



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2671/2015***

<i>Communication submitted by:</i>	F.A. (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	5 November 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 6 November 2015 (not issued in document form)
<i>Date of adoption of Decision:</i>	6 November 2020
<i>Subject matters:</i>	Deportation to Afghanistan
<i>Procedural issues:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Risk of torture, cruel, inhuman or degrading treatment or punishment; non-refoulement
<i>Articles of the Covenant:</i>	6, 7 and 13
<i>Article of the Optional Protocol:</i>	2

* Adopted by the Committee at its 130 th session (12 October–6 November 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Shuichi Furuya, Christof Heyns, Duncan Laki Muhumuza, David Moore, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Tigroudja and Gentian Zyberi.



1.1 The author of the communication is F.A., a national of Afghanistan born on 21 December 1986. At the time of submission, he was subject to deportation to Afghanistan following rejection of his application for refugee status by the Danish authorities. He claimed that by forcibly removing him to Afghanistan, Denmark would violate his rights under articles 6 and 7 of the Covenant. He further claimed that his rights under article 13 of the Covenant had been violated in connection with the hearing of his asylum case by the Danish authorities. The author requested the Committee to issue interim measures for him not to be removed to Afghanistan pending the examination of his communication. The Optional Protocol entered into force for the State party on 23 March 1976. The author is represented by counsel.

1.2 On 6 November 2015, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to issue a request for interim measures. On 10 November 2015, the State party suspended execution of the deportation order against the author.

The facts as submitted by the author

2.1 The author, who is of Tajik ethnicity and a Muslim by religion, has been working since 2012 for the Ministry of Labour, Social Affairs, Martyrs and Disabled in Afghanistan. He was the head of the office located in Pole Alam, in Logar Province. He was responsible for recording and estimating the damages in the areas attacked by the Taliban and for distributing humanitarian aid. He would visit affected areas about twice a week usually accompanied by two co-workers, a driver and 10-12 police officers. In April 2014, the author received a phone call from the Taliban telling him to stop working for the government and that unless he surrendered to the Taliban he would be killed. The following morning, he told his supervisor about the call, who reported the incident to the governor. The governor contacted the police and the security forces that showed up at the author's workplace three days later. They questioned the author and offered him protection only at his workplace. Two days later, the author received another threatening call and later on, several similar life-threatening calls. He reported all these calls to his supervisor who transmitted these messages to the police. They confirmed that they could only protect him at his workplace. The author also received two threatening letters, one of which was delivered by hand by an elderly man to the author's father at the mosque on 15 May 2014. About 20 days later, the author received another letter. The content of these letters was similar to that of the phone calls. A copy of these letters was given to the police, but they continued to refuse to provide protection to the author outside of his workplace. As he feared for his life, the author left his work 13 days after he received the second written threat and decided to flee Afghanistan.¹ According to the information gathered by the author, the threatening letters appear to have been written by the Hezb-e-Islami, who collaborated with the Taliban in Logar Province. According to the information provided by the author, about 80 percent of this area was controlled by the Taliban at the time of his submission to the Committee.

2.2 The author entered Denmark on 25 August 2014 without valid travel documents and applied for asylum on the same day. His sister has residency in Denmark.

2.3 On 1 July 2015, the Danish Immigration Service refused the author's asylum request. On 21 September 2015, the Refugee Appeals Board upheld that decision. Although the Refugee Appeals Board considered it as a fact that the author had been employed as a public official with the Ministry of Labour, Social Affairs, Martyrs and Disabled in Logar Province, due to minor inconsistencies in his statements, the Board doubted that he had indeed found himself in conflict with the Taliban as a result of his work for the Afghani government.

2.4 By a letter of 8 October 2015, the author submitted a request to the Refugee Appeals Board to reopen his case arguing that the interpretation throughout the asylum proceedings had not been satisfactory. He noted that even though he had raised this problem several times before the authorities, his concerns had not been recorded in the minutes of the hearings. On

¹ It appears from the supporting documents that the author left Afghanistan for Pakistan on 19 June 2014. He travelled on with a fake passport to Italy by plane. He arrived in Italy on an unspecified date.

8 February 2016, the Refugee Appeals Board declined the author's request to reopen his asylum case.

2.5 The author claims to have exhausted all domestic remedies.

The complaint

3.1 The author claims that if returned to Afghanistan, there are substantial grounds to believe he would be in danger of being deprived of his life or subjected to torture or cruel, inhuman or degrading treatment or punishment as a result of him having worked for the Afghan government. He alleges that the risk assessment carried out by the domestic authorities had been erroneous primarily because in the consideration of his appeal, the Refugee Appeals Board failed to apply the Office of the United Nations High Commissioner for Refugees (UNHCR) guidelines on credibility assessment.² In support of his claims, he also refers to the general situation of forced returnees in Afghanistan.³

3.2 Furthermore, the author complains about the violation of his rights under article 13 of the Covenant.⁴

State party's observations on admissibility and the merits

4.1 By a note verbale dated 6 May 2016, the State party challenges the admissibility and the merits of the communication and notes that it is for the author to establish a prima facie case for the purposes of admissibility. The State party argues that the author's claims under articles 6, 7 and 13 are manifestly ill-founded and should therefore be declared inadmissible for lack of sufficient substantiation. Should the Committee declare it admissible, the State party is of the view that articles 6 and 7 of the Covenant would not be violated if the author were returned to Afghanistan. It further submits that article 13 of the Covenant had not have been violated in connection with the hearing of the author's asylum case by the Danish authorities.

4.2 The State party describes the structure, composition and functioning of the Refugee Appeals Board,⁵ and the legislation that applies to asylum proceedings.⁶

4.3 Regarding the alleged violation of articles 6 and 7 of the Covenant, the State party submits that the Refugee Appeals Board did not question the author's statements that he had worked for the Ministry of Labour, Social Affairs, Martyrs and Disabled and that he belonged to a group of persons, who may, due to their work, generally be at risk of abuse by the Taliban or other groups fighting against the Afghan authorities. At the same time, the Board considered that this circumstance cannot independently justify the granting of a residence permit without substantiating that he would be at a specific and individual risk of persecution upon his deportation to Afghanistan. In this context, the State party notes that the domestic authorities could not accept as a fact that the author got into conflict with the Taliban because his narrative was not found to be credible. In its assessment, the Board deemed that the author's statements about whether he had been in touch with the police and whether they had been willing to protect him seemed incoherent and inconsistent. Furthermore, he provided conflicting statements as to whether he had continued to work outside of his office after having received the first threatening call. The Board also held it peculiar that, having received the second written threat, the author had stayed at home for 14 more days before leaving Afghanistan. In addition, he gave vague and evasive answers to essential questions, including as to whether it had been the same person whom he talked to over the phone in spite of these calls having lasted for about 10-15 minutes without any connection disruption or problems.

² Office of the United Nations High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan*, 6 August 2013 (HCR/EG/AFG/13/01).

³ The author refers to the notes verbales of the Embassy of Afghanistan in Norway dated 26 February 2015 and 2 March 2015 calling for a halt to all forcible deportations to Afghanistan.

⁴ The author does not put forward any further arguments. The alleged problems of interpretation have only been raised in connection with his new submission to the domestic authorities, but it has not been explained whether and how he considers this to have violated his rights under the Covenant.

⁵ See *Obah Hussein Ahmed v. Denmark* (CCPR/C/117/D/2379/2014), paras. 4.1–4.3.

⁶ See sections 7 (1)–(3) and 31 (1)–(2) of the Aliens Act.

The State party notes in this respect that the author is a young man holding a university degree and that the alleged threats were made over a relatively short period of time (from April to June 2015), which makes it unlikely that the author had difficulties with appropriately remembering the events. Nevertheless, the author failed to provide any reasonable explanation for these inconsistencies apart from arguing that there had been some problems with interpretation, which, however, was not accepted by the authorities as he had raised these concerns only at a late stage of the proceedings.

4.4 In addition, the State party submits that the domestic authorities could not accept any of the written threats submitted by the author as evidence because they were found to have been fabricated for the occasion. In this respect, the State party notes that the Refugee Appeals Board takes into account a number of factors in determining whether it is necessary to verify the authenticity of documents. These factors include e.g. the nature and content of the documents, whether the verification of the documents can lead to a different assessment of evidence, the circumstances of the issuance of the documents, general background information in respect of the particular country and the overall credibility of the asylum seeker. Having considered all these factors, the Board eventually concluded that the circumstances of the present case do not necessitate the further verification of the submitted documents.

4.5 The State party further notes that the author has not produced any new information in his complaint to the Committee and that all relevant background information was made available to and considered by the Refugee Appeals Board in its decision of 21 September 2015. After a thorough assessment of the relevant background information and the author's individual circumstances, the Board concluded that the author was not at a risk of persecution contrary to articles 6 and 7 of the Covenant. In any event, the State party submits that the author's reference to the general situation of forced returnees in Afghanistan could not lead to a different assessment of his case.

4.6 As regards the alleged violation of article 13 of the Covenant, the State party submits that that article partly guarantees the same procedural rights afforded by article 14 (1) of the Covenant but that it does not, however, encompass the right to appeal or the right to a court hearing.⁷ Considering that the author did not elaborate any further on his claim under article 13, the State party is of the view that this claim is not sufficiently substantiated. Insofar as the author refers to problems of interpretation, the State party notes that by its decision of 8 February 2016, the Refugee Appeals Board duly considered this issue. The Board established that the interviews conducted by the Danish Immigration Service on 12 February 2015 and 29 June 2015 were conducted in Dari in the presence of a certified interpreter. The author did not comment on the minutes of these interviews except for requesting a small correction of his mother's name. He then stated that he had understood everything and there had not been any problem with interpretation. The Board therefore observed that the author could not provide a reasonable explanation as to why he had not raised his concerns about interpretation any earlier in the proceedings even though he had the opportunity to do so. As concerns the hearing before the Refugee Appeals Board, the State party submits that it does not appear to have been any problems with interpretation. In such circumstances, the State party is of the view that there has been no violation of article 13 of the Covenant on account of alleged errors of interpretation.

4.7 Finally, the State party submits that the author disagrees with the assessment of his specific circumstances and the background information considered by the Refugee Appeals Board. However, in his communication to the Committee, the author failed to identify any irregularity in the decision-making process or any risk factor that the Board has failed to properly take into account. The State party also submits that the Committee must give considerable weight to the findings of fact made by the Board, which is better placed to assess the factual circumstances of a particular case. Hence, in the State party's view, there is no basis for doubting, let alone setting aside, the assessment made by the Board according to which the author has failed to establish that there are substantial grounds for believing that

⁷ The State party refers to *Mr. X and Ms. X v. Denmark* (CCPR/C/112/D/2186/2012) and *Maroufidou v. Sweden* (CCPR/C/12/D/58/1979).

he would be in danger of being deprived of his life or subjected to torture or cruel, inhuman or degrading treatment or punishment if returned to Afghanistan.

4.8 The State party informs the Committee that, following the Committee's request for interim measures, the Refugee Appeals Board suspended the time limit for the author's departure from Denmark until further notice. Based on all the above, the State party requests that the Committee review its request for interim measures.

Author's comments on the State party's observations

5.1 On 10 August 2016, the author submitted his comments on the State party's observations.

5.2 With regard to his claims under articles 6 and 7 of the Covenant, the author reiterates his previous arguments and underlines that the domestic authorities failed to explain why they consider that he, as a former employee of the Afghan government, would not face risks of persecution if he were deported to Afghanistan, especially in the light of the fact that he is from an area that is, to a large extent, still controlled by the Taliban.

5.3 Regarding his claim under article 13 of the Covenant, the author submits that during the first two interviews conducted by the Immigration Service, the Iranian interpreter was speaking Farsi and not Dari. He raised this problem during the second interview, but the interpreter did not translate his concern and the interview continued in Farsi. As concerns the interview before the Refugee Appeals Board, he notes that the interpreter was from Afghanistan but he was speaking Pashto and not Dari. It is added that it was not until when he received the decision of the Refugee Appeals Board that he understood the nature of the credibility assessment. As there was no possibility for him to appeal this decision to the Danish courts, he requested the reopening of the proceedings. The decision of the Refugee Appeals Board of 8 February 2016 proves that the domestic authorities failed to recognize his concerns in connection with interpretation, which has clearly violated his rights under article 13 of the Covenant. The author further submits that at the hearing before the Refugee Appeals Board it was not only the representative of the Immigration Service but also the members of the Board who kept asking questions from him, which made the impression that the members are not impartial.

5.4 In the light of these arguments, the author requested the Committee to uphold its request for interim measures.

Additional observations by the State party

6.1 On 9 August 2017, the State party submitted its additional observations on admissibility and the merits, reiterating that the author's claims had not been substantiated.

6.2 The State party upholds its observations of 6 May 2016 and recalls the Committee's jurisprudence that due weight should be given to the assessments conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists.⁸ The State party adds that the author has not explained why the decision by the Refugee Appeals Board would be contrary to this standard.

6.3 The State party further notes that although the UNHCR background materials cited by the author indeed refer to persons who have collaborated with international forces as individuals belonging to a potential risk group, this reference cannot independently justify the granting of residence to the author under section 7 of the Aliens Act, nor can other general background information on the security situation in Afghanistan. The State party continues to argue that the decisive factor is whether, upon an assessment of the information in the case at hand in conjunction with the current background information on Afghanistan, the author would be at a specific and individual risk of persecution if returned to Afghanistan.

⁸ *A.S.M. and R.A.H. v. Denmark* (CCPR/C/117/D/2378/2014), paras. 8.3 and 8.6.

6.4 Regarding the author's claim that he was asked questions by members of the Refugee Appeals Board, the State party notes that it is standard procedure to ask questions from the asylum-seeker during the oral hearing by members of the Board especially if his/her statements require further clarification that were not addressed by the representatives of the parties.

6.5 Accordingly, the State party maintains that the complaint should be declared inadmissible. Should the Committee examine the complaint on the merits, the State party is of the view that there has been no violation of the rights of the author under article 13 of the Covenant and that it has not been established that there are substantial grounds for believing that it would constitute a violation of articles 6 and 7 of the Covenant to return the author to Afghanistan.

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 he has exhausted all domestic remedies available to him. 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 the author's claim under article 13 of the Covenant that he was unable to appeal the negative decision of the Refugee Appeals Board to a judicial body and that he felt that the Refugee Appeals Board was biased because the members themselves posed questions to him at the oral hearing. In that regard, the Committee refers to its jurisprudence, according to which article 13 offers asylum seekers some of the protection afforded under article 14 of the Covenant but not the right of appeal to judicial bodies.⁹ The Committee further notes that the author has not explained why he considers that the mere fact that members of the Board asked him questions in connection with the facts of the case at the oral hearing would give the impression that they lack impartiality. In addition, the Committee takes note of the author's claims regarding the alleged errors of interpretation during the asylum hearings, which may have affected due process guarantees in the migration proceedings. However, the Committee observes the State party's observations in this regard asserting that the interviews conducted by the Danish Immigration Service on 12 February 2015 and 29 June 2015 had been conducted in Dari in the presence of a certified interpreter; the author failed to comment on the minutes of these interviews except for requesting a small correction of his mother's name; furthermore, the author stated that he had understood everything and there had not been any problem with interpretation. The author could not therefore provide a reasonable explanation as to why he had not raised his concerns about interpretation any earlier in the proceedings even though he had the opportunity to do so. As concerns the hearing before the Refugee Appeals Board, the State party further submits that it does not appear to have been any problems with interpretation. The Committee therefore concludes, in face of the information before it, that the author has failed to sufficiently substantiate his claims under articles 13 of the Covenant, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7.5 Furthermore, the Committee notes the author's claims that he would face torture or cruel, inhuman or degrading treatment or punishment in violation of articles 6 and 7 of the Covenant if removed to his country of origin, owing to his former position at the Ministry of Labour, Social Affairs, Martyrs and Disabled in Afghanistan. The Committee observes the

⁹ See, for example, *D and E v. Denmark* (CCPR/C/119/D/2293/2013), para. 6.8; *A and B v. Denmark* (CCPR/C/117/D/2291/2013), para. 7.3; and *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 8.5.

author's submission that prior to his departure, he had received several phone calls as well as two threatening letters from the Taliban that unless he stops working for the government he would be killed. The Committee is also mindful of the background information on the potential risk profile of former government officials and civil servants provided by the author. In addition, the Committee notes the author's claim that he was not provided adequate interpretation during the asylum hearings and that this had had a negative impact on his credibility assessment.

7.6 On the other hand, the Committee notes that the State party challenged the admissibility and substance of these claims, and that the State party agreed with the Refugee Appeals Board's assessment, which, while accepting some elements of the author's statements as facts, found that the author had failed to establish that there were substantial grounds for believing that he would be at a specific and real personal risk of irreparable harm upon his forcible return, namely of being killed or subjected to cruel, inhuman or degrading treatment or punishment if he were returned to Afghanistan.

7.7 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 when there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated in articles 6 and 7 of the Covenant.¹⁰ The Committee has also indicated that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.¹¹ Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹²

7.8 The Committee also recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.¹³

7.9 In the present case, the Committee notes that the Refugee Appeals Board pointed to several contradictions in the author's accounts of the facts and that, even though the Board did not contest that the author had worked for the Afghan government, it considered that he could not establish that this had led to a perpetual conflict with the Taliban, which allegedly manifested in several verbal and written threats addressed to the author. The Committee considers that, while the author disagrees with the factual conclusions of the State party's authorities, the information before the Committee does not allow it to conclude that those findings are arbitrary or amount to a manifest error or denial of justice. In this respect, the Committee takes note of the alleged errors of interpretation during the asylum hearings but notes that the author failed to explain how and to what extent the allegedly erroneous interpretation had distorted his statements that were finally deemed inconsistent by the domestic authorities and which led them to conclude there were no substantial grounds for believing that it would constitute a violation of articles 6 and 7 of the Covenant to return the author to Afghanistan. Furthermore, the Committee takes note of the arguments of the State party that the author failed to provide any plausible reasons for not having raised these issues at an earlier stage of the proceedings especially on occasions when he was requested to confirm that he had properly understood the interpreter. The Committee is also mindful of the reasoning of the Board that it did not afford decisive weight to isolated inconsistencies but made an overall assessment of the author's statements as well as other information available on file.

7.10 In such circumstances, the Committee considers that the author has not established a sufficient basis for his claim that the evaluation of his asylum application by the Danish

¹⁰ See also *A v. Denmark* (CCPR/C/116/D/2357/2014), para. 7.4.

¹¹ See, for example, *A and B v. Denmark*, para. 8.3.

¹² *Ibid.* See also *X v. Norway* (CCPR/C/115/D/2474/2014), para. 7.3; and *X v. Canada* (CCPR/C/115/D/2366/2014), para. 9.3.

¹³ See, for example, *I.M.Y. v. Denmark*, (CCPR/C/117/D/2559/2015), para. 7.6; and *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.4.

authorities was clearly arbitrary or amounted to a manifest error or denial of justice.¹⁴ Consequently, and without prejudice to the continuing responsibility of the State party to take into account the situation in the country to which the author would be deported and not underestimating the concerns that may legitimately be expressed with respect to the general human rights situation in Afghanistan, the Committee considers that, in the light of the available information regarding the author's personal circumstances, the author's claims under articles 6 and 7 of the Covenant are insufficiently substantiated and are therefore inadmissible under article 2 of the Optional Protocol.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the author.

¹⁴ See, for example, *A v. Denmark*, para. 7.4.