



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Communication No. 2389/2014

#### Views adopted by the Committee at its 114th session (29 June-24 July 2015)

<i>Submitted by:</i>	X (represented by Helle Holm Thomsen)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Denmark
<i>Date of communication:</i>	12 May 2014
<i>Document references:</i>	Special Rapporteur's rules 92 and 97 decision, transmitted to the State party on 16 May 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	22 July 2015
<i>Subject matter:</i>	Expulsion of the author to the Islamic Republic of Iran
<i>Procedural issues:</i>	Admissibility — manifestly ill-founded
<i>Substantive issues:</i>	Expulsion, torture, cruel, inhuman or degrading treatment or punishment, prohibition of discrimination and equal protection of the law
<i>Articles of the Covenant:</i>	7 and 26
<i>Articles of the Optional Protocol:</i>	2, 5.1, 5.2 and 5.4



## Annex

### **Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (114th session)**

concerning

#### **Communication No. 2389/2014\***

*Submitted by:* X<sup>1</sup> (represented by Helle Holm Thomsen)  
*Alleged victim:* The author  
*State Party:* Denmark  
*Date of communication:* 12 May 2014

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting on 22 July 2015,*

*Having concluded* its consideration of communication No. 2389/2014, submitted to the Human Rights Committee by X under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the author of the communication and the State party,

*Adopts* the following:

#### **Views under article 5 (4) of the Optional Protocol**

1.1 The author of the communication is X, an Iranian national, ethnic Kurd, Sunni Muslim born in Northern Iraq on 7 July 1992. He claims that his deportation to the Islamic Republic of Iran by the State party would violate articles 7 and 26 of the Covenant.<sup>2</sup> The author is represented by counsel.

1.2 On 16 May 2014, the Committee, in accordance with rule 92 of its rules of procedure, acting through its Special Rapporteur for new communications and interim measures, requested the State party to refrain from deporting the author to the Islamic Republic of Iran while his communication was being examined by the Committee. On that

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\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Muhumuza Laki, Photini Pazartzis, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. The text of an individual opinion of Committee members Yuval Shany, Yuji Iwasawa and Konstantine Vardzelashvili (dissenting) is appended to the present Views.

<sup>1</sup> The author requested that his name be kept confidential.

<sup>2</sup> The Covenant and the Optional Protocol entered into force for the State party on 23 March 1976.

same date, the State party suspended the execution of the deportation order against the author.

### **Factual background**

2.1 The author was born to a Muslim Iranian family of Kurdish origin in the Al-Tash refugee camp in Iraq in 1992. The author resided in the Barika refugee Camp in Northern Iraq with his parents and six siblings from 2003 until July 2013, when he left for Denmark. The author has never lived in the Islamic Republic of Iran and does not know of any family members living there. The author and his family were granted refugee status in Iraq by the Office of the United Nations High Commissioner for Refugees (UNHCR).<sup>3</sup> The author claims that he gave up his refugee status and cannot return to Iraq.<sup>4</sup>

2.2 The author arrived in Denmark on 28 July 2013 and applied for asylum on 31 July 2013. On 23 August 2013, he was interviewed by the Danish immigration service about his identity, travel route and grounds for seeking asylum. The author stated that the refugees in the Barika camp were considered by the Iranian authorities to belong to political opposition and that, in general, Iranians who fled to Iraq had been labeled as political refugees, even if they did not have a political affiliation. He also informed the authorities that, as member of the Democratic Party of Iranian Kurdistan, his father has been politically active. The author himself had attended Party cultural celebrations and cultural activities organized by the party Komala, and was a member of the Kurdistan Freedom Party.<sup>5</sup> He specified that he had initially become a member of the party as an opportunity to practice sports, rather than on the basis of political convictions, but that he had participated in the party's conferences. He further explained that he had become member of the Party three or four months before his departure from Iraq, but that he had been a supporter of the Party for about one year beforehand. He explained that he feared expulsion to the Islamic Republic of Iran because he would face execution by authorities owing to his previous status as political refugee and his membership to the Kurdistan Freedom Party. The author also indicated that he had left Iraq because he did not have any rights as a refugee there, that he was discriminated against for being a Kurd and that he did not even have an identity document, a situation that affected his daily life, including his access to employment and the exercise of his political rights. The author provided the Danish authorities with a UNHCR refugee certificate issued in November 2011. He also informed the authorities that his brother had been a refugee in Denmark, his asylum having been granted on 27 August 2010.

2.3 On 31 October 2013, the Danish immigration service rejected the author's application for asylum, having considered that his political activities were too limited. The Danish immigration service also considered that the author's father was no longer politically active, and that he had started his political activities only when he arrived in Iraq.

2.4 The author appealed to the Danish refugee appeals board. He claimed that Denmark had previously given residence permit to people from Al-Tash refugee camp who were recognized as refugees by UNHCR and that the change of practice from 2011 amounted to discrimination. In this connection, the author explained that, under section 7 (1) of the

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<sup>3</sup> The author attached to his complaint a certificate issued by UNHCR indicating that his parents, three of his siblings and himself were granted refugee status in November 2011. The certificate expired in November 2013. In a later submission, the author indicated that his family had been granted refugee status by UNHCR since late 1970s/early 1980s and that, in November 2013, his remaining family in Iraq obtained a renewed refugee status certificate.

<sup>4</sup> The author does not explain why or when he renounced to his refugee status in Iraq.

<sup>5</sup> Danish authorities requested the Kurdistan Freedom Party to confirm that the author was member. A copy of the author's Party membership card was included in one of the annexes presented by the author to the Committee.

Danish Alien Act, the established practice was to grant residence permits to Iranians from the Al-Tash refugee camp who were recognized as refugees by UNHCR, including those who did not carry out any political activities. This practice changed in 2011 when it was decided that Iraq could be considered as the first country of asylum of Iranian refugees from the Al-Tash refugee camp, because they had lived in Iraq for many years. However, Iraq would not accept non-Iraqi citizens and the Danish authorities continued to grant them residence permits under section 7 (1) of the Act. In 2013, the Danish immigration service started to refuse asylum claims from people coming from the Al-Tash refugee camp; however, some still received residence permits following the decisions of the refugee appeals board.<sup>6</sup> The author considers that, in order to be able to change the established practice, the State party should carry the burden of proof to demonstrate that the conditions in the Islamic Republic of Iran had improved. He also claimed that the facts that he was not registered in the Islamic Republic of Iran, did not speak Farsi and had no identity documents increased the risk that he would become a “person of interest” for the Iranian authorities if returned. The author also stated that he would not be able to pursue any political activity in the Islamic Republic of Iran and that no one should have to interrupt his or her political activities to avoid persecution.

2.5 On 18 March 2014, the refugee appeals board refused to grant asylum to the author and gave him 15 days to leave the country. The board found that the author had made an unclear, vague and unconvincing statement about his father’s political activities and membership of the Democratic Party of Iranian Kurdistan. The board also took into account that the author’s brother had not informed the Danish authorities about any political activities carried out by his family members in Iraq when he was interviewed during his own asylum proceedings.<sup>7</sup> It further considered that the author’s involvement in political activities had not been clearly established, as he only became member of the Kurdistan Freedom Party three months before departing Iraq in order to practice sports, and he only participated in some of the party’s festive events. The board considered that the fact that the author had been born and raised in the Al-Tash refugee camp was not a sufficient ground to grant him a residence permit in Denmark. The board concluded that the author’s statements had not demonstrated that he would face a real and personal risk of persecution by the authorities if returned to the Islamic Republic of Iran.

2.6. The author indicates that he would not be able to return to Iraq, where some members of his family still lived, because that country only provides identity documents to Iraqi citizens,<sup>8</sup> and not to refugees. The author therefore argues that he would not be entitled to identity documents and that he would not be able to exercise his rights and to access services necessary for his daily life.<sup>9</sup> The author also argues that not having identity documents is the reason why the Danish authorities would not deport him to Iraq, but to the Islamic Republic of Iran, as they consider that it is futile to remove Iranian Kurds to Iraq either voluntarily or by force.<sup>10</sup>

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<sup>6</sup> The author quotes decisions from February and March 2014.

<sup>7</sup> According to the board decision of 18 March 2014, the author’s brother had agreed that the information contained in his asylum case file be used in the context of the author’s asylum proceedings.

<sup>8</sup> The author quotes a letter sent by the Iraqi Embassy in Copenhagen to the board on 28 November 2012 indicating that Iraq only provides travel documents to Iraqi citizens with identity documents.

<sup>9</sup> The author mentioned that, owing to the lack of identity documents, he could not purchase anything in his name in Iraq. For instance, he was not able to purchase a mobile telephone card.

<sup>10</sup> The author provided a translation of a letter from the Danish National Police to the board dated 4 December 2012 that confirms this statement.

2.7 The author notes that decisions of the refugee appeals board are not subject to appeal before national courts according to article 56 (8) of the Aliens Act, and that he therefore has exhausted all available domestic remedies.<sup>11</sup>

### **The complaint**

3.1 The author contends that his deportation would entail a violation of article 7 of the Covenant. He claims that his deportation to the Islamic Republic of Iran would put him at risk of being subject to torture or cruel, inhuman or degrading treatment or punishment, given that he has always lived in refugee camps in Iraq, such as the Al-Tash and Barika camps, which are considered as affiliated to Kurdish political parties. He argues that he will be automatically perceived by Iranian authorities as a political activist and supporter of such parties for the following reasons: (a) his membership of the Kurdistan Freedom Party; (b) his participation in activities organized by the Kurdistan Freedom Party, the Democratic Party of Iranian Kurdistan and Komala and in Kurd festivities celebrated in Northern Iraq; (c) the fact that his father is a member of the Democratic Party of Iranian Kurdistan; and (d) his own participation in meetings of the Democratic Party of Iranian Kurdistan. He further argues that there is an intense presence of the Iranian intelligence service in Iraq, and that Iranian authorities therefore know of any political activity taking place there.

3.2 Similarly, the author claims that the fact that he lived in the Al-Tash and Barika refugee camps will entail a presumption by the Iranian authorities that he has information about Kurdish parties active in the camps. In compliance with their common practice, the Iranian intelligence service will require him to provide information and, if he refuses, he will be accused of being a spy and be persecuted.

3.3 The author adds that the fact that he is not registered in the Islamic Republic of Iran, has no identification documents and does not speak Farsi increases the risk of persecution, in violation of article 7 of the Convention. He mentions that the treatment of returning Kurds by Iranian authorities is unpredictable and that the risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment is especially high for persons who have his profile.

3.4 The author further claims that he supports the Kurdish cause, fighting for an independent Kurdistan and the rights of Kurds. If returned to the Islamic Republic of Iran, he will have to refrain from expressing support to the Kurdish cause in order to avoid persecution, in violation of his freedom of expression.<sup>12</sup>

3.5 Finally, the author argues that the refugee appeals board, in its decision of 18 March 2014, violated his right to equal protection of the law under article 26 of the Covenant insofar as the decision of the board to grant asylum to his brother was made solely on the basis that he had resided in the Al-Tash and Barika refugee camps, as the author himself had done, and the conditions of his case were similar to those of his brother. The author therefore considers that the board should have reached the same conclusion in both cases. The author alleges that the consequences of deportation to the Islamic Republic of Iran would be very serious because, based on the legitimate expectation that he would be granted asylum in Denmark, as his brother had been in 2010, he had renounced his refugee status in Iraq and would therefore not be able to return there.

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<sup>11</sup> The author refers to CERD/C/DEN/CO/17, para. 13.

<sup>12</sup> The author does not make reference to article 19 of the Covenant, but implicitly invokes this article in his claim.

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

4.1 On 17 November 2014, the State party submitted its observations on the admissibility and merits of the communication. It considers that the communication should be held inadmissible for lack of substantiation of the author's allegations as to the risk of being subject to torture or ill-treatment if returned to the Islamic Republic of Iran, and as to the discriminatory character of the refugee appeals board decision of 18 March 2014.

4.2 The State party alleges that, should the communication be considered admissible, the facts as presented by the author do not reveal a violation of articles 7 and 26 of the Covenant. The State party refers to the Committee's jurisprudence according to which the risk of being subject to torture or ill-treatment must be personal and the author must provide substantial grounds to establish that a real risk of irreparable harm exists.<sup>13</sup>

4.3 The State party attests that, pursuant to section 7 (1) of the Aliens Act, a residence permit will be issued to an alien if he or she falls within the definition of refugee under the Convention Relating to the Status of Refugees. Pursuant to section 7 (2) of the Act, a residence permit will be issued if an asylum seeker risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his or her country of origin. In addition, according to section 31 (2) of the Act, no alien may be returned to a country where he or she will face persecution in the terms established in the Convention. The State party also attests that, in order for refugee appeals board decisions to be in accordance with Denmark's international obligations, the board and the Danish immigration service have drafted memorandums describing the legal protection of asylum seekers afforded by international law, including the International Covenant on Civil and Political Rights.

4.4 The State party describes the proceedings before the refugee appeals board. These proceedings are oral. The board may if needed assign a legal counsel to the asylum seeker free of charge. The asylum seeker attends a hearing where he is allowed to make a statement and answer questions. The decisions of the board are made on the basis of an individual and specific assessment of the relevant case. The asylum seeker's statements regarding his grounds for asylum are assessed in the light of all relevant evidence, including what is known about the conditions in his country of origin. In this connection, the State party attests that the board has a comprehensive collection of general background material on the situation in countries from which Denmark receives asylum seekers, including information from UNHCR, the Danish Ministry of Foreign Affairs, the Country of Origin Information Division of the Danish immigration service, the Danish Refugee Council and other reliable sources.<sup>14</sup> The asylum seeker should substantiate that the conditions to grant asylum are met in his or her case. The asylum seeker is guided as to this duty to provide information and as to the importance to provide details.

4.5 The State party attests that, normally, if the asylum seeker's statements appear coherent and consistent, the refugee appeals board considers them as facts. When the asylum seeker's statements are characterized by inconsistencies and changes, expansions or omissions, the board tries to clarify the reasons. In the case under review, the author's statements were inconsistent on crucial parts of his grounds for seeking asylum, therefore weakening his credibility. In cases where inconsistencies are found, the board takes into

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<sup>13</sup> The State party cites the Committee's views in communication No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

<sup>14</sup> The State party indicates that such sources are Amnesty International, Human Rights Watch, the country reports of the United States of America Department of State, the British Home Office, the Immigration and Refugee Board of Canada, the Norwegian Country of Origin Information Centre, Council of Europe reports and, to some extent, articles from identifiable international journals.

account the asylum seeker's explanations regarding the inconsistencies, his particular situation, including cultural differences, age and health, and, in case of doubt about the asylum seeker's credibility, the board assesses the extent to which the principle of the benefit of the doubt should be applied.

4.6 The State party argues that the refugee appeals board thoroughly reviewed the author's case and found that he had failed to establish that there were substantial grounds for believing that he would be at risk of being subject to persecution or asylum-relevant abuse if returned to the Islamic Republic of Iran. The State party notes that the author has not provided the Committee with any new essential information or views on his circumstances beyond those already relied upon in the refugee appeals board decision of 18 March 2014. The State party considers that the author is trying to use the Committee as an appellate body to have the factual circumstances advocated in support of his claim for asylum reassessed by the Committee.

4.7 The State party notes that there are no grounds for doubting the assessment made by the refugee appeals board that there is no available information that the author would be at risk of abuse constituting a breach of article 7 of the Covenant if he is returned to the Islamic Republic of Iran. The State party refers to two reports<sup>15</sup> according to which formerly active opponents of the Iranian regime, including members of the Mujaheddin e Khalq organization, have voluntarily returned from Iraq to the Islamic Republic of Iran. The State party cites other sources quoted in the reports indicating that Iranian Kurdish political activists who used to live in Kurdish Northern Iraq went back to the Islamic Republic of Iran and that, in most of the cases, after a period of investigation by the Iranian authorities, including sometimes imprisonment, they were able to have a normal life. Furthermore, a small group of children of refugees who had lived in the Kurdish region in Iraq for three decades before returning to the Islamic Republic of Iran were registered without problems and without being exposed to any risk. At the same time, sources also indicated that refugees from Al-Tash with political affiliations who returned to the Islamic Republic of Iran should expect problems. The State party informs the Committee that the refugee appeals board was aware that several sources in the available background information referred to the fact that Iranian nationals from the Al-Tash and Barika refugee camps may expect to become object of general attention of the Iranian authorities if returned there. However, the State party considers that becoming the object of general attention of the Iranian authorities is not sufficient to substantiate a real risk of being subject to torture or ill-treatment.

4.8 Based on an overall assessment of the author's specific circumstances and the relevant background material, the State party concludes that the fact that the author was born and raised in the Al-Tash refugee camp and that he later stayed at the Barika refugee camp does not in itself entail that the author will be at a particular risk of being subject to treatment contrary to article 7 of the Covenant. This applies even if the author may become an object of general attention by the authorities if returned to the Islamic Republic of Iran. The State party notes that there is no available information that Iranian nationals from the Al-Tash or Barika refugee camps have been subjected to abuse by the Iranian authorities after their return to the Islamic Republic of Iran.

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<sup>15</sup> Danish Immigration Service, *Landinfo* and the Danish Refugee Council, *Iran: On Conversion to Christianity, Issues concerning Kurds and post-2009 election protestors as well as legal issues and exit procedures*, 2013; and Danish Immigration Services and the Danish Refugee Council, *Iranian Kurds: On conditions for Iranian Kurdish Parties in Iran and the Kurdish region in Iraq, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from the Kurdish region in Iraq to Iran, 30 May to 9 June 2013*.

4.9 The State party considers that the author has not been politically active, even to a modest extent. He became a member of the Kurdistan Freedom Party three or four months before departing Iraq and his motivation was not political, but rather linked to his desire to play football in the Party's sports section. Furthermore, the author only provided practical assistance in the organization of Kurdistan Freedom Party meetings. Therefore, the State rejects the author's claim that he will be forced to hide his political beliefs if he is returned to the Islamic Republic of Iran. The State party notes that it does not find as a fact that the father of the author was a member of the Democratic Party of Iranian Kurdistan, owing to the author's divergent statements regarding his father's political activities, combined with the fact that his brother did not mention that his father had been a member of the Party during his asylum proceedings.

4.10 The State concludes, in line with the refugee appeals board, that the author has failed to render probable his claim that his father had been actively involved in politics in the Islamic Republic of Iran or that the family's combined activities in the refugee camps in Iraq had been of such a nature and intensity that he would be at risk of being subjected to treatments contrary to article 7 of the Covenant. The State party therefore considers that the author's return to the Islamic Republic of Iran will not constitute a violation of article 7.<sup>16</sup>

4.11 With respect to the author's claim regarding the violation of article 26 of the Covenant, the State party notes that the refugee appeals board bases its decisions on a concrete and individual assessment of each case, taking into consideration the relevant background material available at the moment when the decision is made. The State party further refers to the leading decision made by the refugee appeals board in December 2012, which changed the practice of the board regarding asylum seekers born and raised in the Al-Tash refugee camp. The decision established that, regardless of the fact that the asylum seeker was born and raised in Al-Tash refugee camp, he failed to demonstrate that he would be at risk of persecution falling within the definition of section 7 (2) of the Aliens Act, if returned to the Islamic Republic of Iran. The State party notes that the referred decision has been published on the website of the board and has also been mentioned in its 2012 report of activities. The State party further indicates that, in 2014, the board reviewed seven cases of asylum seekers born and raised in the Al-Tash refugee camp and that, in all of them, the board considered that this fact could not in itself justify granting the asylum. The State party concludes that the author was not discriminated against by the decision of the board of 18 March 2014, as it reached a different conclusion from the one reached in his brother's case, based on an individual and concrete assessment of the author's situation made in compliance with the board's practice.

4.12 The State party notes that, on 16 May 2014, the refugee appeals board suspended the time limit for the author's departure from Denmark until further notice, in compliance with the Committee's request. Considering that the author has failed to render probable that, if returned to the Islamic Republic of Iran, he would be at risk of suffering irreparable damage, the State party calls on the Committee to lift its request for interim measures.

4.13 On 22 July 2015, the State party provided additional observations reiterating that the complaint was ill-founded and that the author did not substantiate violations of articles 7 and 26 of the Covenant. Furthermore, the State party stated that the Democratic Party of Iranian Kurdistan membership card of the author's father did not prove his militancy in that party, as the copy provided by the author in January 2015 had been issued on 5 January 2015, after the final decision of the refugee appeals board.

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<sup>16</sup> The State party refers to the Committee's views in communication No. 2186/2012, *Mr. X and Ms. X v. Denmark*, Views adopted on 22 October 2014, para. 7.5.



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

5.1 On 8 December 2014 and 26 January 2015, the author submitted his comments on the State party's observations. The author claims that he and his family had been granted the status of refugees by UNHCR since the late 1970s/early 1980s, and that the facts that the author had had his refugee certificate renewed in 2011 and that his remaining family in Iraq had obtained another renewal in 2013 means that UNHCR had not found any grounds to suspend their protection.

5.2 The author further indicates that, in recent years, there have not been known cases of Iranian Kurds being returned to the Islamic Republic of Iran from refugee camps in the Kurdish region in Iraq, even though they live under very bad conditions in Iraq. The author considers that this is due to their fear of prosecution upon their return to the Islamic Republic of Iran. Furthermore, residents of the Al-Tash and Barika refugee camps are assimilated to Kurdish opposition groups as there is a general supposition that they are somehow affiliated to these groups.

5.3 The author questions the State party's affirmation that he failed to demonstrate that he would be subject to torture or ill-treatment if returned to the Islamic Republic of Iran, as the reports quoted by the State party itself<sup>14</sup> consistently establish that refugees from the Al-Tash and Barika camps would be at such risk if returned to the Islamic Republic of Iran. For instance, the reports clearly state that all refugee camps in the Kurdish region in Iraq have connections to the political parties that are somehow active in the camps, and that people from the camps will be looked at with suspicion if they return to the Islamic Republic of Iran.<sup>17</sup> According to another source included in the reports referred to by the State party and quoted by the author, if an Iranian Kurd with links to the Al-Tash camp and who lived in Northern Iraq for many years returned to the Islamic Republic of Iran, he or she would come under enormous suspicions by the Iranian authorities. Besides, if such a person wished to return and had a family member who had been a Kurdish activist at some point, he or she could become a person of interest for the Iranian authorities.<sup>18</sup> The author further claims that, in its observations, the State party quoted passages from the reports that are not applicable to the case before the Committee, since they related to former members of the Mujaheddin e Khalq organization and other refugees who had a different history and different political views from those of the refugees from the Al-Tash refugee camp.

5.4 The author challenges the State party's statement that the author or his family had not been involved in political activities to an extent that would put him at risk of being subject to torture or ill-treatment if returned to the Islamic Republic of Iran. The author notes that he is a member of the Kurdistan Freedom Party, that his father became a member of the Democratic Party of Iranian Kurdistan when he arrived in Iraq, and that he is still a member of that party.<sup>19</sup> In addition, the author notes that two of his uncles, one aunt and his two grandparents on his mother's side have been recognized as political refugees in Sweden. Therefore, for the author it is clear that he and his family would be considered as politically active by Iranian authorities and, consequently, they would be at risk of persecution in the Islamic Republic of Iran.

<sup>17</sup> Danish Immigration Services and the Danish Refugee Council, *Iranian Kurds: On conditions for Iranian Kurdish Parties in Iran and the Kurdish region in Iraq, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from the Kurdish region in Iraq to Iran, 30 May to 9 June 2013*, p. 73.

<sup>18</sup> Danish Immigration Service, *Landinfo* and the Danish Refugee Council, *Iran: On Conversion to Christianity, Issues concerning Kurds and post-2009 election protestors as well as legal issues and exit procedures*, 2013, p. 46.

<sup>19</sup> The author submitted a copy of his father's Democratic Party of Iranian Kurdistan membership card.

5.5 The author considers that the issue at stake is not whether the State party considers the author or his family to be politically active, but whether the Iranian authorities will perceive the author as such. The Iranian authorities take Kurdish separatism very seriously and, according to available background information, their reaction is difficult to predict. In addition, it is known that the Iranian authorities use torture in the context of imprisonment. Therefore, the author considers that the “benefit of the doubt” should apply in his case, in line with UNHCHR guidelines, as the foreseeable consequences of his deportation to the Islamic Republic of Iran would be extremely severe.

5.6 The author concludes that he has sufficiently substantiated his allegations as to his risk of being subjected to torture or ill-treatment if returned to the Islamic Republic of Iran, and requests that interim measures be maintained.

5.7 With regard the alleged violation of article 26, the author states that the board decision referred to by the State party as that which determined the change of practice regarding asylum seekers born and raised in the Al-Tash refugee camp in fact did not concern an asylum seeker from that camp, as the person concerned had not been able to prove that he was from this refugee camp. According to the author, in this case, the Danish immigration service argued that if the board had considered the asylum seeker to be a former resident of Al-Tash, he would have been recognized as a refugee based on section 7 (1) of the Aliens Act. However, as it was not the case and the person concerned had spent years in Iraq, it was considered that he would be able to seek protection in Iraq as his first country of asylum, pursuant to section 7 (3) of the Act. The author therefore alleges that his case was the first one in which the board decided to change its practice of granting asylum to all former residents of Al-Tash who had been recognized as refugees by UNHCR. The author further claims that, from the board’s decision of December 2012 to the decision adopted in his case on 18 March 2014, the Danish authorities did not adopt any decision denying asylum to former residents of Al-Tash who had been recognized as refugees by UNHCR.

5.8 The author also contests the statement that, in its decision of 18 March 2014, the refugee appeals board considered new available background information, in contrast to the information available at the time when the asylum proceedings of the author’s brother had been decided, in 2010. The author argues that there was no objective reason to reach different conclusions in his case and his brother’s case, that he has not had an equal protection of the law under similar circumstances, and that he has therefore been treated in a discriminatory way by the State party. The author therefore considers that he has sufficiently substantiated his allegations as to the violation of article 26 of the Covenant by the State party.

5.9 Finally, the author contests the State party’s affirmation that he is trying to use the Committee as an appellate body. He considers that he has sufficiently substantiated that he would be at risk of being subjected to torture or ill-treatment if returned to the Islamic Republic of Iran, a conclusion that can be reached on the basis of the information provided to the Committee by the parties, including the reports quoted by the State party as background information.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

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

6.2 The Committee notes, as required by article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

6.3 The Committee also notes the author's statement that decisions by the Danish refugee appeals board are not subject to appeal and that domestic remedies have therefore been exhausted. This assertion has not been challenged by the State party. Therefore, the Committee considers that domestic remedies have been exhausted as required by article 5 (2) (b) of the Optional Protocol.

6.4 The Committee further notes the author's claim that the decision of the refugee appeals board of 18 March 2014, by which it denied his asylum application, was discriminatory in violation of article 26 of the Covenant insofar as his brother had been granted refugee status under similar circumstances. In this connection, the Committee notes that the author has failed to demonstrate that the decision rejecting his refugee status was discriminatory in that it was made on the basis of a ground prohibited under article 26 of the Covenant.<sup>20</sup> The Committee is therefore of the opinion that this allegation is not substantiated and is inadmissible under article 2 of the Optional Protocol.

6.5 With respect to the State party's challenge to the admissibility of the author's allegation under article 7, on the basis that the author has failed to substantiate that he would be at personal risk of being subjected to torture or ill-treatment if returned to the Islamic Republic of Iran, the Committee notes that the author bases his allegations on the fact that he was born and raised in refugee camps in Iraq known to be linked to Kurdish opposition groups, that he is a member of the Kurdistan Freedom Party and that his father is a member of the Democratic Party of Iranian Kurdistan. The Committee also notes that the author alleges that he has no identification documents and does not speak Farsi, which would put him at risk of persecution by the Iranian authorities. The Committee therefore considers that the author has sufficiently substantiated, for purposes of admissibility, that the facts in the communication raise issues under article 7 of the Covenant that should be considered on their merits.

#### *Consideration of the merits*

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

7.2 The Committee considers it necessary to bear in mind the State party's obligation under article 2 of the Covenant to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, including in the application of its processes for the expulsion of non-citizens.<sup>21</sup> The Committee recalls that it is generally for the organs of States parties to the Covenant 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.<sup>22</sup>

7.3 The Committee recalls its general comment No. 31, 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. The Committee also recalls that the risk must be personal and that

<sup>20</sup> See communication 1547/2007, *Hamida v. Canada*, Views adopted on 18 March 2010, para. 7.4.

<sup>21</sup> See general comment No. 20 of the Committee, para. 9.

<sup>22</sup> See communication No. 1763/2008, *Ernest Sigman Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 11.2.

there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. Therefore, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>23</sup>

7.4 In the present case, the Committee notes the State party's argument that the refugee appeals board did take into account all relevant background information, combined with the author's specific circumstances, and that the author failed to establish that there were substantial grounds for believing that he would be at risk of being subject to persecution or asylum-relevant abuse if returned to the Islamic Republic of Iran. In this connection, the Committee notes the State party's argument that the fact that the author was born in the Al-Tash refugee camp and later lived in the Barika refugee Camp only put him at risk of becoming the object of "general attention" of the Iranian authorities if returned to the Islamic Republic of Iran, which is not enough to substantiate a real risk of being subject to torture or ill-treatment. The Committee further notes the State party's argument that the author failed to render probable his claim that his father had been actively involved in politics in the Islamic Republic of Iran. It also notes that the State party recognized the author's membership of the Kurdistan Freedom Party, but considered that he had not been "politically active" because he had only been a member for a few months before his departure from Iraq, and his motivation to join the party was not political, and that he would therefore not be exposed to a risk of torture or ill-treatment if returned to the Islamic Republic of Iran.

7.5 The Committee further notes the author's claim that the refugee appeals board did not give sufficient weight to his membership of the Kurdistan Freedom Party and to his participation in political activities; and that it did not take into account some of the statements contained in several sources quoted in the reports used by the State party's immigration authorities, according to which refugees involved in political activities of the Kurdish political groups active in the Kurdish region in Iraq, including those who lived in the Al-Tash and Barika camps, may be at risk of persecution if returned to the Islamic Republic of Iran.

7.6 In this connection, the Committee notes that, according to publicly available information, including the reports referred to by the State party,<sup>14</sup> as well as documents elaborated by immigration authorities from different countries and civil society organizations,<sup>24</sup> Kurds who can demonstrate that they are known or suspected by the Iranian authorities of being members or supporters of Kurdish political groups could be at real risk of persecution. It also notes that failed asylum seekers may be at risk of persecution in the Islamic Republic of Iran. This information has not been refuted by the State party. In the present case, the Committee considers that the author's membership of the Kurdistan Freedom Party, together with his previous participation in activities of the Democratic Party of Iranian Kurdistan and Komala, do indeed present a risk that he will be considered or suspected by the Iranian authorities of being a member or supporter of Kurdish political groups and that, as such, he would be at risk of treatment contrary to article 7 of the Covenant if returned to the Islamic Republic of Iran.

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<sup>23</sup> See *X v. Denmark* (note 13 above), para. 9.2.

<sup>24</sup> See Border Agency of the United Kingdom of Great Britain and Northern Ireland, *Optional Guidance Note on Iran*, October 2012, p. 35, available at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/311906/Iran\\_operational\\_guidance\\_2012.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311906/Iran_operational_guidance_2012.pdf). The Swiss Refugee Council describes the Iranian authorities' practice of dealing with returned asylum seekers as arbitrary and unpredictable. See [www.ecoi.net/file\\_upload/1930\\_1418737084\\_q18731-iran.pdf](http://www.ecoi.net/file_upload/1930_1418737084_q18731-iran.pdf).

7.7 The Committee considers that the State party did not sufficiently take into account the totality of facts as exposed in paragraph 7.6. above, including the potential personal risk for the author if returned to the Islamic Republic of Iran. In this connection, the Committee considers that the personal risk faced by the author should be assessed in the light of a combination of his political profile and other personal circumstances, such as his birth in the Al-Tash refugee camp, his later residence in the Barika refugee Camp and the fact that he has no identity documents and does not speak Farsi. None of these circumstances is sufficient in itself to substantiate a real risk of being subject to torture or ill-treatment in the Islamic Republic of Iran. Nonetheless, the Committee considers that the State party should have considered them in their combination, together with the documented prevalence of torture in the Islamic Republic of Iran.<sup>25</sup> The Committee therefore considers that the removal of the author to the Islamic Republic of Iran would constitute a violation of article 7 of the Covenant.

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the author's removal to the Islamic Republic of Iran would, if implemented, violate his rights under article 7 of the Covenant.

9. In accordance with article 2 (3) (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a full reconsideration of his claim regarding the risk of torture, inhuman or degrading treatment or punishment if returned to the Islamic Republic of Iran, taking into account the State party's obligations under the Covenant.

10. By becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant. Pursuant to article 2 of the Covenant, the State party has undertaken to guarantee 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 where it has been determined that a violation has occurred. The Committee therefore requests the State party to provide, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views.

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<sup>25</sup> See, for instance, paragraphs 3.3 and 5.5 above.

## Appendix

### **Individual opinion of Committee members Yuval Shany, Yuji Iwasawa and Konstantine Vardzelashvili (dissenting)**

1. We regret that we are unable to join the majority on the Committee in finding that, in deciding to deport the author, Denmark would violate its obligations under article 7 of the Covenant.

2. In paragraph 7.2. of the present Views, the Committee recalls that it is “generally for the organs of States parties to the Covenant 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”. Yet, in paragraph 7.7, it holds that the State party “did not sufficiently take into account the totality of facts as exposed in paragraph 7.6. above, including the potential personal risk for the author in case he is removed to the Islamic Republic of Iran”.

3. In past cases in which the decision of State organs to deport an individual was found by the Committee to run contrary to the Covenant, the Committee attempted to base its position on inadequacies in the domestic decision-making process, which had been taken by the domestic organs of the State party, leading to the decision to deport. Such inadequacies consisted, at times, of serious procedural flaws in the conduct of the domestic review proceedings,<sup>a</sup> failure by domestic authorities to consider an important piece of information,<sup>b</sup> or on the inability of the State party to provide a reasonable justification for its decision.<sup>c</sup> In the present case, however, after reviewing the same body of evidence that was presented to the domestic organs, the Committee simply disagrees with their conclusion that, on the whole, a real risk of a serious violation was not established. It has not been persuasively claimed before the Committee that the relevant domestic organs did not assign proper weight to any specific piece of evidence presented by the author; nor was it claimed that there was any procedural flaw in their conduct. Furthermore, the Committee itself acknowledges that none of the circumstances of the case gives rise in itself to a real risk that the author be subject to torture; it is just that in evaluating the totality of the facts and evidence, the Committee would have opted for a different substantive outcome.

4. We thus find it impossible to reconcile the holding of the Committee in this case with the applicable legal standard of deference to the organs of State parties in evaluating facts and evidence, which reflects the clear procedural advantages over the Committee that is enjoyed by local authorities, who have direct access to witnesses, in evaluating facts and evidence about direct and personal risk. We therefore dissent from the position taken by the majority on the Committee.

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<sup>a</sup> See, for example, communication No. 1051/2002, *Ahani v. Canada*, Views adopted on 29 March 2004, para. 10.8.

<sup>b</sup> See, for example, communication No. 1908/2009, *X v. Republic of Korea*, Views adopted on 25 March 2014, para. 11.5.

<sup>c</sup> See, for example, communication No. 1222/2003, *Byahuranga v. Denmark*, Views adopted on 1 November 2004, paras. 11.3 and 11.4.