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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2640/2015*, **

Communication submitted by:	R.I.H. and S.M.D. (represented initially by the Danish Refugee Council and subsequently by Advokatkompagniet)
Alleged victims:	The authors and their four children
State party:	Denmark
Date of communication:	6 August 2015 (initial submission)
Document references:	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 6 August 2015 (not issued in document form)
Date of adoption of Views:	13 July 2017
Subject matter:	Deportation from Denmark to Bulgaria
Procedural issue:	Level of substantiation of claims
Substantive issue:	Torture and ill-treatment
Article of the Covenant:	7
Article of the Optional Protocol:	2

1.1 The authors of the communication are R.I.H., born on 10 April 1971, and his wife, S.M.D., born on 15 April 1971. They present the communication on their own behalf and that of their four children, two of whom are minors: R.R.H., born on 1 January 2002, and M.R.H., born on 1 January 2003. The authors also have two adult children, Ri.R.H., born on 7 August 1996, and Ra.R.H., born on 3 April 1995.

1.2 The family is currently staying at the Sandholm Asylum Center in Birkerød. Their deportation to Bulgaria, where they have subsidiary protection, was scheduled for 6 August 2015. The authors claim that, by deporting them to Bulgaria, Denmark would violate their rights under article 7 of the Covenant. The Optional Protocol entered into force for

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

Denmark on 23 March 1976. The author is represented by counsel, initially by the Danish Refugee Council and subsequently by Advokatkompagniet.

1.3 The communication was registered on 6 August 2015. Pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from deporting the authors to Bulgaria while their case was under consideration by the Committee. On 7 August 2015, the Refugee Appeals Board suspended the deadline for the authors' departure from Denmark until further notice, in accordance with the Committee's request.

1.4 On 8 February 2016, as part of its observations on admissibility and the merits, the State party requested that the Committee review its request for interim measures. On 2 May 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request to lift interim measures.

The facts as submitted by the authors

2.1 The authors originate from the Syrian Arab Republic and fled the country together to seek protection in Europe. They entered Denmark in January 2015. On 21 April 2015 and 11 June 2015, the Danish Immigration Service rejected their applications for residence. On 3 August 2015, the Refugee Appeals Board upheld the decisions of the Danish Immigration Service.

2.2 In Bulgaria, the authors were registered as asylum seekers, but they did not receive any assistance and had to buy their own food. They only had the use of a shared bath and toilet, and at one point there was no water for 10 days. The guards at the asylum centre did not speak to the applicants in an appropriate manner, and the children were not allowed to go to school.

2.3 The authors themselves did not need medical assistance during their stay in Bulgaria. A friend of Ra.R.H., the authors' eldest son, died because no one called for an ambulance when he needed it. The friend died about a week after the authors left Bulgaria. The eldest son was sent a photo of his dead friend, and this had a great psychological impact upon him.

2.4 Furthermore, individuals from a party called the "Bald Ones" attacked an asylum centre around 30 minutes away from where the authors were staying. According to the authors, this party hates refugees and asylum seekers.

2.5 When the family members received their residence permits in Bulgaria in November 2014, they had to sign a document committing themselves to leaving the asylum centre within 14 days. As asylum seekers, they had received 65 leva (about 13 euros) per month, but that support was discontinued once they had obtained a residence permit. The authors did not receive any other type of support. The family stayed at the asylum centre, and every second day guards would come and threaten to evict them by force from the centre if they did not leave voluntarily. The family had nowhere to go and was not given any form of assistance.

The complaint

3.1 The authors claim that, by deporting them to Bulgaria, the State party would breach their rights under article 7 of the Covenant. They maintain that they should be regarded as vulnerable, given the young age of their two minor children. The authors claim they fear that a return to Bulgaria will expose them and their children to inhuman or degrading treatment contrary to the best interests of the children, since they face homelessness, destitution, lack of access to health care and lack of personal safety in Bulgaria, where they did not find any durable humanitarian solution.

3.2 The authors are not prepared to go back to Bulgaria because there is no access to health care, even in very urgent situations. Secondly, the authors' children do not have access to schools and the authors themselves do not have access to employment. Consequently, they say, the family does not have access to decent living conditions.

3.3 The authors add that reception conditions in Bulgaria for asylum seekers are substandard. Although in theory, an integration programme formally exists, and although,

according to national law, asylum seekers have access to the labour market, health-care system, social services and assistance in finding housing, in reality it is almost impossible for this group to find a job or a safe place to live.[1] According to the authors, several organizations, such as the Asylum Information Database and the Office of the United Nations High Commissioner for Refugees (UNHCR) have reported that persons who have been granted refugee status or subsidiary protection in Bulgaria lack opportunities to become integrated and find lasting solutions. Refugees and humanitarian-status holders have to ensure their integration into the local society through their own efforts and capacity, with the limited assistance of non-governmental and volunteer organizations.[2] Conditions for children, in particular, have been described as particularly problematic by UNHCR, which has stressed the urgent need for asylum-seeking children and children found to be in need of international protection to be provided with access to education without further delay.[3] Reports also state that child support has been discontinued for refugee children in Bulgaria, stating that, in November 2013, the Agency for Social Support instructed its local departments to reject onward monthly child support allowances, which previously had been provided for recognized individuals without any restrictions or limitations. Restrictions continued during 2014 as well.[4]

3.4 Another organization has also noted that, after granting refugee or humanitarian status (equivalent to subsidiary protection), the Government stops giving refugees the 65 leva per month which they had received as asylum seekers. Human Rights Watch researchers met recognized refugees who were homeless and squatting in unfinished, abandoned buildings in the vicinity of the open centres.[5] In its update of April 2014,[6] UNHCR stated that there continued to be a gap with regard to access to health care when asylum seekers were recognized as refugees or were granted subsidiary protection. Additionally they had to pay a monthly instalment of approximately 17 leva (8.7 euros) in order to access the services of the national health insurance, as did nationals. Medicines were not covered, nor was psychological care. Lack of adequate and affordable housing was another area seriously affecting the beneficiaries of protection in Bulgaria. The authors say that the only accessible accommodation support is that provided in the reception centres, to which a person has access for only six months after being granted the status of asylum seeker. In addition, it has been reported that the asylum authority evicts some refugees even within the valid accommodation period, including those from vulnerable groups such as sick, disabled and elderly people, single parents and families with underage children.[7]

3.5 The authors add that, without support from Bulgarian institutions for social inclusion and integration, newly recognized refugees are in a highly vulnerable position, exposed to higher risks of extreme poverty, unemployment, homelessness, xenophobic and racist attitudes and discrimination.

3.6 Although, in 2011, the Bulgarian authorities adopted a multi-year programme for the integration of refugees, which was supposed to run until 2020, a national audit found that the implementation of the strategy for the integration of refugees in the period 2011-2013 had failed to produce any effect.[8] The Bulgarian authorities failed to allocate any funding for the integration programme for the year 2014, which resulted in the programme's

[1] The authors refer to two publications: Asylum Information Database, *National Country Report — Bulgaria* (April 2014) and Office of the United Nations High Commissioner for Refugees (UNHCR), *Where is my Home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria* (Sofia, 2013), pp. 11-13.

[2] Asylum Information Database, *Country Report — Bulgaria* (January 2015), p. 40.

[3] UNHCR, *Bulgaria as a Country of Asylum: UNHCR Observations on the Current Situation of Asylum in Bulgaria* (April 2014), p. 13.

[4] Asylum Information Database, *Country Report — Bulgaria* (January 2015), pp. 41-42.

[5] Human Rights Watch, "Containment plan: Bulgaria's pushbacks and detention of Syrian and other asylum seekers and migrants", 28 April 2014. Available from www.hrw.org/report/2014/04/28/containment-plan/bulgarias-pushbacks-and-detention-syrian-and-other-asylum-seekers.

[6] UNHCR, *Bulgaria as a Country of Asylum*, p. 12.

[7] Asylum Information Database, *Country Report — Bulgaria* (January 2015), p. 41.

[8] Council of Europe, *Report of the Commissioner for Human Rights of the Council of Europe, Following his Visit to Bulgaria from 9 to 11 February 2015* (Strasbourg, 2015), para. 124.

discontinuance. UNHCR also expressed concern in this respect, stating that, in the absence of a solid strategy and sustainable programme to ensure access to livelihoods, affordable housing, language tuition and effective access to formal education for children, beneficiaries of international protection might not have effective access to self-reliance opportunities, and thus might be at risk of poverty and homelessness. [9] Amnesty International echoed this concern, stating that recognized refugees faced problems in accessing education, housing, health care and other public services.[10]

3.7 The authors further fear that they will be attacked by xenophobic groups. Such groups are common in Bulgaria and remain unaddressed by the State authorities, which cannot protect asylum seekers against attacks. The number of attacks has recently increased. In a September 2014 report, the European Commission against Racism and Intolerance expressed concern about hate speech with respect to refugees in Bulgaria, noting that racist and intolerant speech in political discourse was escalating, and that the authorities rarely voiced any counter-hate speech message to the public.[11] On 11 March 2014, the European Court of Human Rights ruled, in *Abdu v. Bulgaria* (application No. 26827/08) that the Bulgarian authorities had failed to properly investigate the potentially racist nature of an attack on a Sudanese national. The authors assert that the family would therefore not feel safe in Bulgaria and would face destitution, tantamount to inhumane and degrading treatment contrary to the best interests of the children.

3.8 The authors refer to the decision by the European Court of Human Rights in the case of *Tarakhel v. Switzerland* (application No. 29217/12), which highlighted the special vulnerability of asylum-seeking children, even when they were accompanied by their parents. The authors also refer to the Committee's findings under article 7 of the Covenant in the case of *Jasin et al. v. Denmark* (communication No. 2360/2014, Views adopted on 22 July 2015). They conclude that, as a family unit with young children, they are particularly vulnerable to inhumane and degrading treatment in Bulgaria. They add that the risk faced in the case of their return is personal and irreparable, judging from the background information available and the previous experience of the family in Bulgaria.

3.9 According to the authors, even though there is no uniform definition of conditions which would fall within the category of inhumane or degrading treatment, the European Court of Human Rights, in its decision on *M.S.S. v. Belgium and Greece* (application No. 30696/09), has determined that the state of extreme poverty of the applicant, who had lived in a park in Athens for months without access to food or sanitation, amounted to degrading treatment under article 3 of the European Convention on Human Rights. According to the authors, while the facts differ in the case at hand, the latter case supports the finding that homelessness and extreme poverty can amount to inhumane and degrading treatment. The authors were asked to leave the asylum centre, and felt compelled to flee Bulgaria, with no alternative considering the extremely hard living conditions to which recognized refugees were exposed.

3.10 The authors reiterate that there is no reintegration programme for refugees in Bulgaria, who thus face serious poverty, homelessness and limited access to health care, education and employment. They add that, based on their personal experience and their vulnerability as the parents of two minor children, and in the light of the above background information, there is a real risk that they will be exposed to treatment amounting to ill-treatment in breach of article 7 of the Covenant.

State party's observations on admissibility and the merits

4.1 On 8 February 2016, the State party submitted that the communication should be considered inadmissible or, alternatively, devoid of merit. The State party recalls that the authors entered Denmark in January 2015 without valid travel documents. Ra.R.H., the authors' adult son born on 3 April 1995, entered Denmark on 3 February 2015 without

[9] UNHCR, *Bulgaria as a Country of Asylum*, p. 16.

[10] Amnesty International, *Amnesty International report 2014-15, Bulgaria*, 25 February 2015. Available from www.refworld.org/docid/54f07e10c.html.

[11] European Commission against Racism and Intolerance, *ECRI Report on Bulgaria* (*Fifth Monitoring Cycle*) (Strasbourg, 16 September 2014), p. 9.

valid travel documents. The authors applied for asylum on 31 January 2015 and 3 February 2015, respectively. On 21 April 2015 and 11 June 2015, respectively, the Danish Immigration Service refused the authors' applications for residence under section 7 of the Danish Aliens Act, pursuant to section 29 of the Aliens Act. On 11 May 2015 and 26 June 2015, respectively, the authors appealed the decisions to the Refugee Appeals Board. On 3 August 2015, the Refugee Appeals Board upheld the decisions of the Danish Immigration Service to refuse residence to the authors.

4.2 The State party further notes that, in a communication dated 5 August 2015, the authors brought the matter before the Committee, claiming that deporting them to Bulgaria would constitute a breach of article 7 of the Covenant. On 7 August 2015, the Refugee Appeals Board suspended the deadline for the authors' departure from Denmark until further notice, in accordance with the Committee's request.

4.3 The State party submits that, in its decision of 3 August 2015, the Refugee Appeals Board stated, with respect to the authors R.I.H., S.M.D. and their two minor children, that it appeared from the first sentence of section 48a (1) of the Aliens Act that, if an alien claimed to fall within section 7 [of the Act], the Danish Immigration Service must make a decision as soon as possible on refusal of entry, transfer or retransfer under the rules of Part 5. Pursuant to section 29, an application for residence under section 7 could be refused if the alien had already obtained protection in a country falling within section 29a (1), i.e. a country covered by the Dublin Regulation. In the case at hand, the Board considered it a fact that the appellants had been granted residence, in the form of subsidiary protection, in Bulgaria. It appeared from the explanatory notes to Bill No. 72 of 14 November 2014 on section 29 of the Aliens Act that refusal of residence under that provision was allowed only if the conditions for considering the relevant country to be a country of first asylum had been met, because the alien had previously obtained protection in that country. One of the requirements for such a refusal of residence was that the alien must be protected against refoulement and that it must be possible for the alien to enter and stay lawfully in the country of first asylum. The personal integrity and safety of the alien must also be protected, but it could not be required that the alien must have the exact same standard of living as the nationals of the country of first asylum. However, it was a requirement under UNHCR Executive Committee conclusion No. 58 that the alien must be treated in accordance with recognized basic human standards in the country of first asylum.

4.4 The State party submits further that, according to its case law, the Refugee Appeals Board examined whether the alien had access to housing and medical assistance, the possibility of employment in the private or public sector, the possibility of settling freely and the possibility of owning real estate. In the present case, the Board determined that it would be possible for the authors to enter and stay lawfully in Bulgaria and that they would be protected against refoulement in that country. The Board observed that, on 13 October 2014, the authors had obtained subsidiary protection in Bulgaria, a member State of the European Union and a party to the Convention relating to the Status of Refugees, which stipulated compliance with the principle of non-refoulement (art. 33 (1)).

4.5 As regards the general conditions for aliens granted residence in Bulgaria, the Board determined that it would not imply a risk of inhumane or degrading treatment, as referred to in article 4 of the Charter and prohibited by article 3 of the European Convention on Human Rights and article 7 of the International Covenant on Civil and Political Rights, to refuse entry to the appellants. The Board also determined that the authors' personal integrity and safety would be protected.

4.6 Concerning the authors' allegation of xenophobic violence in Bulgaria, the Board indicated that if relevant, the authors would be able to seek protection from the Bulgarian authorities. Moreover, it observed that, judging from the authors' interview with the Danish Immigration Service on 31 March 2015 and 9 June 2015, they were not referring to any specific conflict with private individuals or authorities in Bulgaria.

4.7 The Board further determined that the general socioeconomic conditions for refugees who were granted residence in Bulgaria could not independently lead to the conclusion that the authors could not be returned to Bulgaria. The Board took into consideration available background information, including a report published by UNHCR

in December 2013,[12] which indicated that individuals who had been granted refugee or protection status in Bulgaria enjoyed the same rights as Bulgarian nationals. It also appears from a report on the asylum system in Bulgaria published by the Danish Refugee Council that, once issued, a residence permit gives access to the labour market and social benefits, including unemployment benefits, although it is difficult to find a job in practice because of language problems and a high unemployment rate. It follows from a memorandum on the conditions for asylum seekers and refugees in Bulgaria, drafted by the Danish Refugee Council in November 2014 on the basis of meetings with Bulgarian non-governmental organizations, that individuals with refugee status have access to health insurance, although they have to pay for it. Furthermore, it appears from a report published by UNHCR in December 2014[13] that, under Bulgarian legislation, alien beneficiaries of international protection are entitled to the same social assistance and services as Bulgarian nationals, and they also have the same health-care rights and the right to health insurance of their own choice.

4.8 According to the Refugee Appeals Board, the housing situation of refugees was often difficult because the latter did not obtain financial support, and municipal housing required that at least one member of the family must hold Bulgarian nationality and that the family must have been registered in the municipality concerned for a specified period. Children of refugees granted international protection had access to schooling, but on the condition that refugee children had successfully completed a language course and that the family was registered at a definite address.

4.9 In the light of the above background information, the Refugee Appeals Board found no basis to set aside the assessment made by the Danish Immigration Service that the authors' personal integrity and safety would be protected in Bulgaria, where the socioeconomic conditions must be considered adequate. Accordingly, the Board determined that it would not be contrary to article 3 of the Convention on the Rights of the Child to deport the authors to Bulgaria.

4.10 The State party recalls that the authors were granted residence in Bulgaria in November 2014. It also notes that, after spending four months at the asylum centre, the authors were given a residence permit valid for three years. It considers that the authors have failed to establish a prima facie case for the purposes of admissibility of their communication under article 7 of the Covenant, as they have not been able to show substantial grounds for believing that they would be in danger of being subjected to inhuman or degrading treatment or punishment if deported to Bulgaria. The communication is therefore manifestly ill-founded.

4.11 Should the Committee find the authors' communication admissible, the State party submits that the authors have not sufficiently established that it would constitute a violation of article 7 of the Covenant to deport them to Bulgaria. The State party recalls the Committee's jurisprudence setting the threshold for the risk, which must be real and personal.[14] According to the State party, the authors did not produce any substantial new information or views on their circumstances beyond the information which was already relied upon in their asylum proceedings.

4.12 The State party recalls that, when considering whether a country can serve as a country of first asylum under the Dublin procedure, the Refugee Appeals Board requires, as an absolute minimum, that the relevant asylum seeker must be protected against refoulement, and that his or her personal integrity and safety must be protected in the country of first asylum, which includes certain socioeconomic considerations. However, it cannot be required that the relevant asylum seekers must have completely the same social living standards as the country's own nationals.

[12] UNHCR Regional Representation for Central Europe, *Refugee Integration and the Use of Indicators: Evidence from Central Europe* (Budapest, 2013).

[13] UNHCR, *Monitoring Report on the Integration of Beneficiaries of International Protection in the Republic of Bulgaria* (Sofia, 2014).

[14] The State party refers to the Committee's Views in communication No. 2007/2010, *J.J.M. v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

4.13 The State party recalls that the authors' statements and allegations were thoroughly considered by the Danish Immigration Service and the Refugee Appeals Board, including their claims related to living conditions. The State party also stresses that the authors' statements about reception conditions in Bulgaria are relevant only to individuals falling under the Dublin procedure, but not for the assessment whether a country can serve as the authors' country of first asylum. In this regard, the authors' reference to the Asylum Information Database country report for Bulgaria of January 2015 applies only to asylum seekers.

4.14 The State party adds that the authors' assertion that they risk homelessness and may have to live on the streets if deported to Bulgaria is substantiated neither by their past experience, nor by the background information available. According to their own information, the authors were accommodated at the asylum centre after being granted residence in Bulgaria and were allowed to stay there, even though they had been told to leave the centre within 14 days and had been instructed by the police to stay elsewhere. Accordingly, the authors were not homeless during their stay in Bulgaria. The State party further observes that it appears from the UNHCR report *Where is my Home?* that the quality of accommodation of asylum seekers and protection status holders after leaving the registration and reception centres is directly dependent on their employment and income, but also dependent on their family status.[15] In general, refugee families, in particular those with young children, encounter a more positive attitude from landlords. No cases have been recorded of families being forced to leave the registration and reception centres without being provided with accommodation, or at least with funds to rent lodgings.

4.15 With respect to the authors' allegation based on a report that the Bulgarian authorities discontinue the payment of a monthly allowance once asylum seekers are granted residence, [16] the State party stresses that, according to the same source of information, refugees acquire the rights and obligations of Bulgarian nationals. During their own experience, the authors were provided with 65 leva per month as asylum seekers, and non-governmental information indicates that the amount granted to persons with protection status is equal to the social aid granted to Bulgarian nationals, and that recognized refugees have the right to receive financial support for up to six months after the positive decision.[17]

4.16 The State party further submits that the authors' submission about the alleged lack of access to medical assistance during their stay in Bulgaria is based solely on unsubstantiated information, and is not aligned with the general information available on conditions for aliens granted protection status in Bulgaria.[18] The same is true of the authors' submission that they risk having only limited access to health care if deported to Bulgaria. [19] Information indicates that, under Bulgarian legislation, beneficiaries of international protection are entitled to the same social assistance and services as Bulgarian nationals, and they also have the same health-care rights and the right to health insurance of their own choice.[20] The State party further observes that the authors neither requested nor needed medical assistance or health-care services in Bulgaria.

4.17 As regards the authors' information about racially motivated assaults and rhetoric, the State party observes that the Bulgarian Government has addressed and condemned racist attacks and rhetoric and notes that, on 14 February 2014 following the attack on the Dzhumaya Mosque in Plovdiv, the Government published a second joint declaration calling for guarantees of civil, ethnic and religious peace and the police detained over 120 people in connection with the attack.[21] The State party also observes in this respect that the authors

[15] UNHCR, *Where is my Home?*, p. 6.

[16] Human Rights Watch, "Containment Plan", p. 5.

[17] Asylum Information Database, *Country Report — Bulgaria* (January 2015), p. 41.

[18] See, for example, UNHCR, *Where is my Home?*, p. 24.

[19] The State party refers to two reports: *Bulgaria as a Country of Asylum* and Tsvetelina Hristova and others, *Trapped in Europe's Quagmire: the Situation of Asylum Seekers and Refugees in Bulgaria* (Munich, Bordermonitoring.eu, 2014), from which it appears that refugees in Bulgaria have access to health-care services and that medical treatment is free if the asylum-seekers register with a general practitioner.

[20] UNHCR, *Monitoring Report.*

[21] The State party cites *Bulgaria as a Country of Asylum*, p. 14.

can seek protection from the relevant authorities, should they experience any problems of a racist nature. Their reported past experiences of fearing a group called the "Bald Ones" cannot change that assessment. Besides, the authors themselves have not experienced any problems with that group or similar groups.

4.18 As regards the submission about insufficient access to education and schooling, the State party notes that available information indicates that asylum seekers under 18 years of age have access to education on the same conditions as those applicable to Bulgarian nationals.[22] However, before being enrolled in Bulgarian municipal schools, refugee and asylum-seeking children must successfully complete a language course. Attending compulsory school is free of charge.

4.19 Concerning the authors' allegations that, if deported to Bulgaria, they will not have access to accommodation, and that they will thus most likely have to live on the streets with their children, the State party refers to the decision by the European Court of Human Rights in the case of *Samsam Mohammed Hussein and others v. the Netherlands and Italy* (application No. 27725/10). The Court stated in that decision that the assessment whether there were substantial grounds for believing that an applicant faced a real risk of being subjected to treatment that would be in breach of article 3 of the European Convention on Human Rights must necessarily be a rigorous one and inevitably required that the Court assess the conditions in the receiving country against the standard of that provision of the Convention. In that connection, the Court further stated (paras. 70 and 71), that the mere fact of return to a country where one's economic position would be worse than in the expelling Contracting State was not sufficient to meet the threshold of ill-treatment proscribed by article 3 of the Convention; that article 3 could not be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home; and that the provision did not entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living.

4.20 Regarding the authors' reference to the decision of the European Court of Human Rights in the case of *Tarakhel v. Switzerland*, the State party is of the opinion that it cannot be inferred from this judgment that individual guarantees must be obtained from the Bulgarian authorities in the case at hand, which concerns the transfer of a family already granted protection status in Bulgaria.

4.21 As for the Committee's Views in the case of *Jasin et al. v. Denmark*, the State party distinguishes the facts of that case from those of the present case, noting that the former concerned a single woman with minor children, whose residence permit for Italy had expired. The case at hand concerns the deportation of a family consisting of a mother, a father and their two minor children, as well as two adult children, who all still hold valid residence permits for subsidiary protection in Bulgaria. In the opinion of the State party, the cases are therefore not comparable.

4.22 The State party therefore submits that the Refugee Appeals Board took into account all relevant information in its decision and that the communication has not brought to light any information substantiating the assertion that the authors risk such persecution or abuse on their return to Bulgaria as would justify granting them asylum. It recalls the Committee's established jurisprudence,[23] according to which important weight should be given to the assessment conducted by the State party, unless it was found that the evaluation was clearly arbitrary or amounted to a denial of justice. In the present case, the State party submits that the authors are trying to use the Committee as an appellate body to reassess the factual circumstances advocated in support of their claim for asylum. There is no basis for challenging the assessment made by the Refugee Appeals Board, according to which the authors failed to establish that there were substantial grounds for believing that they would be in danger of being subjected to inhuman or degrading treatment or punishment if deported to Bulgaria. Against that background, the State party submits that

[22] Ibid.

[23] See *P.T. v. Denmark* (communication No. 2272/2013,Views adopted on 1 April 2015), para. 7.3; *K. v. Denmark* (communication No. 2393/2014, Views adopted on 16 July 2015), paras. 7.4 and 7.5.

the deportation of the authors to Bulgaria would not constitute a violation of article 7 of the Covenant.

Authors' comments on the State party's observations

5.1 In their comments of 11 April 2016, [24] the authors maintain that their deportation to Bulgaria would constitute a breach of article 7 of the Covenant. The authors assert that they would face inhuman and degrading treatment by being forced to live in the streets with no access to housing, food or sanitary facilities and no prospect of finding a durable humanitarian solution.

5.2 The authors stress that the assessment of a first-asylum claim includes not only the principle of non-refoulement, but also the assessment whether the person with international protection is permitted to remain there and to be treated in accordance with recognized basic human standards until a durable solution is found for them, as stated in UNHCR Executive Committee conclusion No. 58. The authors submit that the Refugee Appeals Board has failed to undertake a thorough assessment of the risk that they would face in case of deportation to Bulgaria and, in particular, to establish whether they would be treated in accordance with recognized basic human standards. The mere fact that Bulgaria is bound by the European Convention on Human Rights is not an automatic indication that the country complies with that Convention.

5.3 The authors further stress that the Board has already determined, in the past, that families with minor children are in a particularly vulnerable situation. From October 2014 to September 2015, the Board assessed 72 cases of applicants with refugee status or subsidiary protection status in Bulgaria. The Board granted asylum in 11 of these cases, based on the vulnerable status of families, along with the lack of essential support and medical treatment in Bulgaria. Therefore, the Board not only has the possibility of granting protection to families in need of special care, but has actually done so.

5.4 With respect to the State party's claim that the authors did not experience homelessness, the latter stress that they had nowhere to go when they were forced to leave the asylum centre, and found themselves in a situation where they were forced into secondary movement, inter alia because of homelessness.

5.5 As for medical care, the authors stress that the Refugee Appeals Board has, in several decisions, established that there is a lack of appropriate medical support in Bulgaria. The fact that the family has, or has not, already requested or needed medical assistance or health care is immaterial when assessing whether a lack of appropriate medical support may expose them to a breach of article 7 of the Covenant. The authors add that refugees' access to health care is restricted in Bulgaria. General access depends on prepaid insurance, which is not covered by the State. Even where a refugee has paid for the health insurance, he or she still has to pay for medicines and psychological treatment, which may be vital for traumatized refugees and torture victims. [25] In addition, because of the administrative workload and prejudice against refugees, only 4 out of 130 general practitioners have agreed to add refugees to their patient lists.

5.6 The authors stress that the cumulative effect of their experiences amounts to a well-founded fear of treatment in breach of article 7 of the Covenant. They reiterate that racially motivated crimes against minorities are not prosecuted in Bulgaria, being treated by the authorities as hooliganism.[26]

5.7 As for children's education, the authors note that the Bulgarian Council on Refugees and Migrants reported in 2014 that only 45 refugee children were enrolled in the Bulgarian municipal school system, while a total of 825 refugee children were registered in Bulgaria.

[24] As of this date, the authors were represented by Advokatkompagniet. [A valid power of attorney is on file.]

[25] The authors refer to a report by Förderverein PRO ASYL, *Erniedrigt, Misshandelt, Schutzlos: Flüchtlinge in Bulgarien* (April 2015), p. 34. Available from https://www.proasyl.de/wp-content/uploads/2015/04/150415_Bulgarienbericht.pdf.

[26] Amnesty International, *Missing the Point: Lack of Adequate Investigation of Hate Crimes in Bulgaria* (February 2015), p. 27.

Thus, over 90 per cent of the registered refugee children were not enrolled in the municipal school system. The bureaucratic administration and the difficulties of enrolment in the mandatory language course constitute a de facto violation of the children's right to education, say the authors.

5.8 The authors reiterate that the Committee's Views in *Jasin et al. v. Denmark* are relevant in their situation. As in that case, it was wrong of the State party to assume that, as holders of valid residence permits in Bulgaria, the authors would benefit from their theoretical rights and social benefits. It is up to the State party to undertake an individualized assessment on the actual risk faced in case of deportation. As such, there were procedural defects in the Refugee Appeals Board's assessment, which is why the authors have resorted to the Committee.

State party's additional observations

6.1 On 4 November 2016, the State party provided additional observations, generally referring to its observations of 8 February 2015. It reiterates that the Refugee Appeals Board made a full and thorough assessment of all the circumstances of the case, including an assessment of the information in the case at hand, in conjunction with the information on conditions in the country of first asylum. It asserts that the authors have not established that the assessment made by the Refugee Appeals Board is clearly arbitrary or manifestly ill-founded.

6.2 According to the State party, the various cases cited by the authors in which the Board determined that Bulgaria could not serve as the country of first asylum do not reflect arbitrariness, but rather the fact that the Board makes a specific and individual assessment in each individual case. The finding made by the Board in the case at hand, that Bulgaria can serve as the authors' country of first asylum, was thus based on a specific assessment of the circumstances in this case.

6.3 The State party refers to the Committee's jurisprudence[27] and distinguishes the present case from that of *Jasin et al. v. Denmark*, previously considered by the Committee, which concerned the deportation of a single mother who suffered from asthma, required medication and had three minor children, and whose residence permit for Italy had expired. The State party stresses that the case at hand concerns the deportation of a married couple with four children, two of whom are adults; that none of the family members suffers from any diseases requiring medical treatment; and that all family members have been granted residence permits in Bulgaria. The State party further notes that the authors have failed to specify any irregularity in domestic decision-making by the Bulgarian authorities, and refers to the case of *A.A.I. and A.H.A. v. Denmark* (communication No. 2402/2014, Views adopted by the Committee on 29 March 2016), in which the Committee found that it was not contrary to article 7 of the Covenant to deport a married couple and their two minor children to Italy, where they had all previously been issued with residence permits. According to the State party, the same reasoning should apply in the case at hand.

6.4 As for the background information referred to by the authors, the State party notes that the same information was included in the other background material on Bulgaria available to the Refugee Appeals Board, and was thus also taken into account in the Board's assessment of the authors' case.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not the communication is admissible under the Optional Protocol to the Covenant.

[27] The State party further refers to the individual dissenting opinion of Committee members Yuval Shany, Konstantine Vardzelashvili and Sir Nigel Rodley in the case of *Abdilafir Abubakar Ali and Mayul Ali Mohamad v. Denmark* (communication No. 2409/2014, Views adopted on 29 March 2016).

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

7.3 The Committee notes that the State party has not contested the admissibility of the communication under article 5 (2) (b) of the Optional Protocol. It also observes that the authors filed an application for asylum, which was rejected by the Refugee Appeals Board on 3 August 2015. Accordingly, the Committee considers that domestic remedies have been exhausted.

7.4 The Committee notes the State party's argument that the authors' claims with respect to article 7 should be held inadmissible for lack of substantiation. However, the Committee considers that, for the purpose of admissibility, the authors have adequately explained the reasons why they fear that their forcible return to Bulgaria would result in a risk of treatment that would be in violation of article 7 of the Covenant. As no other obstacles to admissibility exist, the Committee declares the communication admissible insofar as it appears to raise issues under article 7 of the Covenant, and proceeds to its consideration of the merits.

Consideration of the merits

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

8.2 The Committee notes the authors' claim that deporting them and their four children, two of whom are minors, to Bulgaria on the basis of the Dublin Regulation principle of "first country of asylum" would expose them to treatment contrary to article 7 of the Covenant. The Committee notes that the authors base their arguments on, inter alia, the socioeconomic situation they would face, notably the lack of access to financial or social assistance and to integration programmes for refugees and asylum seekers, as well as by the general conditions of reception for asylum seekers and refugees in Bulgaria. The authors have contended that they would have no access to social housing or temporary shelters; that they would not be able to find accommodation or jobs and would therefore face homelessness and be forced to live on the streets; and that they would be exposed to acts of a xenophobic nature and left without protection.

8.3 The Committee recalls paragraph 12 of 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 where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant. The Committee has also indicated that the risk must be personal[28] and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.[29] The Committee further 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,[30] unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.[31]

[28] Communications No. 2007/2010, *J.J.M. v. Denmark*, Views adopted on 26 March 2014, para. 9.2, and No. 692/1996, *A.R.J. v. Australia,* Views adopted on 28 July 1997, para. 6.6. See also Committee against Torture communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

[29] See *J.J.M. v. Denmark*, para. 9.2, and communication No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

[30] See communications No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 11.4, and No. 1957/2010, *Fan Bao Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

[31] See, inter alia, communication No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

8.4 The Committee observes that it is not disputed that the authors obtained subsidiary protection in Bulgaria and were accordingly granted a residence permit in November 2014, with a validity period of three years; nor that they could stay in the asylum centre after they obtained a residence permit. The Committee also notes that the Danish Refugee Appeals Board determined that the authors did not face any problems with the nationals and authorities of Bulgaria, and that they would enjoy necessary social rights if they were returned to Bulgaria, including access to school for the children and access to medical care.

8.5 The Committee further notes that the authors rely on third-party information and reports on the general situation of asylum seekers and refugees in Bulgaria[32] to argue that they would not have access to housing in case of return and would be deprived of medical care. In this respect, the Committee notes the State party's statement that, by law, persons granted refugee and protection status in Bulgaria have the same rights as Bulgarian nationals,[33] as well as its argument that the authors have not requested or needed medical assistance during their stay in Bulgaria and have therefore not substantiated their allegation that no medical support is available. Regarding allegations of xenophobic violence, the Committee also takes note of the Refugee Appeals Board's determination that, during their asylum interviews, the authors had failed to report any specific conflict and that they would have the possibility to seek the protection of the relevant Bulgarian authorities should their personal integrity and safety be threatened.

8.6 The Committee observes that, notwithstanding the fact that it is difficult, in practice, for refugees and beneficiaries of subsidiary protection to gain access to the labour market or to housing, the authors have failed to substantiate a real and personal risk to themselves upon return to Bulgaria. The authors have not established that they were homeless before their departure from Bulgaria; they did not live in destitution; and their situation with four children, the youngest of whom is 14 years old, must be distinguished from that of the author in the decision of *Jasin et al. v. Denmark*, which concerned a single mother of three minor children, suffering from a health condition and holding an expired residence permit. The mere fact that the authors may possibly be confronted with difficulties upon their return does not, by itself, necessarily mean that they would be in a special situation of vulnerability — and in a situation significantly different to many other families — such as to conclude that their return to Bulgaria would constitute a violation of the State party's obligations under article 7 of the Covenant.[34]

8.7 Although the authors disagree with the decision of the State party's authorities to return them to Bulgaria as the country of their first asylum, they have failed to explain why this decision is manifestly unreasonable or arbitrary in nature. Nor have they pointed out any procedural irregularities in the procedures before the Danish Immigration Service or the Refugee Appeals Board. Accordingly, the Committee cannot conclude that the removal of the authors to Bulgaria by the State party would constitute a violation of article 7 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the authors' removal to Bulgaria would not violate their rights under article 7 of the Covenant. The Committee is, however, confident that the State party will duly inform the Bulgarian authorities of the authors' removal, in order for the authors and their children to be kept together and to be taken charge of in a manner adapted to their needs, especially taking into account the ages of the minor children.

[32] See para. 3.3 ff. above.

[33] Article 32 (2) of the Law on Asylum and Refugees of Bulgaria.

[34] See, for instance, communication No. 2569/2015, *B.M.I. and N.A.K. v. Denmark*, Views adopted on 26 October 2016, para. 8.6.