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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. 2858/2016*, **, ***

Communication submitted by:	Elezjana Elezaj (represented by counsel, Irfan Feyaz)
Alleged victim:	The author
State party:	Denmark
Date of communication:	28 October 2016 (initial submission)
Document references:	Decision taken pursuant to rule 94 of the Committee's rules of procedure, transmitted to the State party on 11 November 2016 (not issued in document form)
Date of adoption of Views:	16 March 2023
Subject matter:	Deportation from Denmark to Albania
Procedural issues:	Exhaustion of domestic remedies; substantiation of claims
Substantive issues:	Non-refoulement; right to life; torture and ill-treatment
Articles of the Covenant:	6, 7 and 14
Articles of the Optional Protocol:	2 and 5 (2) (b)

1.1 The author of the communication is Elezjana Elezaj, a national of Albania born on 8 June 1995. Her application for a residence permit based on humanitarian grounds was rejected by the State party and she risked being forcibly removed to Albania on 16 November 2016. She claims that the State party has violated her rights under articles 6, 7 and 14 of the Covenant. The Optional Protocol entered into force for Denmark on 23 March 1976. The author is represented by counsel.

1.2 On 11 November 2016, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures,

* Adopted by the Committee at its 137th session (27 February–24 March 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

*** A joint opinion by Committee members Carlos Goméz Martínez, Laurence R. Helfer and Marcia V.J. Kran (dissenting) is annexed to the present Views.

requested the State party to refrain from deporting the author to Albania while her case was pending before the Committee.

Factual background

2.1 In February 2014, the author was taken by her cousin against her and her mother's will to Serbia to marry a national of Serbia. She later discovered that her husband's family had paid 7,000 euros for her. During her stay in Serbia, she was physically abused by her husband and his father and grandfather and was subjected to forced labour.

2.2 In October 2014, the author and her mother persuaded the author's husband to let her visit her family in Albania. Once in Albania, the author reported to the Albanian authorities the assaults by her husband and other members of his family that she had suffered. The assaults were the subject of a court case in Tirana, which ended, for lack of evidence, on 8 October 2015. The author decided not to return to Serbia and filed for divorce. Her husband's family rejected her request and requested her to reimburse the 7,000 euros they had paid for her. The author also approached the Albanian authorities to seek divorce from her husband.

2.3 In May or June 2015,[1] the family of the author's husband visited her residence in Albania while she was away. She decided to leave the country, as she heard that her uncle would come to Albania and kill her for humiliating the family by marrying a Serb and later filing for divorce. Her fears were based on an incident that had occurred two years beforehand, when her uncle attacked her with a knife, almost cutting her throat, because there were rumours that she had been seen with an unknown man in the city and he suspected that she was a prostitute.

2.4 On 20 July 2015, the author arrived in Denmark in possession of a valid Albanian passport and applied for asylum on the same day.[2] On 5 August 2015, the Danish Immigration Service decided that the author was not covered by the provisions of the Aliens Act on trafficking in persons and that it fell outside the Refugee Appeals Board's competence to decide whether to grant her a residence permit for humanitarian reasons. The Immigration Service decided that her case fell, rather, within the competence of the Ministry of Immigration and Integration.

2.5 In its decision dated 19 January 2016, the Refugee Appeals Board stated that it had not found grounds to process the author's appeal for an oral board meeting. It stated that, like the Immigration Service, it accepted the author's explanation as to the facts of her case. The Board, however, did not consider that the situation was of such a nature or severity as to enable it to grant the author a residence permit under paragraph 7 of the Aliens Act.[3] The Board considered that the case was of a criminal nature and that the author should seek protection from the Albanian authorities against possible attacks by her uncle, her husband or her husband's family. On the basis of the information provided by the author, the Board found that the Albanian authorities had shown a willingness and the ability to protect her against her husband and his family. It noted that the author had reported the assaults that she had suffered and her request for a divorce to the Albanian authorities. The Board further noted that the author had not had any personal contact with either her husband or his family from October 2014 until her departure in July 2015. The information that her uncle would kill her was considered by the Board to be based only on rumours. After an overall assessment, the Board found that the author had not provided evidence that she would face persecution upon her return to Albania or that she would be in real danger of abuse within the categories of chapter 7, paragraph 1 or 2, of the Aliens Act. The Board considered that the information on the author's personal circumstances, including her health condition, was not sufficient grounds for granting a residence permit. The Board therefore upheld the decision of the Immigration Service.

[1] This date is extracted from the Refugee Appeals Board's decision dated 19 January 2016.

[2] This information is extracted from the Refugee Appeals Board's decision dated 26 September 2016.

[3] Paragraph 7 of the Aliens Act pertains to the granting of a residence permit for persons who fall within the provisions of the Convention relating to the status of refugees or who risk the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to their country of origin.

2.6 On 2 March 2016, the author requested that her case be reopened, as her counsel had dropped her case without notifying her and the counsel's right to practise had lapsed, on 12 November 2015.[4] On 28 April 2016, the Refugee Appeals Board acceded to the author's request. On 26 September 2016, the Board decided to uphold its previous decision. It considered that the fact that the court case in Tirana regarding the assaults suffered by the author had ended on 8 October 2015 for lack of evidence could not lead to a change in its assessment.

2.7 The author claims that she has exhausted all domestic remedies.

Complaint

3.1 The author claims that the State party would violate her rights under articles 6, 7 and 14 of the Covenant if she were to be deported to Albania. She claims that she is at risk of torture, cruel and inhuman treatment and death upon her return to Albania. The author also fears that she might not have access to a fair trial or obtain protection from the courts and tribunals.

3.2 The author claims a violation of article 6 of the Covenant, as she risks being killed by her uncle, because, according to him, she had dishonoured her family by escaping from her husband. She also claims she would be subjected to torture or to cruel, inhuman or degrading treatment or punishment, in violation of article 7 of the Covenant. She claims that her fear is real, as she was attacked by her uncle previously.[5] The author claims that the Danish Refugee Council confirmed she was at risk of being attacked and killed by her uncle. The author claims to have been subjected to trafficking in persons and claimed before the Refugee Appeals Board that she was at risk of being exposed to the same treatment upon her return to Albania.

3.3 The author claims a violation of article 14 of the Covenant, as due to the nature of the "crime" of escaping from a marriage and her uncle's contacts, she will not be provided with a fair trial or protection from the courts and tribunals in Albania. In the background information submitted by the author to the Refugee Appeals Board, on 9 June 2016, the author claimed that corruption was prevalent at all levels within the judiciary in Albania and that, although mechanisms for control and oversight were in place, they did not function efficiently and were insufficient.

State party's observations on admissibility and the merits

4.1 On 11 May 2017, the State party submitted its observations on admissibility and the merits of the communication.

4.2 The State party first refers to the facts of the author's case before the domestic authorities. It submits that the author entered Denmark on 20 July 2015 and applied for asylum on the same day. The State party indicates that, on 29 July 2015, the Danish Immigration Service consulted the Danish Refugee Council in order to examine the author's application for asylum in accordance with the procedure for manifestly unfounded applications under section 53 (b) of the Aliens Act.[6] On 4 August 2015, the Danish Refugee Council disagreed with the proposal to examine the author's asylum application under the procedure for manifestly unfounded applications. On 21 August 2015, the Danish Immigration Service rejected the author's application for asylum. The State party submits that the Refugee Appeals Board subsequently upheld this decision, on 19 January 2016 and 26 September 2016.

[4] Section 137 of the Administration of Justice Act.

[5] The author provided a photograph showing a scar on her face close to the carotid artery.

[6] The State party explains that, following a consultation with the Danish Refugee Council, the Danish Immigration Service may determine that an application for residence under section 7 of the Aliens Act is manifestly unfounded and therefore cannot be appealed to the Refugee Appeals Board. If the Danish Refugee Council does not concur with the assessment of the Danish Immigration Service, the case will then be considered by the Refugee Appeals Board, on the basis of written documents. The Refugee Appeals Board will also assign counsel to the asylum-seeker.

4.3 The State party submits that it is incumbent upon the asylum-seeker to substantiate that the conditions for granting asylum are met. It adds that the assessment of the evidence by the Refugee Appeals Board is based on the asylum-seeker's statements and the Board's background material on the asylum-seeker's country of origin. If the asylum-seeker's statements appear coherent and consistent, the Board will consider them as facts. The State party submits that, in cases in which there are inconsistencies, changes, expansions or omissions in the asylum-seeker's statements, the Board will seek to clarify the reasons for this and will take them into account. The Board will also take into account the asylum-seeker's particular situation, in line with, for example, the Office of the United Nations High Commissioner for Refugees *Handbook on Procedures and Criteria for Determining Refugee under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*. In addition to examining and bringing out information on the specific facts of the case, the State party clarifies that the Board is also responsible for providing background information on the asylum-seeker's country of origin and whether there is a consistent pattern of gross, flagrant, or mass violations of human rights. It submits that the Board has a comprehensive collection of background information that is regularly updated and supplemented in order for it to form an accurate, objective understanding of the conditions in the country. Regarding the legal basis for the decisions of the Board, the State party submits that the Board, when exercising its powers under the Aliens Act, is obliged to take the State party's international obligations into account, including under the Covenant.

4.4 With regard to the admissibility of the communication, the State party argues that the author's allegations under article 14 of the Covenant are wholly unsubstantiated and manifestly ill-founded and should therefore be considered inadmissible. The State party notes that the author attempts to apply the State party's obligations under article 14 in an extraterritorial manner. It also notes that the author's allegations do not rest on the treatment suffered or that she will suffer within the State party or in an area in which the State party's authorities are in effective control or due to their conduct. It submits that it cannot be held responsible for violations of article 14 of the Covenant expected to be committed by another State party outside its territory and jurisdiction. The State party refers to the Committee's jurisprudence[7] and further submits that the Committee has never considered a complaint on its merits regarding the removal of a person who feared a violation of provisions other than articles 6 and 7 of the Covenant in the receiving State. The State party is of the view that extraditing, deporting, expelling or otherwise removing a person fearing a violation of article 14 by another State party will not cause irreparable harm such as that contemplated by articles 6 and 7. The State party therefore submits that the author's claims under article 14 of the Covenant should be declared inadmissible as manifestly ill-founded. Furthermore, it submits that the claim should also be considered inadmissible *ratione materiae*.

4.5 With regard to the merits of the author's claims under articles 6 and 7 of the Covenant, the State party refers to the Committee's jurisprudence that important weight should be given to the assessment conducted by the State party and that it is generally for the organs of States parties to examine the facts and evidence of the case and to determine whether a risk exists, unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.[8] The State party submits that the author has failed to establish that the assessment made by the Refugee Appeals Board was arbitrary or amounted to a manifest error or denial of justice. It argues that the author did not identify any irregularities in the decision-making process or any risk factors that the Board might have failed to properly take into account. The State party notes that decisions made by the Board are final according to the Aliens Act and that courts are therefore barred from reviewing the merits of such decisions.

4.6 The State party agrees with the Refugee Appeals Board's assessment of the author's risk in the case of her return to Albania in its decision dated 26 September 2016. It notes that, according to the case law of the Board, conflicts arising in connection with marriage, often characterized as private law conflicts, do not normally justify residence under section 7 of

[7] *A.S.M. and R.A.H. v. Denmark* (CCPR/C/117/D/2378/2014).

[8] The State party refers to, for example, *Z.H. et al. v. Denmark* (CCPR/C/119/D/2602/2015), para. 7.4; *M.Z.B.M. v. Denmark* (CCPR/C/119/D/2593/2015), para. 7.3; and *K v. Denmark* (CCPR/C/114/D/2393/2014), paras. 7.4 and 7.5.

the Aliens Act, as protection can be sought before the authorities of the country of origin. However, the Board has also recognized that certain kinds of abuse by private individuals of a certain scope and severity can amount to persecution if the authorities are not able or willing to offer protection. The State party notes that the Danish Immigration Service and the Refugee Appeals Board accepted as fact the account of the circumstances presented by the author, but that the Board did not consider them to be of such a nature or severity as to justify residence, in accordance with section 7 of the Aliens Act. It observes that the Board found that the incidents relied upon were criminal offences and that the author should seek protection from the Albanian authorities, which had shown the willingness and ability to protect her against her former spouse and his family.

4.7 The State party notes that, in its assessment of the severity of the conflict experienced by the author, the Refugee Appeals Board emphasized that the author had not had any personal contact with her former spouse and his family between her return to Albania in October 2014 and her departure in July 2015. The information that her paternal uncle intended to contact her was based upon rumours from neighbours. Regarding the background information, the State party refers to a report published by the Norwegian Country of Origin Information Centre that stated that family violence, persecution (stalking) and threatening behaviour were explicitly criminalized by the Albanian Criminal Code.[9] The State party notes that the Albanian Act on Family Violence was adopted in December 2006, that a referral system for cases of family violence has also been adopted and that a national centre for battered women and girls has been established.[10] In response to the author's contention that corruption prevails among Albanian authorities, the State party refers to official reports indicating that a national anti-corruption strategy was adopted in 2008 and that Albania has made concerted efforts to improve law enforcement and security infrastructure and reduce corruption. The State party also submits that the Refugee Appeals Board made its decision on the basis of a procedure in which the author had the opportunity to present her views in writing, with the assistance of legal counsel, and that the Board had conducted a comprehensive and thorough review of the evidence.

4.8 On the author's claim that she was a victim of trafficking in persons, the State party submits that the Danish Immigration Service opened a case to assess, on its own initiative, whether she was a victim of trafficking in persons on the basis of the information provided in her asylum case. The State party indicates that, on 5 August 2015, the Danish Immigration Service decided that the author did not fall within the provision on trafficking in persons of the Aliens Act and was not eligible for the special scheme for victims of trafficking in persons. The State party submits that the Danish Centre against Human Trafficking, on behalf of the author, requested her case to be reopened. That request was rejected by the Danish Immigration Service on 5 October 2015. Despite repeated requests by the Centre against Human Trafficking for the author's case to be reopened, the Danish Immigration Service refused to reopen it. An identification questionnaire completed by an employee of the Centre against Human Trafficking, who had determined that the author was a victim of trafficking in persons, was attached to the requests. The State party agrees with the findings of the Danish Immigration Service, according to which the author had independently taken the initiative to leave Albania and travel to Denmark of her own free will. It could not be assumed that she had been misguided or tricked. In its assessment, the Danish Immigration Service emphasized that the author's marriage and the circumstances under which it was contracted, including the payment to her spouse's family, were not comparable to trafficking in persons. The circumstances of the author's stay with her spouse in Serbia, including the abuse suffered, could not lead to the conclusion that she should be deemed a victim of trafficking in persons.[11] The State party further agrees with the Danish Immigration Service's findings that the author was not subjected to violence in connection with her journey to Denmark or after her entry into the country. It further notes that nothing indicated that she had incurred any debt to anyone in connection with her entry into Denmark. The State party also submits that the

[9] Norwegian Country of Origin Information Centre, "Albania: violence against women", *Response* (21 December 2015). Available at https://www.ecoi.net/en/file/local/1203968/1788_1451486193_alb.pdf (in Norwegian).

[10] Ibid.

[11] Decision of the Danish Immigration Service dated 26 October 2015, Case No. 15/210946.

author did not provide any reasons as to why she should nonetheless be eligible for enrolment in the special scheme for the entry of victims of trafficking into Denmark. The State party submits that the Danish Immigration Service takes into account the definition of trafficking in persons set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and in the Council of Europe Convention on Action against Trafficking in Human Beings and that it considers several indicators of trafficking in persons in its specific and individual assessment of the information provided in each individual case.

4.9 The State party concludes that the author's communication does not provide any new, specific details about her situation and that it merely reflects her disagreement with the Refugee Appeals Board's assessment of her case. It reiterates that the author has failed to identify any irregularity in the Board's decision-making process and that she is using the Committee as an appellate body in order for the factual circumstances of her case to be reassessed. The State party submits that the author has failed to establish that there are substantial grounds for believing that she is in danger of being subjected to inhuman or degrading treatment or punishment if returned to Albania. It concludes that her return to Albania would not constitute a violation of articles 6 and 7 of the Covenant.

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

5.1 On 23 November 2020, the author's counsel submitted comments on the State party's observations on admissibility and the merits of the communication. The author reiterates that both the Danish Immigration Service and the Refugee Appeals Board accepted as fact her account of the circumstances. She also submits that she has resided in Denmark since 2016.

5.2 The author disputes the assessment made by the Danish Immigration Service according to which she was not subjected to trafficking in persons. She argues that it is irrelevant whether she travelled voluntarily to Denmark, as she was trafficked prior to coming to Denmark. The author further argues that, on the basis of the definition of trafficking in persons set out in the Trafficking in Persons Protocol, she was trafficked when she was taken to Serbia to marry in exchange of a fee, where she suffered sexual and physical abuse. Furthermore, she submits that she was 16 years old and thus a child when this occurred. The author argues that it is also irrelevant whether she was kidnapped or not when taken to Serbia in order to determine whether she was trafficked against her free will.

5.3 The author reiterates that she risks being killed by her own uncle if she is returned to Albania, as according to him, she has tarnished her family's honour and reputation. She submits that she also risks being killed by her ex-husband or his family or being captured by them in Serbia and subjected to the same treatment that she suffered earlier. The author reiterates that the threat of being killed by her uncle or subjected to inhumane conditions is real, as he previously cut her throat with a knife, which almost caused a fatal cut to her carotid artery. Given that her uncle sold her, the author submits that it should be assumed that he is willing to go to great lengths to get his money back.

5.4 The author reiterates that she will continue to be at risk in Albania since the Albanian authorities are unable to provide her with adequate protection due to the lack of acknowledgement of the problem of trafficking and corruption within its legal system. The author refers to a report by the Home Office of the Government of the United Kingdom of Great Britain and Northern Ireland and an article from *Exit News* [12]describing the deficiencies of Albania in dealing with victims of trafficking in persons, who are vulnerable to retrafficking. The author further cites a report by the Department of State of the United States of America[13] that emphasizes that the Government of Albania does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. The Department of State report also points to the incapacity of prosecutors to successfully prosecute trafficking cases and protect victims during investigation and prosecution processes. The author submits that the Home Office and the Department of State recognize

[12] See https://exit.al/en/comment-the-untold-stories-of-albanias-human-trafficking-survivors.

[13] See https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf.

problems with corruption and the lack of resources provided to shelters for victims of trafficking in persons.

5.5 The author submits that her mother and brother have received several threats from her former husband and her uncle, who have arrived at their home with weapons in order to locate her. Although her mother has reported these threats to the police 10 times over the past five years, the author submits that the police have not taken them seriously. She adds that her uncle was arrested once and then paid the police for his release, which indicates that she will be in danger if she returns to Albania.

5.6 The author concludes that she was a victim of trafficking in persons and will not receive adequate protection in Albania. She submits that she is at great risk of being subjected to the same treatment that she suffered previously. The author argues that the State party would violate articles 6, 7 and 8 if she were to be returned to Albania.

State party's additional observations

6.1 On 8 June 2022, the State party submitted additional observations. In response to the author's submission that she was 16 years old when she married, it submits that, according to her passport and the information she provided to the Danish Immigration Service, it appears that she was born on 8 June 1995 and introduced to her husband in February 2014. The State party thus submits that she was 18 years old at the time she married.

6.2 The State party notes that the author has submitted that the Danish Immigration Service emphasized that she had voluntarily travelled from Albania to Denmark in assessing whether or not she was a victim of trafficking in persons. In response, the State party submits that, according to its practice, it is not a prerequisite for assessing a person as a victim of trafficking in persons for the person in question to have been trafficked to Denmark. It submits that the Danish Immigration Service took into account the circumstances surrounding the author's marriage, including the payment, and also reviewed and evaluated all the relevant facts, including whether she was underage or in other ways in a vulnerable position. The State party refers to its observations dated 11 May 2017 with regard to the overall assessment of whether the author was subjected to trafficking in persons and maintains that she was not a victim of trafficking in persons.

6.3 The State party observes that no new relevant information was submitted by the author in support of her asylum claim. It reiterates that the author's communication is a mere disagreement with the outcome of the assessment of the facts of her case, including the background information that was considered by the Refugee Appeals Board.

6.4 The State party maintains that the author has failed to establish a prima facie case for the purposes of admissibility of her claims under article 14 of the Covenant and that this part of the communication should therefore be declared inadmissible as manifestly ill-founded and inadmissible *ratione materiae.* The State party adds that, should the Committee find the communication admissible, the author has not established that there are substantial grounds for believing that her return to Albania would constitute a violation of articles 6 and 7 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

7.3 The Committee notes the author's claim that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

7.4 The Committee notes that the author's claims under article 8 of the Covenant were raised after the submission of the communication in the author's comments to the State party's observations. It also notes that the author did not develop those allegations and therefore failed to sufficiently substantiate them for the purposes of admissibility. Accordingly, it declares that part of the communication inadmissible under article 2 of the Optional Protocol.

7.5 The Committee notes the author's claim under article 14 of the Covenant that, if returned to Albania, she would not be afforded protection by the courts and would not be provided with a fair trial, as corruption is prevalent at all levels within the judiciary, and the mechanisms for control and oversight in place are inefficient. In that connection, the Committee notes the State party's argument that this claim should be declared inadmissible *ratione materiae* and for lack of substantiation, as the author is applying the State party's obligations in an extraterritorial manner. It notes the State party's argument that it cannot be held responsible for violations of article 14 of the Covenant expected to be committed by another State party outside its territory and jurisdiction. The Committee further notes the State party's argument that the Committee has never considered a complaint on its merits regarding the removal of a person who feared a violation of provisions other than articles 6 and 7 of the Covenant in the receiving State.

7.6 The Committee recalls that article 2 of the Covenant imposes an obligation upon 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 by articles 6 and 7 of the Covenant, in the country to which removal is to be effected.[14] Accordingly, to the extent that the author's allegation of violation of article 14 relies on violations that she will allegedly suffer after her return to Albania, the Committee considers that the author's claim is incompatible *ratione loci* with the provisions of the Covenant and declares them inadmissible under article 3 of the Optional Protocol.

7.7 In relation to the author's claims under articles 6 and 7 of the Covenant, the Committee considers that they are sufficiently substantiated for the purposes of admissibility and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's claim that her removal to Albania would expose her to treatment contrary to articles 6 and 7 of the Covenant. It notes that the author's allegations are based on her fear of being killed by her uncle, who had previously attacked her, as he considers she has dishonoured her family by escaping from her husband. The Committee notes the author's claim that she was subjected to trafficking in persons and that she risks being exposed to the same treatment if she were to be returned to Albania. It notes her claims that the Albanian authorities are unable to provide her with adequate protection due to the lack of acknowledgement of the problem of trafficking and corruption within the legal system. The Committee also notes that the State party's authorities accepted the factual circumstances presented by the author, but that they did not consider them of such a nature or severity as to justify granting the author asylum. It notes that the State party considered the incidents relied upon as criminal offences and that the Albanian authorities had shown the willingness and ability to protect the author against her former spouse and uncle. It takes note of the State party's argument that the author's communication merely reflects her disagreement with the Refugee Appeals Board's assessment of her case, without pointing to irregularities in the decision-making process, and thus using the Committee as an appellate body for the reassessment of the factual circumstances of her case.

8.3 The Committee recalls paragraph 12 of its general comment No. 31 (2004), 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

[14] Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The Committee has indicated in its jurisprudence 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.[15] The Committee also recalls its jurisprudence determining 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,[16] unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.[17]

8.4 In the present case, the Committee observes that the author's case was reviewed by the Danish Immigration Service and by the Refugee Appeals Board on two occasions, during a procedure in which she was provided with the assistance of legal counsel and the opportunity to submit her views in writing. It notes that, during that procedure, the domestic authorities assessed the evidence submitted by the author and the country information for Albania. Furthermore, the Committee notes that the author has not raised in her claims any procedural irregularities regarding the procedures before the Danish Immigration Service or the Refugee Appeals Board.

8.5 The question before the Committee is whether the domestic authorities have properly assessed whether the author would face a real risk of irreparable harm if returned to Albania, as contemplated by articles 6 and 7. In this regard, the Committee notes that both the Danish Immigration Service and the Refugee Appeals Board accepted the facts presented by the author in support of her asylum application but disputed that she faced a real risk of persecution and that the Albanian authorities would be unable or unwilling to offer her protection. It observes that the author reported the abuses suffered in Serbia to the police upon her return to Albania and that she was subsequently heard on these incidents in court in Tirana. The Committee also observes that the author's uncle had already been tried and incarcerated for a previous knife attack against her, which almost severed her carotid artery, but that he was allegedly released following the payment of a bribe. While noting the State party's arguments that reports indicate the legislative and policy steps taken by Albania to protect women victims of family violence and gender-based violence and progress in reducing corruption in law enforcement, the Committee also notes that the State party did not give adequate weight to information regarding the existing gap between law and practice. In that regard, the Committee has expressed concern about the persistence of the phenomenon of blood feud-related crimes, the inadequate implementation of the law, ineffective police investigation into such cases and a limited number of convictions.[18] The Committee also notes the information about the lack of a sufficient number of shelters for victims of domestic violence and trafficking in persons.[19] On the author's allegation concerning the prevalence of corruption in the judiciary in Albania, the Committee considers that the State party did not accord enough weight to the information provided by the author in this respect and the ways in which this had affected her attempts to denounce her uncle and had relied mainly on general country information.

8.6 With respect to the author's claim that she risked being retrafficked upon her return to Albania, the Committee notes that the Danish Immigration Service had conducted an overall assessment of the information provided by the author to determine whether she was a victim of trafficking in persons, which took into account the incidents experienced by the author in Albania and while travelling to Denmark. It notes that the Danish Centre against Trafficking in persons had assessed that the author was a victim of trafficking in persons and had repeatedly requested the Danish Immigration Service to reopen the author's case. Despite the repeated requests of the Danish Centre against Human Trafficking, the Committee notes that the Danish Immigration Service rejected them and did not change its assessment. Although the Committee notes that State party found that the author had not been subjected

[15] *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; and *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), para. 6.6.

[16] *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

[17] See, inter alia, *Z.H. v. Australia*; and *Simms v. Jamaica* (CCPR/C/53/D/541/1993), para. 6.2.

[18] CCPR/C/ALB/CO/2, para. 10.

[19] Ibid., para. 11; and United States of America, Department of State, *Trafficking in Persons Report, June 2017* (Washington, D.C., 2017), p. 59.

to trafficking in persons, the Committee considers that the State party did not demonstrate that it had undertaken a thorough assessment regarding the author's risk of retrafficking upon her return to Albania in the light of her personal circumstances and the available concerning country information.

8.7 In the light of the above, the Committee considers that the State party, when assessing the risk faced by the author, failed to adequately take into account the totality of the available information and its cumulative effect, according to which the author would be at real risk of irreparable harm if removed to Albania. In such circumstances, it considers that the assessment of the author's claims by the State party was arbitrary and that the author's removal to Albania would violate articles 6 and 7 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to Albania would be a violation by the State party of her rights under articles 6 and 7 of the Covenant.

10. In accordance with article 2 (1) of the Covenant, which establishes that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to review the author's claims, taking into account the State party's obligations under the Covenant and the present Views. The State party is also requested to refrain from expelling the author to Albania while her request is under reconsideration.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish the present Views.

Annex

Joint opinion of Committee members Carlos Goméz Martínez, Laurence R. Helfer and Marcia V.J. Kran (dissenting)

1. We have come to a different conclusion than the majority of the Committee, which decided that the removal of the author from Denmark would constitute a violation of articles 6 and 7 of the Covenant.

2. In submissions to the Committee, the State party explained that it was incumbent upon the asylum-seeker to substantiate that the conditions for granting asylum had been met. The assessment made by the Refugee Appeals Board is based on the asylum-seeker's written and in-person oral statements which, if they appear to be coherent and consistent, will be accepted as facts. In addition, the Board considers background information on the asylum-seeker's country of origin to determine whether there is a consistent pattern of gross, flagrant or systemic violations of human rights, including violations of the State party's international obligations, including under the Covenant (see para. 4.3 above).[1]

3. The State party, throughout the author's proceedings, accepted the author's explanations of the circumstances of her case (see para. 2.5 above). The author was given the opportunity to present her views in writing and was provided the assistance of legal counsel (see para. 4.7 above). With regard to the human rights situation in the country of origin, the State party relied on the criminalization of family violence, persecution and threatening behaviour under the Albanian Criminal Code, the adoption of the Albanian Act on Family Violence and official reports indicating that a national anti-corruption strategy had been adopted in 2008 (see para. 4.7 above).

4. The State party assessed all of this information and concluded that the author had failed to demonstrate that she faced a real and personal risk of irreparable harm if she were to be deported to Albania. In particular, the Refugee Appeals Board found that the incidents cited by the author were criminal offences for which she could seek protection from the Albanian authorities, which had, in fact, previously shown the willingness and ability to protect her from violence by her husband and his family (see paragraph 4.6 above). In response to the State party's submission to the Committee, the author did not provide any new information or specific details about her situation to substantiate her claims that she was in danger of being subjected to a violation of her right to life or to inhuman or degrading treatment or punishment if she were returned to Albania (see para. 4.9 above).

5. The Committee's settled jurisprudence provides that a State party cannot extradite, deport, expel or otherwise remove a person from its territory when there are substantial grounds for believing that there is a real and personal risk of irreparable harm resulting from such removal, such as that contemplated by articles 6 and 7 of the Covenant.[2] The Committee has, however, consistently held that it is generally for the State party to analyse the facts and evidence of each case to determine whether such a risk exists.[3] There is also a high threshold to prove that a risk of irreparable harm to the asylum-seeker exists,[4] for which the author bears the burden of proof.[5] Further, due weight should be given to the State party's assessment of the facts and circumstances, unless that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.[6] This deferential approach reflects the

[1] *A.G. et al. v. Angola* (CCPR/C/129/D/3106/2018-3122/2018), para. 7.4.

[2] General comment No. 31 (2004) on the nature of the general legal obligation imposed on State parties to the Covenant, para. 12.

[3] *A.G. et al v. Angola*, paras. 7.5 and 7.6; and *Z.H. v Denmark* (CCPR/C/119/D/2602/2015), paras. 7.3 and 7.4. See also general comment No. 31 (2004), para. 12.

[4] *A.G. et al v. Angola*, para 7.4; and *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2.

[5] *Hamida v. Canada* (CCPR/C/98/D/1544/2007), para. 8.7.

[6] *Z.H. v. Denmark*, para. 7.4; *A.S.M and R.A.H v. Denmark* (CCPR/C/117/D/2378/2014), para. 8.3; *M.M. v. Denmark* (CCPR/C/125/D/2345/2014), para. 8.4; and *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.4.

Committee's long-held position that it is not a fourth-instance review body that is competent to re-evaluate findings of fact made by national authorities.[7]

6. In the present case, the decisions were reached by competent national authorities, namely the Danish Immigration Service and the Refugee Appeals Board, which carefully considered the facts and evidence before them and made thorough and individualized assessments of the author's case and of the human rights situation in Albania as it pertained to the facts presented by the author.

7. For the reasons set out above, in our view, the State party's assessment adequately considered all the background information and evidence presented by the author, including the claim that she faced a real and personal risk of irreparable harm if deported to Albania. In her communication to the Committee, the author did not provide information to demonstrate that the State party's assessment was clearly arbitrary, manifestly erroneous or amounted to a denial of justice. We therefore would have concluded that there was no violation of the author's rights under articles 6 and 7 the Covenant.

[7] *A.G. v. Netherlands* (CCPR/C/130/D/3052/2017), para. 10.4; *F and G v. Denmark,* (CCPR/C/119/D/2530/2015), annex, para. 2; and *Arenz et al. v. Germany* (CCPR/C/80/D/1138/2002), para. 8.6.