert. Accordingly, the Committee considers that the State party failed to take into due consideration the consequences of the author's personal situation in his country of origin, and concludes that his removal to the Islamic Republic of Iran by the State party would constitute a violation of articles 6 and 7 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to the Islamic Republic of Iran would, if implemented, violate his rights under articles 6 and 7 of the Covenant.

10. In accordance with article 2 (1) of the Covenant, in which it is established that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the author's case taking into account the State party's obligations under the Covenant and the Committee's present Views. The State party is also requested to refrain from expelling the author while his request for asylum is being reconsidered.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has

[30] See *S.A.H. v. Denmark* (CCPR/C/121/D/2419/2014), para. 11.8. Cf. European Court of Human Rights, *F.G. v. Sweden* (application No. 43611/11), judgment of 23 March 2016, para. 156.

[31] Cf. Danish Immigration Service, "Iran: house churches and converts", February 2018, available at www.refworld.org/docid/5ab8f2de4.html; United States Commission on International Religious Freedom, *USCIRF Annual Report 2018*, Tier 1: USCIRF-recommended countries of particular concern: the Islamic Republic of Iran, 25 April 2018, available at www.refworld.org/docid/5b278edb0.html; Home Office (United Kingdom), "Country policy and information note: Iran: Christians and Christian converts", March 2018, available at www.refworld.org/docid/5aa2aa2e7.html; Congressional Research Service (United States of America), "Iran: politics, human rights, and U.S. policy", 3 October 2017, available at www.refworld.org/docid/59e884b44.html; and Austrian Centre for Country of Origin and Asylum Research and Documentation, "Query response: Iran: House churches; situation of practising Christians; treatment by authorities of Christian converts' family members", 14 June 2017, available at www.refworld.org/docid/5943a44d4.html.

undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views.

Annex

Individual opinion of Committee members Christof Heyns, Marcia V.J. Kran and Yuval Shany (dissenting)

1. We regret that we cannot join the majority on the Committee in finding that, if the author were to be deported to the Islamic Republic of Iran by Denmark, it would constitute a violation of the Covenant.

2. While we do not disagree, in principle, with the Committee's approach that both sincere and insincere conversions may create real risks for removed individuals and that, as a result, some converts may find themselves in situations analogous to refugees *sur place* regardless of the genuineness of their conversion (see para. 8.5), such a risk cannot be simply assumed. It needs to be established by the author in the circumstances of the case. Thus, even if the Appeals Board erred in focusing only on the genuineness of the conversion, and not on the consequences of the conversion for the author upon his return to the Islamic Republic of Iran, it has not been established by the author that his conversion is known to the authorities in the Islamic Republic of Iran, or even that there are substantial grounds for believing that failed asylum seekers such as himself, who have converted to Christianity abroad, are exposed to a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, upon their return to the Islamic Republic of Iran.[1]

3. In reaching the conclusion about the risk faced by the author upon deportation, the majority on the Committee relied on reports from the public domain on the situation in the Islamic Republic of Iran for converts to Christianity generally, and returning converts specifically (see para. 8.7, footnote 31). We have some reservations regarding the propriety of the Committee's occasional practice of relying on information not argued by the parties. In any event, we are of the opinion that the reports cited by the majority are not conclusive in their findings.

4. The Danish Immigration Service report suggests that converts in the Islamic Republic of Iran are not charged with the crime of apostasy and that no one has been arrested in recent years just because of a conversion;[2] the United States Commission on International Religious Freedom report suggests that if converts are targeted, this is generally because of proselytizing activity;[3] the United Kingdom Home Office report suggests that the treatment of returned converts depends largely on the way they practise their Christianity upon return to the Islamic Republic of Iran.[4] A similar conclusion, suggesting that public worshiping by Christian converts could lead to persecution (though not necessarily persecution qualifying as irreparable harm), is found in the report of the Austrian Centre for Country of Origin and Asylum Research and Documentation.[5] No pertinent information on the specific risk facing returning converts is found in the United States Congressional Research Service report.[6] The information found in the reports thus appears to support the position that practising Christianity in public by converts from Islam

[1] See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

[2] Danish Immigration Service, "Iran: house churches and converts", February 2018, part. 1.3, available at www.refworld.org/docid/5ab8f2de4.html.

[3] United States Commission on International Religious Freedom, *USCIRF Annual Report 2018*, Tier 1: USCIRF-recommended countries of particular concern: the Islamic Republic of Iran, 25 April 2018, p. 47, available at www.refworld.org/docid/5b278edb0.html.

[4] Home Office (United Kingdom), "Country policy and information note: Iran: Christians and Christian converts", March 2018, part 8, available at www.refworld.org/docid/5aa2aa2e7.html.

[5] Austrian Centre for Country of Origin and Asylum Research and Documentation, "Query response: Iran: House churches; situation of practising Christians; treatment by authorities of Christian converts' family members", 14 June 2017, available at www.refworld.org/docid/5943a44d4.html.

[6] Congressional Research Service (United States), "Iran: politics, human rights, and U.S. policy", 3 October 2017, available at www.refworld.org/docid/59e884b44.html.

could result in harassment and even persecution, but also that much would depend on the actual circumstances of the case. The findings of the Refugee Appeals Board that the author's conversion to Christianity was not genuine — a finding that the Committee is not in a position to second-guess — appear to cast doubt on whether the reports can establish in themselves a presumption of real, serious risk for the author upon deportation, since it is not clear whether he intends to or is likely to publicly practise Christianity upon his return.

5. In the absence of pertinent information before the Committee that the author's conversion is known to the Iranian authorities, about whether and how he is likely to practise Christianity in the Islamic Republic of Iran, and that he is likely to be targeted if his conversion is known, we are not in a position to find that the deportation would place the author at real risk resulting in a violation of articles 6 or 7 of the Covenant.