



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2373/2014\*, \*\*

<i>Communication submitted by:</i>	I.K. (represented by counsel, Helge Nørrung)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	26 February 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 3 April 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	18 March 2019
<i>Subject matter:</i>	Author's deportation from Denmark to Afghanistan
<i>Procedural issues:</i>	Inadmissibility as manifestly ill-founded; inadmissibility <i>ratione loci</i> and <i>ratione materiae</i> ; level of substantiation of claims
<i>Substantive issues:</i>	Risk to life; risk of torture or other cruel, inhuman or degrading treatment or punishment; freedom of religion
<i>Articles of the Covenant:</i>	6, 7 and 18
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is I.K.,<sup>1</sup> a national of Afghanistan born on 1 January 1996.<sup>2</sup> He claims that he would be a victim of violation by Denmark of articles 6, 7 and 18 of the International Covenant on Civil and Political Rights if he were deported to Afghanistan. The author's appeal against a negative decision on his application for asylum in Denmark was rejected finally on 11 February 2014. His deportation to Afghanistan was

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

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

<sup>1</sup> The author requests that his identity be kept confidential.

<sup>2</sup> The author was born in 1994, according to a disputed age test.



expected within 15 days of the final decision, namely by 26 February 2014.<sup>3</sup> The author asked the Committee to request interim measures in order for him not to be removed to Afghanistan pending the examination of his communication. He is represented by counsel, Helge Nørrung.<sup>4</sup> The Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976.

1.2 On 3 April 2014, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures under rule 92 of its rules of procedure.

### **The facts as submitted by the author**

2.1 The author submits that he is of Hazara ethnicity and comes from Ghazni Province in Afghanistan. He left his home country in October 2011, after being in conflict with a powerful neighbour, an army general.

2.2 The author submits that his father was killed by the Taliban in 2007, and his mother was left with five minor children, including the author. In 2011, the aforementioned general attempted to seize the land that belonged to the author's family, and during the ensuing physical altercation, the author hit the neighbour's son on his leg with a spade. The author's mother urged him to escape to avoid further punishment from the powerful neighbour.

2.3 Prior to that incident, the author had also experienced attempts to rape him during a short period of employment with his father's former employer, a local commander.

2.4 The author travelled through several countries before reaching Denmark. On the way to Denmark, he visited Christian churches in Greece and Italy, firstly because the churches offered food, and later because he found peace in the church. The author began to be interested in Christianity. He rejected his Muslim faith, and his family in Afghanistan was informed about his "conversion".<sup>5</sup> He submits that he converted to Christianity not to obtain asylum, but because he found the Christian religion to be peaceful.<sup>6</sup> He claims that he rejected Islam wholeheartedly and wishes to practise Christianity. In its final decision, the Refugee Appeals Board correctly stated that the author was a former Shia Muslim and now a "seeking Christian". It also correctly stated that the author's father had worked for a commander, Bask Habibullah, and had been killed by Taliban in that connection in 2007. Finally, the Board held that it "cannot deny that the applicant and his family has had a land dispute with the neighbour about the boundary between the lots, and that the author has hit the neighbour's son with a spade across the leg". Nevertheless, the Board rejected the asylum claim, finding that "it is not substantiated that he upon return to the homeland will be at risk of persecution which would justify his asylum, according to the Aliens Act (sect. 7, para. 1), or to be at real risk of abuse covered by the Aliens Act (sect. 7, para. 2)."

2.5 Since the final decisions of the Refugee Appeals Board cannot be appealed to the Danish courts, the author submits that he has exhausted all available and effective domestic remedies. The present communication has not been and is not being examined under another procedure of international investigation or settlement.

### **The complaint**

3.1 The author claimed that he would be exposed to persecution, torture and the risk of death, in violation of articles 6 and 7 of the Covenant, if removed to Afghanistan. He claims

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<sup>3</sup> The author estimated that the police would deport him to Afghanistan within one month of the date of the communication.

<sup>4</sup> The document conferring power of attorney is annexed to the initial communication. Mr. Helge Nørrung was replaced by Mr. Daniel Nørrung, following the first counsel's retirement.

<sup>5</sup> According to the decision of the Danish Refugee Board of 11 February 2014 (annex 1).

<sup>6</sup> The author asserts that, as he was a minor, he was living in asylum centres that did not facilitate contact with alternative religions. It was the author's counsel who contacted Christian associates which led to the author's contact with a local priest, near the asylum centre, who helped the author to learn more about Christianity. Before the Board meeting, the counsel submitted on 10 February 2014 a brief letter by the priest attesting to the author's Christian beliefs. When transferred to an adult asylum centre, he kept his faith secret due to hostility from his fellow countrymen.

to be in need of protection due to his ethnicity as a Hazara, his young age and his interest in Christianity over a period of two years, which he has expressed to other Afghans.<sup>7</sup>

3.2 The author also submitted that the land dispute with a powerful neighbour, an army general, and the fact that the author had no family in Afghanistan, put him at further risk of being subjected to torture or being killed.

3.3 Concerning the author's interest in Christianity, the author submitted that he had spoken about it from the beginning of the asylum proceedings in Denmark and that he had not pretended to have great knowledge of his newfound religion, which at first merely gave him peace, but had ended up undertaking serious study of Christianity in order to be baptized. The author also enclosed a copy of a certificate of baptism, according to which he was baptized on 23 February 2014 in the Pentecostal Church of Rudkøbing. The author claimed that it would constitute a breach of article 18 of the Covenant if he were to be returned to Afghanistan, since he might thereby lose the right to choose his own religion and the right to exercise it.

3.4 In light of the above, the author concluded that his removal to Afghanistan would constitute a violation by Denmark of his rights under articles 6, 7 and 18 of the Covenant.

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

4.1 On 3 October 2014, the State party submitted its observations on the admissibility and the merits of the communication, arguing that the communication was inadmissible due to non-substantiation of the author's claims, or alternatively, was without merits.

4.2 The State party recalls that the author is an Afghan national, registered as having been born on 1 January 1994, who entered Denmark on 18 February 2013 without valid travel documents and applied for asylum the same day. On 30 August 2013, the Danish Immigration Service decided that the author was 19 years old, and his date of birth was registered as 1 January 1994. The author stated that he had been born on 1 January 1996. On 26 November 2013, the Immigration Service refused asylum to the author. On 11 February 2014, the Refugee Appeals Board upheld the refusal of the author's asylum application by the Immigration Service. On 26 February 2014, the author submitted the communication to the Committee, claiming that it would constitute a violation of articles 6, 7 and 18 of the Covenant to return him to Afghanistan. On 24 March 2014, the Ministry of Justice upheld the decision on the author's age made by the Immigration Service. A forcible return of the author to Afghanistan was scheduled for 25 March 2014, but the return was cancelled. On 30 April 2014, an alert was recorded in respect of the author in the Danish Criminal Register for the purpose of his detention and return to Afghanistan, since he had failed to appear for deportation, despite having been summoned. The author was not to be found at the time of the submission of the State party's observations and had gone into hiding from the Danish authorities.

4.3 The State party describes the relevant domestic law and procedures, including the structure, composition and functioning of the Refugee Appeals Board, which it considers to be an independent, quasi-judicial body.<sup>8</sup> It also points out the established procedures for assessing inconsistent statements by the asylum seeker that may impact on the asylum seeker's credibility.

4.4 As regards articles 6 and 7 of the Covenant, the State party submits that the author has failed to establish a *prima facie* case for the purpose of admissibility of his communication, because it has not been established that there are substantial grounds for believing that the author would be in danger of being deprived of his life or subjected to torture or to cruel, inhuman or degrading treatment or punishment on his return to Afghanistan. This part of the communication should be declared inadmissible as not being sufficiently substantiated.

<sup>7</sup> The author claims that he falls within the risk groups as elaborated in the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan, published by the Office of the United Nations High Commissioner for Refugees on 6 August 2013, p. 67.

<sup>8</sup> See, for example, *Obah Hussein Ahmed v. Denmark* (CCPR/C/117/D/2379/2014), paras. 4.1–4.3.

4.5 The State party considers that the author's alleged conversion to Christianity cannot be deemed genuine, and finds that the author has failed to establish that there are substantial grounds for believing that, following a return to Afghanistan, he would risk any violation of his rights under article 18 as a consequence of his alleged conversion to Christianity. This part of the communication should therefore be considered inadmissible as manifestly ill-founded. The State party also observes that the author is seeking to apply the obligations under article 18 in an extraterritorial manner, and submits that it cannot be held responsible for violations of article 18 expected to be committed by another State party outside the territory and jurisdiction of Denmark. The State party argues that the Committee has never considered a complaint on its merits regarding the deportation of a person who feared violation of provisions other than articles 6 and 7 of the Covenant in the receiving State. In the State party's view, extraditing, deporting, expelling or otherwise removing a person who fears having his or her rights under, for example, article 18 of the Covenant violated by another State party will not cause such irreparable harm as is contemplated by articles 6 and 7 of the Covenant. Therefore, this part of the communication should also be rejected as inadmissible *ratione loci* and *ratione materiae*, pursuant to rule 96 (d) of the Committee's rules of procedure, read together with rule 96 (a) of the Committee's rules of procedure and article 2 of the Optional Protocol.

4.6 Should the Committee find the communication admissible, the State party submits that it has not been established that there are substantial grounds for believing that it would constitute a violation of articles 6, 7 and 18 of the Covenant to return the author to Afghanistan.

4.7 The Refugee Appeals Board took a decision on 11 February 2014 not to grant a residence permit to the author, pursuant to section 7 (1) or 7 (2) of the Aliens Act, on the basis of a procedure during which the author had the opportunity to present his views to the Board both in writing and orally, with the assistance of legal counsel.

4.8 The State party observes that the Refugee Appeals Board found that it could not be ruled out that the author and his family had had a land dispute with a neighbour in Afghanistan, and that the author had consequently hit the neighbour's son on the leg using a spade. However, the Board found that the land dispute was not of such a nature or intensity as to give reason to assume that the author would be at a real risk of abuse from his neighbour if the author were returned to Afghanistan. The Board has assessed whether the author as an asylum seeker has a well-founded fear of being subjected to specific, individual persecution of a certain severity if he were returned to his country of origin, and came to a negative conclusion. The State party agrees with the Board that the land dispute relied upon by the author was not of such a nature or intensity that the author would be at a real risk of abuse from his neighbour if the author were returned to his country of origin. There were no sufficient grounds established for the author to obtain a residence permit. The State party observes that, according to the author's own statement, the neighbour did not demand the author's family's land until mid-2011, four years after the father's death in 2007, the author merely hit the neighbour's son on the leg using a spade, the neighbour took all the family's property after the author's departure, the neighbour's son has died since the author's departure, the author's family has subsequently left Afghanistan, and the land dispute took place three years ago.

4.9 The State party finds that the fact that the author is young, is without family and is an ethnic Hazara from Ghazni Province cannot in itself justify the author being entitled to international protection. In reference to the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan, of 6 August 2013, the State party submits that the author does not belong to a minority ethnic group in the area of his residence, as Hazaras constitute 25 per cent of the population in Ghazni Province. Moreover, the author is a young unmarried male of working age with no health problems. He stated when interviewed by the Immigration Service on 1 November 2013 that neither he nor anybody in his family had been involved in politics. The author has further stated that he has never experienced any problems with the Afghan authorities. Accordingly, the author is inconspicuous.

4.10 As regards the author's Christian activities and persuasion, the Refugee Appeals Board considered the statements made by the author during the Board hearing and in the

written material, and took into account the material forwarded by the author's counsel when making its decision. However, the Board considered that there was no basis for granting the author a residence permit under section 7 of the Aliens Act as the author's Christian persuasion could not be deemed genuine. The author had stated to the Board that he had sought out the church in Greece for food and peace, that when he came to Denmark, a year or so had passed during which time the author had not actively sought information about Christianity or tried to get to church, and that he only established contact with a pastor two weeks before the Board hearing. The State party observes that the author's letter of 26 February 2014 to the Committee contained a certificate of baptism stating that the author had been baptized on 23 February 2014 in the Pentecostal Church of Rudkøbing. The Board considered the author's Christian activities in its decision of 11 February 2014; the State party submits that a certificate of baptism dated 12 days after the Board's decision cannot lead to a different assessment. It should be noted on this point that the author was baptized and had a certificate of baptism issued three days before he brought his complaint before the Committee and one month before his scheduled forcible return. The author also stated at the Board hearing on 11 February 2014 that, at a meeting between the author and his counsel prior to the Board hearing, his counsel had phoned a Christian acquaintance who had contacts with refugees and had asked him to contact a third individual and to send the author a link to a website attesting that the author had established contact with a Danish church through his counsel. Moreover, in its decision of 11 February 2014, the Board was not able to establish it as a fact that people in the area of the author's home town had become aware that he had gone to church in Greece. The author has also stated that he did not understand what was said in the church in Greece. Furthermore, at the date of the Board hearing, the author did not understand what pastors in Denmark were saying. Nine or ten days prior to the Board hearing, he had received a Bible in Farsi, which he had studied. He also admitted that he had been able to communicate only with few persons because he knew only a little Farsi, and that he was able to read Farsi, but had problems understanding some expressions and concepts.

4.11 According to the information available, the author was baptized 12 days after the Refugee Appeals Board hearing, at a time when the author had merely been in contact with a Danish pastor for slightly under one month, when he did not understand what was being said in the Danish churches and when he had attempted to study a Bible not written in his native language. The State party further observes that the author's alleged new faith has not been demonstrated in external activities other than his baptism on 23 February 2014, and that he admitted to the Immigration Service and the Board that his relationship with Christianity was very personal and secret. Moreover, the author went missing after the Board hearing; the Danish police therefore recorded an alert in respect of the author in the criminal register on 30 April 2014. The author was still not to be found and remained in hiding from the Danish authorities at that point. In view of the timing of events and the general circumstances of the case, the State party considers that the author has failed to substantiate his alleged conversion to Christianity as genuine.<sup>9</sup> Finally, the State party observes that, in the European Court of Human Rights judgment of 8 July 2014 in *M.E. v. Denmark* (application No. 58363/10), the Court expressed its opinion on the examination of a similar case by the Danish asylum authorities, considering it to have complied with the due process guarantees as the applicant had been represented by a lawyer, he had been given the opportunity to submit written observations and documents, and his arguments had been duly considered.

4.12 On the basis of the above, the State party submits that it will not constitute a violation of article 6 or 7 of the Covenant to return the author to Afghanistan, and that he will not risk any violation of his rights under article 18 of the Covenant as a consequence of his alleged conversion to Christianity. In any circumstances, the State party cannot be held

<sup>9</sup> The State party refers to "Afghanistan: Situasjonen for kristne og konvertitter", a report published by Landinfo on 4 September 2013 on "converts of convenience" (see pp. 19 and 22), indicating that several sources have stated that, even if it becomes known in the country of origin that the relevant person has indicated conversion as a ground for asylum in another country, this does not mean that the person concerned will become vulnerable upon his or her return, since Afghans have great understanding for compatriots who try everything to obtain a residence permit in Europe.

responsible for violations of the author's rights under article 18 that may be committed by another State party outside the territory and jurisdiction of Denmark.

#### **Author's additional information and comments on the State party's observations**

5.1 On 30 July 2015, the author informed the Committee that his deportation was scheduled for 2 August 2015. On 3 August 2015, the author's counsel submitted that the author had been deported to Kabul on 2 August 2015. The counsel reiterated the request for interim measures, as there might be ways of bringing him back through private channels.

5.2 On 2 October 2015, the author submitted comments on the State party's observations, claiming that the communication should be declared admissible, that articles 6, 7 and 18 of the Covenant had been violated by the State party's decision to return the author to Afghanistan, and that the Committee's decision pursuant to rule 92 of its rules of procedure, on interim measures, should be reconsidered because the author was now in imminent danger in Afghanistan.

5.3 Although the author finds the accounts by the Immigration Service to be generally correct, the decision by the Immigration Service in regard to his age has been disputed by the author, who maintains that he was born on 1 January 1996.

5.4 Since the submission of the initial communication, the following events took place: On 9 July 2015, the author was arrested on his way to a church summer camp and was detained for deportation. His counsel was advised that his deportation was planned for 10 August 2015. On 30 July 2015, the author's counsel wrote an email to the Committee asking for urgent reconsideration of its decision not to issue a request for interim measures, attaching a deportation order from the police, who had apparently brought forward the deportation so that it would take place on Sunday, 2 August 2015. On 2 August 2015, one of the author's Christian friends who was also a Red Cross volunteer, together with the counsel, visited the author for the last time in the Ellebæk deportation centre; he was given consolation and the Christian sacrament. On 12 August 2015, Red Cross volunteer Jens Kennet and priest Susanne Krog wrote an admonition on the matter to the Danish asylum authorities, which is attached to the author's comments of 2 October 2015 (annex 5). On 1 October 2015, the author's main priest, Susanne Krog, wrote an update to her letter of attestation of 25 July 2015 (annex 6). Those descriptions, together with the description from the priest Helle Frimann Hansen (annex 3), give clear evidence of the author's conversion to Christianity. The priests Jens Kennet and Susanne Krog have had little contact with the author since his removal to Kabul.

5.5 Concerning statements made by the author during the asylum proceedings, the counsel refers to the parts of the Refugee Appeals Board's decision that deal with the author's interest in Christianity during and since his stay in Greece.<sup>10</sup> While the author's statements to the asylum authorities have been duly recorded, the Board has not reflected on the statements as recorded in the counsel's brief to the Board of 5 February 2014 (annex 2). The Board decision (p. 13) only mentions that such a brief was submitted. The author confirmed that his church activities in Greece were not motivated by a desire to obtain asylum. Since the church was the only place that helped with shelter and food, this gave him a favourable impression of Christianity. As he did not speak the language, he could not develop his interest in Christianity, which continued in Denmark. The author wished to learn more about Christianity during his stays at various asylum centres. After the interview with the Immigration Service, the author succeeded in making contact with the guardian of one of his friends, named Adam Johnson, who referred him to some Christian websites.

5.6 Requested to clarify what he meant by his rejection of Islam, the author stated that he abhorred the kind of Islam he had experienced in Afghanistan, which was an expression of coercion, and which did not spare children such as the author. Asked whether he would pray in the mosque following his removal, the author responded that he would not, regardless of whether he was granted asylum or not. The author continued: "They say that they are Muslims, but I detest their actions; they killed my father and they raped me." The author added that after his family had fled to Pakistan, they had received information about

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<sup>10</sup> Decision of 11 February 2014, pp. 5–9.

his interest in Christianity. There is now very little contact between the author and his family, since neither of them want to talk to each other. This is partly due to the author's interest in Christianity, and partly because they believe that the author's aggression towards the neighbour's son is the reason for the family's misfortune (annex 2). The author's counsel also objects to the Immigration Service's conclusion that the author's land dispute was not current and relevant, as the author reportedly stated that his neighbour had taken possession of that land and was now cultivating it – a conclusion that he perceives as being devoid of any empathy for the applicant, who at the age of 14 or 15, and as the oldest son of a widow, was stripped of his and his family's livelihood by a powerful and ruthless neighbour.

5.7 Referring to the UNHCR background materials, the counsel argues that the author will be at risk of persecution, torture, or risk to his life, if removed, due to his young age and his ethnicity. He should therefore be entitled to asylum under the Aliens Act, article 7, paragraphs 1 or 2. As concerns the Refugee Appeals Board's decision, none of the author's statements made during the Board's hearing can be taken as lacking in honesty; the author admitted from the outset that his knowledge of Christianity was limited, but stated that his wish to learn more about it was great, in spite of language barriers. It is likewise evident that the author denounces the kind of Islam that he experienced in Afghanistan.

5.8 As regards the national asylum proceedings, the counsel objects that the decisions of the Refugee Appeals Board cannot be appealed to the ordinary Danish courts, as stipulated in the Aliens Act (art. 56, sect. 8), which can be seen as a breach of the right to appeal enshrined in the Constitution of Denmark (art. 63). Moreover, the proceedings of the Refugee Appeals Board, as a quasi-judicial body, lack many of the attributes of judicial proceedings: the meetings are not open to the public, witnesses are not allowed, except in exceptional circumstances, and one member of the five-member Board is appointed by the ministry that is the superior authority to the Immigration Service, resulting in a lack of neutrality. Another issue is the lack of specific translation or language education requirements for the interpreters used by the Immigration Service and the Board, and the absence of audio recordings of asylum interviews. There is no requirement to use highly educated interpreters, such as from Afghanistan, who are not regularly used, neither in the present case nor in other asylum cases for Dari- and Pashto-speaking applicants. Those weaknesses in the Danish asylum system make it important that the principle of the benefit of the doubt be invoked in favour of the asylum seeker's credibility.

5.9 The counsel maintains his previous submissions, and reiterates the request for interim measures so that the State party can ensure protection of the author by returning him to Denmark while the consideration of the communication remains pending.

5.10 Furthermore, the counsel claims that, following his removal to Afghanistan, the author has been living in great fear of being killed. In reference to the judgment of the European Court of Human Rights in *Z and T v. United Kingdom* (application No. 27034/05), in which the Court stated that the contracting parties could not serve as "indirect guarantors of freedom of worship for the rest of the world", the counsel reiterates that the author will not be able to practise his religion in Afghanistan in the same manner as he did in Europe, without risking his life if his conversion becomes known. Thus, he is deprived of any form of worship except by way of private prayers. The counsel adds that an outdated method was used to assess the author's age. In light of the above, the communication should be declared admissible.

5.11 Finally, the counsel reiterates that, given the fact that the author and his family had a land dispute with their powerful neighbour, that the author consequently hit the neighbour's son, and experienced hostility and rape which made him reject Islam, and that he became a genuine Christian, the Refugee Appeals Board should have considered the extreme dangers of returning a Christian convert to Afghanistan, even though he had not yet been baptized at the time. In conclusion, he maintains that articles 6 and 7 of the Covenant have been violated by Denmark, due to the author's removal to Afghanistan.

**State party's additional observations**

6.1 On 26 February 2016, the State party submitted its additional observations on admissibility and the merits, reiterating that the author's claims had not been substantiated.

6.2 On 10 July 2015, the author had been arrested and detained for the purpose of his forced return from Denmark. On 2 August 2015, the author was forcibly returned to Afghanistan.

6.3 On 3 August 2015, the author requested the Refugee Appeals Board to reopen his asylum case. On 17 December 2015, the Board refused to reopen the author's asylum case.<sup>11</sup> The Board emphasized that the request for the case to be reopened and the appended statements<sup>12</sup> were not forwarded to it until 3 August 2015, after the applicant had been returned to Afghanistan on 2 August 2015. Since the author is no longer in Denmark, and his asylum case is considered to be closed, his current situation in Afghanistan cannot be examined.

6.4 In the period from 3 April 2014, when the Committee transmitted the applicant's communication of 26 February 2014 to Denmark, until the receipt of the request of 3 August 2015 for the case to be reopened, when the applicant had already been removed from Denmark, the Refugee Appeals Board received no information on the applicant's religious persuasion or activities, from either the counsel or the author, or anyone else. However, several of the statements appended to the request of 3 August 2015 for the case to be reopened relate to circumstances and events which, according to the information available, took place during the said period. This information could have been forwarded to the Board in due time before the return of the author, however it was not forwarded until after his removal.

6.5 The State party observes that, for the entire period from the hearing of the case by the Refugee Appeals Board in February 2014 until his actual deportation on 2 August 2015, the author was represented by an attorney who has very extensive experience in the hearing of asylum cases before the Board and who is aware of the importance of presenting to the Board any new information in the case as soon as possible. The counsel did not forward the said information to the Board immediately after the author was arrested on 10 July 2015 and detained for the purpose of his return, but only after his actual deportation, on 3 August 2015. The Board was not familiar with the information on the author's religious persuasion and activities in the meantime. The State party also observes that the counsel, in his letter of 30 July 2015 to the Committee, emphasized that the applicant would be forcibly returned on 2 August 2015. It is therefore incomprehensible that the information was not forwarded to the Board until after the author's return. The counsel and the author have not given the Board the opportunity to consider this information and to hear the applicant's detailed statements. Neither was the information on the author's circumstances preceding the submission of his communication to the Committee submitted until after his return on 3 August 2015. The Board also observed inconsistencies in the new information submitted in support of the request for the case to be reopened. It appears from the certificate of baptism produced that the author was baptized on 23 February 2014, 12 days after the Board hearing. Consequently, the maximum number of days from the applicant's initial contact with a pastor in Denmark until the completion of his baptism was 23 days, which does not accord with the author's own statements during the proceedings, nor with the statement from Reverend Frimann Hansen (annex 3) produced previously.

6.6 In response to the author's additional comments of 2 October 2015, the State party refers to its observations of 3 October 2014, adding that the Board was familiar with the counsel's brief of 5 February 2014 when it took its decision on 11 February 2014, and pointing to a report entitled *Afghanistan: Post-Taliban Governance, Security and U.S. Policy*<sup>13</sup> which confirms the State party's submission concerning the author's age and ethnicity.

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<sup>11</sup> The Board's decision is appended as annex 2.

<sup>12</sup> Including the statement of 25 July 2015 by Susanne Krog, a minister of the Pentecostal Church.

<sup>13</sup> Published by the Congressional Research Service on 15 October 2015, p. 75, fig. 2.



6.7 As stated above, an asylum case is deemed to be closed when the asylum seeker leaves Denmark. If the asylum seeker concerned re-enters Denmark and applies for asylum, the Board will consider the application to be a new application for asylum, provided that the asylum seeker has remained in his country of origin. Since the author is no longer in Denmark, the Board cannot consider the author's situation after his return on 2 August 2015, as attested in the statements of 12 August 2015 from Reverend Krog of the Pentecostal Church and Red Cross volunteer Jens Kennet, and a statement of 1 October 2015 from Reverend Krog<sup>14</sup> appended to the counsel's additional comments of 2 October 2015.

6.8 In regard to the author's submission concerning the absence of appeals against the decisions of the Board to the Danish courts, and the fact that the Board is not a court of law, reference is made to part 5 of the State party's observations of 3 October 2014. As far as the calling of witnesses is concerned, the State party observes that, during the proceedings before the Board, neither the author nor his counsel requested that witnesses be called. Accordingly, the author's objection does not seem to be relevant. Concerning the educational requirements for the interpreters, the State party observes that the author does not appear to have pointed out any errors or omissions in translations in connection with the proceedings before the Immigration Service and the Board, and neither does he appear to have objected to the interpreters used. Moreover, the author confirmed that he had understood everything said by the relevant interpreter during the interview with the Immigration Service on 1 November 2013, and that he had had the opportunity to make comments on the report and corrections to it. The author only made a comment as to the meaning of the word *jirga*; otherwise, he accepted the report as read out to him by the interpreter. The State party further observes that the Board's members are very attentive to the adequacy of the interpreting provided at Board hearings and will suspend the hearing in case of interpreting problems, and that the proceedings will be adjourned if the Board finds it unjustifiable to continue the hearing using the interpreter summoned. The State party adds that the author was represented by counsel at the hearing before the Board and that neither the author nor his assigned counsel made any such objections at its hearing on 11 February 2014. It submits that since the author had access to counsel and participated in the oral hearing with the assistance of an interpreter provided by the Board, he has not demonstrated how these proceedings would have amounted to a denial of justice in his case.<sup>15</sup>

6.9 The State party recalls the Committee's jurisprudence that important weight should be given to the assessments conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists.<sup>16</sup> The State party adds that the author has not explained why the decision by the Board would be contrary to this standard, nor has he provided substantial grounds to support his claim that his removal to Afghanistan would expose him to a real risk of irreparable harm in violation of articles 6 and 7 of the Covenant.<sup>17</sup>

6.10 The State party reiterates that the author's claims are manifestly ill-founded and hence inadmissible, and that the claims under article 18 are inadmissible *ratione loci* and *ratione materiae* pursuant to article 2 of the Optional Protocol. Should the Committee find the communication admissible, the State party maintains that it has not been established that there are substantial grounds for believing that it constituted a violation of articles 6, 7 or 18 of the Covenant to return the author to Afghanistan.

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

7.1 On 14 March 2016, the initial counsel submitted additional comments, informing the Committee that Mr. Daniel Nørnung could not obtain power of attorney as a succeeding

<sup>14</sup> Both statements are enclosed, as annexes 5 and 6.

<sup>15</sup> *K. v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.6.

<sup>16</sup> *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.3; and *K. v. Denmark*, paras. 7.4–7.5.

<sup>17</sup> *N. v. Denmark* (CCPR/C/114/D/2426/2014), para. 6.6.

counsel, since the author had been removed to Afghanistan on 2 August 2015. In his comments, the counsel (Mr. Helge Nørrung) informed the Committee that the priests and other Christian friends of the author had continued to worry about the author's well-being and safety.

7.2 The counsel submits that the author was "available" as of 10 July 2015 when he was detained, following which the author sent an application to the Immigration Service, on 28 July 2015, regarding his residence for other reasons (Aliens Act, art. 9c (1)), as he hoped for postponement of his expulsion. On 31 July 2015, the National Police informed the counsel that the Immigration Service had no objections to the author's deportation. The counsel requested the police officer concerned to contact the Immigration Service once again, but there was no response. On 2 August 2015, the counsel visited the author in the Ellebaek prison, together with his priest. On 3 August 2015, not knowing whether the deportation had actually taken place, the counsel forwarded the author's application for residence for other reasons to the Board, together with a request for the asylum proceedings to be reopened. It was only later that day that the counsel learned that the author had been deported and had arrived in Kabul.<sup>18</sup>

7.3 In reference to the thorough decision by the Refugee Appeals Board of 17 December 2015, the counsel submits that the sincere Christian activities of the author have been described in six different letters, dated from 10 March 2015 to 26 July 2015. He points to a perceived inconsistency in the Board's decision, in which it considered that the counsel should have submitted important new information before the author's deportation was carried out, whereas the Board refused to assess new information because the author was not in Denmark.

7.4 The counsel claims that the facts as presented in the initial communication, including the author's interest in Christianity, had already begun during his transit in Greece where he prayed in churches, had continued with him attending religious services on Sundays and church instruction on Thursdays in Denmark, and had culminated with his baptism. That information was substantial enough for the request for reopening of the asylum proceedings to be granted when he was still in Denmark so that an additional hearing could take place. When reopening of the asylum proceedings was not initiated and the State party's observations were not favourable, the counsel applied for residence for the author for other reasons. In the meantime, the counsel intended to submit all the additional documents from priests to the Committee. However, since the deportation date was announced very late, the counsel only managed to send five single documents to the Committee on 30 July 2015, a few days before the deportation, whereas the full views appeared in the counsel's comments dated 2 October 2015.

7.5 Finally, the counsel emphasizes that the rejection of the author's asylum by the Board on 11 February 2014 was based on only one-and-half hour long hearing of the author, that his baptism and active Christian life had already been documented in the initial communication and that the priests referred to above had known the author for more than 18 months.

7.6 The counsel concludes that the author is at imminent risk of being exposed to serious harm and even threat to life, and that he is not able to practise his religion, and therefore recommends that the Committee reconsider issuing a request for interim measures to ask the State party to invite the author back to Denmark. This would enable the Board to conduct the additional hearing based on the important supplementary information submitted to it by the counsel. The counsel claims that the alleged violations of articles 6, 7 and 18 of the Covenant by Denmark would remain a reality if the deportation is not revoked.

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<sup>18</sup> The counsel attached a copy of the email correspondence with the police officer concerned.

## 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 93 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 notes that the author appealed against the negative decision of the Danish Immigration Service in his asylum application to the Refugee Appeals Board, which dismissed the appeal on 11 February 2014, and that the Board also rejected the author's request for his asylum case to be reopened, on 17 December 2015. Since the decisions of the Board cannot be appealed, no further remedies are available to the author. The Committee observes that the State party has not objected to the admissibility of the communication under article 5 (2) (b) of the Optional Protocol. Accordingly, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee notes the author's claims that by removing him to Afghanistan, he would be exposed to persecution, torture and the risk of death, in violation of articles 6 and 7 of the Covenant, due to his ethnicity, young age, land dispute with a neighbour and interest in Christianity, and that he would be deprived of the right to exercise his religion in public, in violation of article 18 of the Covenant. The Committee notes, however, the State party's argument that the author's claims with respect to articles 6, 7 and 18 of the Covenant should be declared inadmissible because he has failed to establish a *prima facie* case for the purpose of admissibility of his communication.

8.5 With regard to the author's claim under article 18, the Committee notes the State party's argument that the author's conversion to Christianity has not been genuine, and that this part of his claim is inadmissible *ratione loci* and *ratione materiae*, as incompatible with the provisions of the Covenant, because article 18 does not have extraterritorial application and the State party therefore cannot be held responsible for violations of article 18 expected to be committed by another State party outside the territory and jurisdiction of Denmark. The Committee recalls that article 2 of the Covenant entails an obligation for States parties not to deport a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated in articles 6 and 7 of the Covenant, in the country to which removal is to be effected.<sup>19</sup> The Committee notes in this regard that the author has not provided further information to substantiate his claim that by removing him to Afghanistan, the State party has violated his rights under article 18, amounting to irreparable harm such as that contemplated in articles 6 and 7 of the Covenant.<sup>20</sup> The Committee therefore considers that the author has failed to sufficiently substantiate his claim for the purposes of admissibility, and that this part of the communication is inadmissible under article 2 of the Optional Protocol.

8.6 While noting the State party's arguments that the author's claim under articles 6 and 7 of the Covenant should be held inadmissible owing to insufficient substantiation, the Committee considers that the author has adequately explained numerous risk factors, including his ethnicity, his age and a conflict with a powerful neighbour, for which he fears that his forcible removal to Afghanistan would result in a risk of treatment incompatible with the relevant provisions of the Covenant. The Committee is therefore of the opinion that this part of the communication, raising issues under articles 6 and 7 of the Covenant, has been sufficiently substantiated for the purposes of admissibility. The Committee considers that the inadmissibility argument adduced by the State party is intimately linked to the merits and should thus be considered at that stage.

<sup>19</sup> 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.

<sup>20</sup> See, for example, *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.5.

8.7 The Committee declares the communication admissible insofar as it appears to raise issues under articles 6 and 7 of the Covenant, and proceeds to consider it on the merits.

*Consideration of the merits*

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

9.2 The issue before the Committee is whether the removal of the author to Afghanistan (on 2 August 2015) amounted to a violation by the State party of its obligations under articles 6 and 7 of the Covenant.

9.3 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 the Committee 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. 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.<sup>21</sup> Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>22</sup> The Committee also recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists,<sup>23</sup> unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>24</sup>

9.4 The Committee notes the State party's observation that its obligations under articles 6 and 7 of the Covenant are reflected in section 7 (1) and (2) of the Aliens Act, under which a residence permit will be issued to an alien upon application if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment if returned to his or her country of origin. The Committee also notes the State party's observation that the assessment of whether an alien risks persecution or abuse justifying asylum if returned to his or her country of origin must normally be made in the light of the information available at the time of the decision, that is, the existence of the risk must be assessed primarily with reference to the facts that were known or ought to have been known by the State party at the time of the expulsion. According to the State party, the decisive factor must be whether, at the time of the Board's decision of 11 February 2014, information was available that supported the author's allegation that he would be at risk of being subjected to persecution or abuse justifying asylum if he were returned to Afghanistan.<sup>25</sup> The State party asserted that the author's certificate of baptism of 23 February 2014 had been submitted after the Board's final decision of 11 February 2014, and that the new information on his conversion to Christianity had been submitted only on 3 August 2015, following the author's removal to Afghanistan the day before.

9.5 The Committee notes, in particular, the Refugee Appeals Board's finding of 11 February 2014 that many of the author's allegations can be considered as facts; however, the Board found that the land dispute had not been of such a nature or intensity as to give reason to assume that the author would be at a real risk of abuse from his neighbour if the author were returned to Afghanistan. The Committee observes that, according to the

<sup>21</sup> See *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), para. 6.6; and *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

<sup>22</sup> *Ibid.*

<sup>23</sup> See *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

<sup>24</sup> See *Y.A.A. and F.H.M. v. Denmark* (CCPR/C/119/D/2681/2015) para. 7.3; and *Rezaifar v. Denmark* (CCPR/C/119/D/2512/2014), para. 8.3.

<sup>25</sup> The Board considered, inter alia, the author's allegations that he used to work for the army, but that he was subjected to an attempted rape and therefore quit his job (see para. 2.3). However, as his grounds for asylum, the author referred to his fear that, if he were returned to Afghanistan, he would be killed by his neighbour because of a land dispute or executed by the Afghan authorities because of his interest in Christianity.

author's own statements, the neighbour did not demand the author's family's land until mid-2011, four years after the father's death in 2007, and that the land dispute took place three years before the Board's decision. The Board has also, for example, noted that the author does not belong to a minority ethnic group in the area of his residence (see para. 4.9 above), and that the author stated that he had never experienced any problems with the Afghan authorities. The Committee further notes that the Board considered all the author's statements in regard to his Christian activities and persuasion, made during the Board hearing and in the written material, including those made by his counsel; nonetheless, the Board could not consider the author's Christian persuasion as genuine, since the author established contact with a pastor in Denmark only two weeks before the Board's hearing, and he was baptized on 23 February 2014, 12 days after the Board's final decision.

9.6 The Committee also notes that the Refugee Appeals Board observed, in its decision of 17 December 2015, that it received no information on the applicant's religious persuasion or activities, either from the counsel or from the author, during the period from 3 April 2014 until receipt of the request for reopening of the author's asylum case on 3 August 2015, when the author had already been removed from Denmark. Since the author is no longer in Denmark, his asylum case was considered as closed by the State party's asylum authorities. The Committee notes that the Board also observed a lack of explanation as to why the new information could not have been forwarded before the author's forcible removal on 2 August 2015, as well as inconsistencies in that information.

9.7 The Committee further notes the author's submission that his claims and the risk factors pertaining to him were not properly assessed by the State party's authorities, and that the Refugee Appeals Board's decisions were manifestly erroneous as such decisions cannot be appealed to a court, emphasizing that the Board's proceedings lack attributes of a judicial process and that the interpreters used are not properly qualified. In this connection, the Committee notes the State party's claim that the author has not explained why the decisions of the Board in his case would be contrary to the due process standards, nor has he provided substantial grounds to support his claim that his removal to Afghanistan would expose him to a real risk of irreparable harm in violation of articles 6 and 7 of the Covenant. The Committee recalls 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>26</sup> However, the Committee considers that, in the present case, the author's claims mainly reflect his disagreement with the factual conclusions drawn by the State party, including the alleged risk of being harmed by his former neighbour due to a land dispute, or being persecuted, tortured or executed by the Afghan authorities on account of his religious beliefs, and do not demonstrate that these conclusions are arbitrary or manifestly unreasonable or that the asylum proceedings in question amounted to a denial of justice.<sup>27</sup>

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that, by removing the author to Afghanistan, the State party did not violate its obligations under articles 6 and 7 of the Covenant.

<sup>26</sup> *Omo-Amenaghawon v. Denmark* (CCPR/C/114/D/2288/2013), para. 7.5.

<sup>27</sup> See, for example, *P.T. v. Denmark*, para. 7.4; and *M.P. et al. v. Denmark* (CCPR/C/121/D/2643/2015), para. 8.7.