



## 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. 2439/2014\*, \*\*

<i>Communication submitted by:</i>	M.B.S. (represented by counsel, the Danish Refugee Council and, subsequently, Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	4 July 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 4 July 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	29 March 2019
<i>Subject matter:</i>	Deportation to the Islamic Republic of Iran
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Risk of torture or cruel, inhuman or degrading treatment or punishment; non-refoulement
<i>Articles of the Covenant:</i>	6, 7, 13 and 14
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is M.B.S., a national of the Islamic Republic of Iran born on 20 May 1983. He is seeking asylum in Denmark and is subject to deportation to the Islamic Republic of Iran following the denial of his application for refugee status by the Danish authorities. He claims that by forcibly deporting him to the Islamic Republic of Iran, Denmark would violate his rights under article 7 of the Covenant. He also claims that his rights under article 13 of the Covenant have been violated in connection with the hearing of his asylum case by the Danish authorities.<sup>1</sup> The author was initially represented

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

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

<sup>1</sup> In his initial submission, the author invoked article 14 but, on 2 February 2015, he informed the Committee that he was arguing a violation of article 13 of the Covenant instead of article 14.



by the Danish Refugee Council and subsequently by Niels-Erik Hansen. The Optional Protocol entered into force for Denmark on 23 March 1976.

1.2 On 4 July 2014, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from deporting the author to the Islamic Republic of Iran while his case was under consideration by the Committee. However, on 11 February 2015, the Committee decided to accept the request by the State party to lift the interim measures.

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

2.1 The author is an ethnic Azeri and Shia Muslim from Tehran. In 2010, together with a friend, he started to sell satellite dishes. On an unknown date in the autumn of 2010, the police searched their storage place. Having discovered the satellite dishes, the police arrested the author and his friend and held them in detention for four days<sup>2</sup> at a police station. While in detention, the author and his friend were threatened with torture and exposed to “psychological pressure”.<sup>3</sup> Upon release,<sup>4</sup> the author was summoned to court and was sentenced with a fine.<sup>5</sup> He was also requested to sign a statement that he would never sell satellite dishes again; otherwise, he would receive a prison sentence.

2.2 However, the author continued with the sales. In March 2011, while the author was installing a satellite dish for a client, he was warned that the authorities were at his client’s door. The author escaped by jumping from the rooftop and running away on a motorcycle. After this event, the author stayed at his friend’s father’s home for seven months and then left the Islamic Republic of Iran on 24 November 2011.<sup>6</sup>

2.3 The author arrived in Denmark on 17 January 2012, without valid travel documents, and applied for asylum on 23 January 2012. He invoked the fear of persecution by the Iranian authorities upon return because he had been arrested for selling satellite dishes. However, the Danish Immigration Service denied his request on 31 August 2012.

2.4 On 16 December 2012, the author converted to Christianity.<sup>7</sup> He therefore appealed the decision of the Danish Immigration Service by invoking his conversion as an additional ground for fear of persecution in the Islamic Republic of Iran.

2.5 On 16 January 2013, the Danish Refugee Appeals Board denied his appeal because it considered that his conversion was not genuine.<sup>8</sup> The Board therefore concluded that the author had not demonstrated a risk of concrete and personal persecution if returned to his

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<sup>2</sup> In his asylum screening interview before the Danish Immigration Service on 7 August 2012, the author declared that they had been detained for four days because of some national holidays.

<sup>3</sup> No further details provided by the author.

<sup>4</sup> The father of the author’s friend paid the bail.

<sup>5</sup> The amount of the fine was 15 million Iranian rials.

<sup>6</sup> In his asylum screening interview of 7 August 2012, the author declared that he left the Islamic Republic of Iran lawfully, using a genuine national passport. He went to Thailand and then to Turkey, using his passport. He then used a false Israeli passport to travel from Turkey to Cyprus and back to Turkey, wherefrom he travelled to Denmark. However, he declared before the Refugee Appeals Board that a friend of a friend had obtained a passport for him.

<sup>7</sup> He submits a certificate of baptism dated 16 December 2012. During the proceedings before the Refugee Appeals Board, the author stated that he had not thought about converting for a long period prior to his conversion, but that a friend at the place where he lived had inspired him to convert, and his conversion had taken place immediately after that. In his initial communication to the Committee, the author declared that he had attended his first church service five months after his entry into Denmark, after having met an Iranian convert who introduced him to the teachings of Christianity.

<sup>8</sup> The Refugee Appeals Board noted that the author “has been unable to give even a rough account of the Christian festivals or present other basic information about Christianity, except that Jesus is the most important person”. The Board also noted the author’s declaration that only his friend and a couple of other persons knew about the conversion.

country. It thus found no reason to postpone the asylum proceedings for authentication of the documents that the author had received from his family.<sup>9</sup>

2.6 On an unknown date, the family of the author informed him about two summonses to appear in court in the Islamic Republic of Iran and a judgment passed in absentia on 27 July 2013, by which he was sentenced to six years in prison, 74 whiplashes and a fine.<sup>10</sup>

2.7 On 1 March 2014, the Iranian public prosecutor summoned the author to appear in court on 12 March 2014; otherwise, he would be sentenced in absentia. According to the author, the grounds for that summons appear to be his conversion to Christianity and his cooperation with Christians. The summons also allegedly mentions that the author will not be able to appeal such a judgment.

2.8 On 3 May 2014, the father of the author was summoned in connection with the author's conversion.<sup>11</sup>

2.9 On 26 June 2014, a Danish pastor confirmed that the author had been part of the church community between May and November 2013.

2.10 On 15 October 2014, the author requested the reopening of his asylum case, invoking new facts and producing new documents as to his original ground for asylum and his conversion. On 25 November 2014, the Refugee Appeals Board dismissed his request.

### **The complaint**

3.1 The author claims that, if returned to the Islamic Republic of Iran, he risks persecution on account of his conversion to Christianity and his active life as a Christian, in violation of article 7 of the Covenant. The Iranian authorities will not protect him from threats exerted by civilians.

3.2 The author notes that he posted pictures of his baptism ceremony on Facebook, without thinking about the consequences. This triggered hate messages and threats from people who accused him of being an infidel. His sister was dismissed from her job and his brother was denied access to university. His parents told him not to come back because he would be killed by the Iranian authorities, who were looking for him. His father was questioned twice by the authorities in relation to the author and his whereabouts and was also subjected to "physical abuse". The Iranian security police told his father that the author would be executed if they found him because he had renounced Islam.

3.3 The time of his conversion and his lack of detailed knowledge of Christianity, including Christian holidays, should not be used as an argument against the author. At the time of questioning by the Refugee Appeals Board, he had been a Christian for only a few months and, according to country of origin information, Christian converts often lack detailed knowledge of certain parts of Christianity. On the basis of his generally active Christian life with regular church services and Bible studies, combined with his statements

<sup>9</sup> Without mentioning any exact date, the Board's decision states that "after his entry to Denmark, the applicant's family sent him two notices to appear before the court and a conviction in absentia sentencing him to, inter alia, eight years' imprisonment". See footnote 18 below.

<sup>10</sup> (1) A judgment of 24 July 2013 issued in absentia and pronounced on 27 July 2013, sentencing the author to five years' imprisonment for the importation of 478 satellite dishes and one year's imprisonment, 74 lashes and a fine of 500,000 Iranian tomans for possession of indecent and forbidden images and other equipment, including playing cards and backgammon games; (2) a notice to appear served on the author on 1 March 2014 to appear before the Islamic Revolutionary Court in the Islamic Republic of Iran on 12 March 2014 regarding a matter of "turning his back on Islam, conversion from the holy religion Islam to Christianity, association and collaboration with groups which spread Christianity"; and (3) a notice to appear served on the author's father on 3 May 2014 to appear before the Islamic Revolutionary Court in the Islamic Republic of Iran on 14 May 2014. The author's name is listed as the reason for his father's appearance before the court. In the translation of the judgment, it is mentioned that the author was charged with selling satellite dishes and that during a search by the Iranian police, the authorities found not only the satellite dishes, but also pornographic material. It is also mentioned that the author had a right to appeal within 20 days.

<sup>11</sup> The author attaches two documents in Farsi claiming that they are the pictures of these two summonses, received from his sister.

on his wish to proselytize, it may reasonably be assumed that the author will engage in religious practices upon return to the Islamic Republic of Iran, which, in the light of the available country of origin information, will expose him to a real risk of treatment contrary to article 7 of the Covenant.

3.4 The author will be deported to the Islamic Republic of Iran irrespective of the fact that he does not hold a valid Iranian passport and thus risks being interrogated by the authorities at the airport.<sup>12</sup> Even if the Iranian authorities are not already aware that he has converted to Christianity, there is a significant risk that this fact will be disclosed if he is arrested and questioned when entering the country without a valid passport.

3.5 The author also fears repercussions from the Iranian authorities because he will be forced to serve a sentence rendered in his absence.

3.6 Lastly, the author attended two or three demonstrations in Copenhagen, in front of the Iranian Embassy, against the regime in the Islamic Republic of Iran and its mistreatment of the population.<sup>13</sup>

3.7 The author further invoked articles 6 and 14 of the Covenant, without providing any reasons.

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

4.1 On 5 January 2015, the State party submitted its observations on admissibility and the merits. It first refers to the facts of the case, in particular to the author's statements regarding his situation in the Islamic Republic of Iran prior to his departure and to the documents produced before the Danish authorities and before the Committee. It notes that, on 18 January 2012, the author declared to the Danish National Police that he was tired of living in Tehran and that he had paid for a false passport to travel to Denmark. On 23 January 2012, he declared to the Danish National Police that he saw no possibility of a future in the Islamic Republic of Iran, that he had been under pressure at work and that he had had no freedom to live life fully. He wanted to live in Denmark to have a better life, with an education and work, and to enjoy privacy and freedom. On 23 January 2012, the author also submitted an asylum application in which he gave his first elaborate and coherent statement on the background of his departure from the Islamic Republic of Iran and his ground for asylum in his native language and in his own words.

4.2 The State party points to discrepancies in the author's declarations before the Danish authorities with respect to the moment when he was detained in the Islamic Republic of Iran; whether he experienced problems with the Iranian authorities after his detention at the police station; and the validity of his passport when he left the country. The author also submitted different documents to the Danish authorities and to the Committee. While some documents have been submitted to both of them,<sup>14</sup> others were produced only before the Refugee Appeals Board<sup>15</sup> or only before the Committee.<sup>16</sup>

4.3 On 25 November 2014, the Refugee Appeals Board refused to reopen the asylum proceedings. Given that the Board could not find as a fact that the author had problems with

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<sup>12</sup> In that respect, the author cites a country of origin information report on the Islamic Republic of Iran published by the United Kingdom of Great Britain and Northern Ireland Border Agency, Home Office (16 January 2013), p. 260, available at [www.refworld.org/docid/510136952.html](http://www.refworld.org/docid/510136952.html) and Norway: Landinfo – Country of Origin Information Centre, Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures (February 2013), p. 69, available at [www.refworld.org/docid/519c99d14.html](http://www.refworld.org/docid/519c99d14.html).

<sup>13</sup> The author submits four pictures.

<sup>14</sup> The judgment of 24 July 2013, the notice to appear served on the author on 1 March 2014 and the notice to appear served on the author's father on 3 May 2014.

<sup>15</sup> (1) Judgment of 16 September 2011 issued in absentia for the selling, setting up, etc. of satellite dishes, in which the author was sentenced to eight years' imprisonment and a fine of 100 million rials; (2) notice of 2 May 2011 to appear "for the execution of sentences at the Evin Prison"; and (3) notice of 26 June 2011 to appear "for the execution of sentences at the Evin Prison".

<sup>16</sup> A notice to appear dated 6 May 2013 and served on 8 May 2013, according to which the author was to appear before the Islamic Revolutionary Court in the Islamic Republic of Iran on 21 May 2013.

the Iranian authorities during the time leading up to his departure from the Islamic Republic of Iran, it also could not find as a fact that he had been prosecuted in connection with those problems. It further observed that, at the Board hearing of 16 January 2013, the author had produced three documents, which appeared to be two notices to appear and a judgment in absentia sentencing him, inter alia, to eight years' imprisonment for the sale of satellite dishes.<sup>17</sup> The author declared that his parents had received those documents prior to his departure in November 2011, without his knowledge. The Board held that the most recent production of a new judgment for the same matter,<sup>18</sup> which was allegedly delivered more than one and a half years after the judgment produced in January 2013, contradicts the author's statement that he had already been sentenced in absentia for the relevant matter prior to his departure. Moreover, according to the most recently produced judgment, he had been sentenced to five years' imprisonment and a fine for that same matter, while for the other matter – the finding of, inter alia, pornography, which he had not mentioned previously – he had allegedly been sentenced to one year's imprisonment, 74 lashes and a fine. Lastly, the document indicates that the sentence was pronounced on 27 July 2013, while the author only produced the document in connection with the submission of his communication to the Committee almost one year later, namely, on 4 July 2014. The author has not provided any explanation for this.

4.4 Consequently, the Board considered that the judgment transmitted together with the request to reopen the case appeared to have been fabricated for the occasion. Background information attests that forged documents, including judgments and other court documents, are widespread and easy to obtain in the Islamic Republic of Iran.<sup>19</sup> Based on the above, the Board found no reason to request an assessment of the authenticity of the document produced by the author.

4.5 As to the conversion of the author, the Board pointed to discrepancies between, on the one hand, his declarations in his communication to the Committee and in his request to reopen proceedings and, on the other, his statements in the asylum registration report prepared by the Danish National Police, his asylum application form, his interview with the Danish Immigration Service and the brief submitted by his assigned counsel. These discrepancies relate to the period of time during which he participated in church activities. Moreover, the Danish pastor's statement of 26 June 2014 fails to confirm the statement by the author that he started to participate regularly in church services and lessons in Christianity five months after his entry into Denmark, namely, a whole year earlier, and that he had participated in Bible classes for four months prior to his baptism.<sup>20</sup>

4.6 The Board then assessed whether, as a result of those activities, the author had been profiled by the Iranian authorities to such an extent that he would be at risk of abuse in case of return. It took into account the Facebook postings and the hate emails received by the author, as well as the harassment and threats received by his family from the Iranian authorities, who declared that the author would be killed upon his return to the Islamic Republic of Iran. However, the author failed to render probable that he had been exposed to the Iranian authorities and would be at a specific and individual risk of persecution for that reason in the event of his return to his country of origin.

<sup>17</sup> The judgment of 16 September 2011 and the two notices to appear dated 2 May 2011 and 26 June 2011.

<sup>18</sup> The judgment of 24 July 2013.

<sup>19</sup> Memorandum of the Danish Ministry of Foreign Affairs (*Udenrigsministeriet*) concerning forged and false documents from the Islamic Republic of Iran, 2 September 2013. According to the State party, the memorandum mentions, inter alia, that it is easy to illegally obtain summonses and to forge summonses by erasing information in the summons and adding new details. In principle, this applies to all legal documents and documents issued by an authority, including court orders and judgments and, according to the source of the report published by the Danish Immigration Service, there is a relatively high occurrence of forged documents in the Islamic Republic of Iran.

<sup>20</sup> The author did not mention his interest in Christianity when interviewed by the Danish Immigration Service. Before the Board, he explained that he did not have any particular knowledge about Christianity at that time or documents proving his interest. He thus feared that the Danish authorities would consider his interest a lie.

4.7 First, the printouts of the Facebook activities of the author failed to show his baptism, but showed instead more general Christian messages. Nonetheless, the printouts showed that all these updates to his Facebook profile had been made within the last half hour prior to the printing of the images. Given the general lack of credibility of the author, the Board considered that the Facebook updates were made precisely for the purpose of making a subsequent printout of the pages that could be used in the author's asylum case.

4.8 Second, the information provided by the author about alleged reactions to himself and his family was completely unsubstantiated. Third, the author was baptised on 16 December 2012, but failed to state in connection with the Board hearing one month later, on 16 January 2013, that he had uploaded photos of his baptism on Facebook. On the contrary, he declared in his request to reopen proceedings that these updates had been made immediately after his baptism. He stated that he was happy about being baptised and wanted to share this with his friends; he had therefore uploaded photos of the ceremony without thinking of the consequences.

4.9 The Board referred to information according to which Facebook is not monitored on a systematic basis and many people use Facebook without being concerned about potential monitoring.<sup>21</sup> The authorities can control activities on Facebook only if a friend of the individual applicant is an agent of the authorities. Therefore, the notices to appear before an Iranian court because the author had allegedly converted from Islam could not lead to a different assessment. In view of their nature and the moment when they were produced, together with the general facts of the case, these documents appear to have been fabricated for the occasion. Forged documents, including notices to appear, are widespread and easy to obtain in the Islamic Republic of Iran. Therefore, the Refugee Appeals Board found no reason to request an assessment of the authenticity of the documents.

4.10 The Board also considered that the author had failed to render probable that he had become a person of interest to the Iranian authorities as a result of his participation in three demonstrations in front of the Iranian Embassy in Copenhagen. The photographs produced as evidence do not reveal the name of the author and do not show a demonstration in progress in front of the Iranian Embassy in which the author is a participant, but a staged scene where the author poses for the photographer holding the material used in the demonstration. The photographs therefore appear to have been taken for the purpose of clearly showing the author holding the various material in his hands. In addition, the photographs were not taken in front of the Iranian Embassy in Copenhagen, but along a garden belonging to a property located about 100 metres and around a corner from the embassy, making it invisible from the Embassy. The author has not stated the time of the demonstration, and there is no available information or documentation regarding the other demonstrations in which he participated according to his statement.

4.11 After presenting the findings of the decision of 25 November 2014 of the Refugee Appeals Board, the State party describes the structure, composition and functioning of the Board,<sup>22</sup> as well as the legislation applying to asylum proceedings.<sup>23</sup> It then submits that the author has failed to establish a *prima facie* case for the purposes of admissibility under articles 6, 7 and 14 of the Covenant, in the absence of substantial grounds for believing that he is in danger of being deprived of his life or subjected to inhuman or degrading treatment if returned to the Islamic Republic of Iran, or that those provisions have been violated in connection with the consideration of the author's asylum case by the Danish authorities. These parts of the communication are therefore manifestly unfounded and should be declared inadmissible.

4.12 The practice of the Committee under article 14 of the Covenant is that proceedings relating to the expulsion of an alien do not fall within the ambit of a determination of "rights and obligations in a suit at law" within the meaning of article 14 (1), but are

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<sup>21</sup> Danish Immigration Service, "Update on the situation for Christian converts in Iran: report from the Danish Immigration Service's fact-finding mission to Istanbul and Ankara, Turkey and London, United Kingdom, 25 March to 2 April 2014 and 10 April to 11 April 2014" (Copenhagen, June 2014).

<sup>22</sup> *Obah Hussein Ahmed v. Denmark* (CCPR/C/117/D/2379/2014), paras. 4.1–4.3.

<sup>23</sup> Sections 7 (1)–(3) and 31 (1)–(2) of the Danish Aliens Act.

governed by article 13 of the Covenant.<sup>24</sup> Against this background, this part of the communication should be declared inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol.

4.13 On the merits, the author has failed to establish that his return to the Islamic Republic of Iran would violate articles 6 and 7 of the Covenant. In its general comment No. 6 (1982) on the right to life, the Committee discussed both negative and positive components of the right to life, namely, the right of a person not to be deprived of his life arbitrarily or unlawfully by the State or its agents and the obligation of the State party to adopt measures that are conducive to protecting life. Under the jurisprudence of the Committee, States parties are under an obligation not to extradite, deport, expel or otherwise remove a person from their territory where the necessary and foreseeable consequence of the deportation would be a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, whether in the country to which removal is to be effected or in any country to which the person may subsequently be removed. 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.<sup>25</sup> The obligations of the State party under articles 6 and 7 of the Covenant are reflected in sections 7 (1) and (2) of the Danish Aliens Act, according to which a residence permit will be issued to an alien if he or she risks the death penalty or being subjected to torture or ill-treatment if returned to his or her country of origin.

4.14 During the proceedings before the Danish immigration authorities, the author's statements on his grounds for asylum, namely, the sale of satellite dishes and his conversion to Christianity, have continuously been elaborated and altered fundamentally and considerably. The Refugee Appeals Board rejected his new statements as being non-credible and fabricated for the purpose of giving him a (fictitious) ground for asylum. Thus, in its decision of 16 January 2013, the Board was unable to find as a fact the author's statement that he had been persecuted prior to his departure from the Islamic Republic of Iran. The author only mentioned that he had experienced problems with the authorities after his detention at the police station to his assigned counsel immediately prior to the Board hearing of 16 January 2013 and, subsequently, during that hearing. In contrast, in both his asylum application and his statement to the Danish Immigration Service, he stated that he had had no problems with the authorities after his detention and during the time leading up to his departure. The author also made inconsistent statements regarding his passport and his departure from the Islamic Republic of Iran. The State party therefore agrees with the Refugee Appeals Board that the author has made elaborate and inconsistent statements about this part of his asylum ground, for which reason his statement cannot be accepted as a fact. The author presented no essential new information about his situation prior to his departure from the Islamic Republic of Iran during the proceedings before the Committee.

4.15 In its decision of 16 January 2013, the Refugee Appeals Board also considered that the conversion of the author was not genuine. According to the author's own statement, only his friend and possibly a couple of other persons in Denmark knew about it. The determination as to whether the activities of the author during his stay in Denmark derive from a genuine Christian persuasion depends, in particular, on the assessment of the author's statements about his religious persuasion compared with the other circumstances relied upon in the case. This approach is in line both with paragraph 95 of the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* and with paragraph 34 of the Office of the United Nations High Commissioner for Refugees (UNHCR) Guidelines on International Protection: Religion-based Refugee Claims under Article 1 A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, in which it is stated, inter alia, that "where individuals convert after their departure from the country of origin, this may have the effect of creating a *sur place* claim. In such situations, particular

<sup>24</sup> *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 8.5, and *X and X v. Denmark* (CCPR/C/112/D/2186/2012), para. 6.3.

<sup>25</sup> *A.A.I. and A.H.A. v. Denmark* (CCPR/C/116/D/2402/2014), para. 6.5, and *X v. Denmark*, para. 9.2.

credibility concerns tend to arise and a rigorous and in-depth examination of the circumstances and genuineness of the conversion will be necessary”.

4.16 Having explained the elements taken into account by the Danish Refugee Appeals Board when assessing whether a conversion should be deemed genuine,<sup>26</sup> the State party points to inconsistencies in the author’s statements. In the proceedings leading to the decision of the Danish Immigration Service, the author declared that he was of the Shia Muslim faith and did not raise any issues about this faith or his religious affiliation. In his asylum application form, the author replied in the negative to the question of whether religious circumstances had contributed to his departure from his country of origin. The brief prepared by the assigned counsel on 14 January 2013, namely, two days before the hearing at the Refugee Appeals Board, which was based on an interview with the author, did not mention anything about the author having developed an interest in or having converted to Christianity. On the contrary, when presenting his statement of claim, the counsel submitted that the author was of the Shia Muslim faith. It was only at the Board hearing that the author declared that he had abandoned Islam following his departure from the Islamic Republic of Iran.

4.17 In his request to reopen his case and in his communication to the Committee, the author further elaborated on his statements regarding his conversion and submitted further evidence. When refusing his request to reopen proceedings, the Board took into account all his new allegations that he had developed an interest in Christianity already in the Islamic Republic of Iran, but had been afraid to search for more knowledge about Christianity because doing so could be fatal; that he had not attended church services until five months after his entry into Denmark because he did not know the language or the location of the church; and that he had attended Bible classes for four months prior to his baptism on 16 December 2012.

4.18 The State party also draws the attention of the Committee to the fact that public debate in Denmark in general and among asylum seekers in particular has focused considerably on the significance of conversion, typically from Islam to Christianity, to the outcome of an asylum case. It is therefore common knowledge among asylum seekers and other parties within the field of asylum that information on conversion is a ground for asylum. In paragraph 36 of the above-mentioned UNHCR Guidelines on International Protection, it is stated, *inter alia*, that “so-called ‘self-serving’ activities do not create a well-founded fear of persecution on a Convention ground in the claimant’s country of origin, if the opportunistic nature of such activities will be apparent to all, including the authorities there, and serious adverse consequences would not result if the person were returned”.

4.19 As to the claim by the author that there is a significant risk that the Iranian authorities will become aware of his conversion if he enters the Islamic Republic of Iran without a passport and is subjected to interrogation in that connection, given that the genuineness of the author’s conversion to Christianity cannot be accepted as a fact, there is no risk that the Iranian authorities will become aware of it when the author enters the Islamic Republic of Iran.

4.20 As to the documents submitted to the Refugee Appeals Board and to the Committee, in its decisions of 16 January 2013 and 25 November 2014, the Board examined three of the four documents that the author has submitted to the Committee<sup>27</sup> and three documents that were not submitted to the Committee. The two documents submitted by the author to

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<sup>26</sup> The Danish Refugee Appeals Board makes an overall assessment of the circumstances of each asylum case in which an asylum seeker claims to have converted, such as the moment of the conversion, including whether the person has previously shown an interest in converting, and the asylum seeker’s knowledge and understanding of the basic tenets, historical events and key figures of significance for the new belief (festivals, creeds, essential scriptures). Other elements include the external manifestation of the new faith (baptism, participation in church services or other activities, including classes and missionary work, declarations in the media) and the question of whether the asylum seeker has adhered to the new faith in a permanent and regular manner.

<sup>27</sup> The Refugee Appeals Board did not consider the notice to appear dated 6 May 2013, but considered three other, essentially identical, notices to appear addressed to the author.



the Committee on 16 October 2014 as additional information were thus taken into account when the Refugee Appeals Board refused to reopen proceedings.

4.21 As to the documents related to the sale of satellite dishes by the author, given that the author's statement regarding his conflict prior to his departure from the Islamic Republic of Iran must be set aside as non-credible, it cannot be accepted as a fact that attempts were made to prosecute the author in that connection. Those documents must therefore be regarded as having been fabricated for the occasion. The State party also draws the attention of the Committee to the fact that the author has submitted two conflicting convictions regarding the same matter, namely, the sale of satellite dishes.<sup>28</sup> Furthermore, it is odd that the author submitted the conviction from July 2013 only after he brought his case before the Committee on 4 July 2014. During an entire year, the author did not find any reason to request that the Refugee Appeals Board reopen his asylum case based on the conviction and the sentence pronounced in July 2013. The author has not provided a reasonable explanation for this.

4.22 In conclusion, when rendering its decision, the Danish Refugee Appeals Board took into account all relevant information. The present communication to the Committee has not brought to light any new information substantiating that the author will risk persecution or asylum-relevant abuse upon his return to Iran. During domestic proceedings, the author had the opportunity to present his views, both in writing and orally, with the assistance of a legal counsel, and the Board conducted a comprehensive and thorough examination of the evidence in the case. In its refusal to reopen the author's asylum case, the Refugee Appeals Board took into account the additional information that the author has submitted to the Committee. The author has failed to identify any irregularity in the decision-making process or any risk factors that the Board failed to take properly into account. He 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. However, the Committee must give considerable weight to the findings of facts made by the Refugee Appeals Board, which is better placed to assess the factual circumstances in the author's case. There is no basis for doubting, let alone setting aside, the assessments made by the Refugee Appeals Board, according to which the author has failed to establish that there are substantial grounds for believing that he would be at risk of being subjected to persecution or asylum-relevant abuse if he is returned to the Islamic Republic of Iran. Against this background, the return of the author to the Islamic Republic of Iran would not constitute a violation of articles 6 or 7 of the Covenant.

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

5.1 In his comments of 4 February 2016,<sup>29</sup> the author raises a violation of articles 7 and 13 of the Covenant. In the Islamic Republic of Iran, under sharia law, it is a crime to leave Islam, hence he fears persecution on return.

5.2 Under article 13 of the Covenant, as part of a fair trial, any person should have the right to appeal on matters concerning life and death. Yet, the conversion of the author was never examined by the Danish Immigration Service; thus, the decision of the Refugee Appeals Board of 16 January 2013 on his conversion was not a decision pronounced in appeal. On the contrary, the Board was the first, and also the last, Danish administrative authority to examine whether his conversion was genuine.

5.3 The decision of the Board of 16 January 2013 is also manifestly unreasonable and arbitrary. It is arbitrary in the sense of differential treatment. The author was baptised after the decision of the Danish Immigration Service, but before the decision of the Board. He

<sup>28</sup> As also appears from the decision made by the Refugee Appeals Board on 25 November 2014.

<sup>29</sup> The author attached a letter issued by the International Christian Centre in Copenhagen on 9 January 2016, in which it is attested that the author had participated in biblical classes since January 2013 (and since mid-2015, on a weekly basis). On 8 February 2016, the author provided another letter issued by a pastor of the Apostle Church on 7 February 2016, in which it is confirmed that the author has been part of the community since 2013, but that since 2014, he has been "a regular part of the church service and the community". The two letters also attest to the author's participation in three summer camps at a Lutheran Mission College, in 2013, 2014 and 2015.

was thus treated differently from persons who were baptised before the decision of the Immigration Service and who would thus have a right to appeal. He was also treated differently from Iranians who were baptised after the decision of the Board and thus sought to have their case reopened on the basis of their new *sur place* motive. This differential treatment is neither justified nor reasonable, because it was only after the decision of the Immigration Service that the author met Christians and decided to convert.

5.4 Lastly, while the decision of 16 January 2013 was made by the five members of the Refugee Appeals Board, the decision of 25 November 2014 was not made by the five members of the Board, but was signed by a person who was part of the Board's legal staff and most likely was approved by the chairperson of the Board. Therefore, it was not the Board as such that made the decision to reject the author's request to reopen his asylum case. The author should have benefited from a new oral hearing before the Danish Immigration Service, which would have allowed him to explain his new *sur place* motive and then have access to the Refugee Appeals Board as the second instance which would have taken a decision on the matter.

#### **Additional submission from the State party**

6.1 On 14 July 2016, the State party provided further observations to the Committee, referring to its observations of 5 January 2015. As to the examination by the Danish authorities of the author's application for asylum, the State party first observes that article 13 of the Covenant offers some of the protection afforded under article 14 of the Covenant, but not the right to appeal.<sup>30</sup> However, article 13 does not confer a right to a court hearing. Thus, in *Maroufidou v. Sweden*, the Committee did not dispute that a mere administrative "review" of the expulsion order in question was compatible with article 13.<sup>31</sup>

6.2 The power to decide on the reopening of an asylum case is vested in the chairman of the panel that originally decided the appeal when, according to the contents of the request for reopening, there is no reason to assume that the Refugee Appeals Board will change its decision.<sup>32</sup> The chairman is a judge. The Secretariat of the Refugee Appeals Board assists the Executive Committee in drafting decisions, which become final when endorsed by the chairman of the Board. Subsequently, the decision is signed by an employee of the Secretariat and delivered to the asylum seeker. Accordingly, both formally and in practice, decisions on reopening requests are made by the chairman of the relevant panel. The circumstance that a decision is signed by an employee of the Secretariat does not alter this fact. The legislation on the consideration of requests for the reopening of asylum cases is thus clear and leaves no doubt about the competence of the Refugee Appeals Board. There is no basis for claiming that decisions denying requests for reopening are made by the Secretariat of the Refugee Appeals Board. Therefore, the author has failed to establish a *prima facie* case for the purpose of admissibility of his communication under article 13 of the Covenant, given that it has not been sufficiently established that there are substantial grounds for believing that his rights under that article have been violated. This part of the communication should therefore be considered inadmissible as manifestly unfounded.

6.3 As to the alleged conversion by the author to Christianity, in its decisions of 16 January 2013 and 25 November 2014, the Refugee Appeals Board could not consider as a fact that the author's conversion was genuine. The Board found that the conversion reflected grounds for asylum that had been fabricated for the occasion. The circumstance that an asylum seeker has been baptised and has participated in various religious activities does not independently render it probable that such person has in actual fact converted. The Refugee Appeals Board makes an overall assessment of all the circumstances of a case when a person claims to have converted.<sup>33</sup> The statements made by church members in their

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<sup>30</sup> *X and X v. Denmark*, para. 6.3.

<sup>31</sup> *Maroufidou v. Sweden* (CCPR/C/12/D/58/1979).

<sup>32</sup> Section 53 (12) of the Danish Aliens Act and rule 48 of the Rules of Procedure of the Refugee Appeals Board.

<sup>33</sup> Including the asylum seeker's educational background, knowledge of Christianity, motives for the conversion, considerations of the consequences of converting and participation in religious activities, as well as the asylum seeker's general credibility and the entire process preceding the conversion.

letters of support cannot lead to a different assessment of the case. There is still no evidence confirming the author's statement in his communication to the Committee that he began to participate regularly in church services and lessons in Christianity five months after his entry into Denmark or that he participated in four months of Bible classes prior to his baptism.

6.4 The Danish Refugee Appeals Board has granted asylum in many cases in which it accepted that the conversion was genuine and that the person would practice the new faith upon return in the country of origin, being thus at such a risk of persecution that could justify asylum. The Board has also reopened other cases when new information has come to light after the initial Board hearing.

### **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 93 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 effective domestic remedies available to him. In the absence of any objection by the State party in that connection, the Committee considers that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

7.4 The Committee notes that the author invokes article 6 of the Covenant without advancing any arguments to support this claim. Therefore, the Committee considers that this part of the communication is insufficiently substantiated for the purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

7.5 The Committee takes notes of the author's claims under article 14 of the Covenant. In that regard, the Committee refers to its jurisprudence that proceedings relating to the expulsion of aliens do not fall within the ambit of a determination of "rights and obligations in a suit at law" within the meaning of article 14, but are governed by article 13 of the Covenant.<sup>34</sup> Article 13 offers some of the protection afforded under article 14 of the Covenant, but does not itself protect the right of appeal to judicial courts.<sup>35</sup> The Committee considers that the claim under article 14 is therefore insufficiently substantiated for the purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.<sup>36</sup>

7.6 The Committee further notes the author's claim that the decision by the Danish Refugee Appeals Board not to reopen proceedings violated his rights under articles 7 and 13 of the Covenant because the decision was adopted by the chairperson of the panel that considered the appeal, who is a member of the Secretariat, and without granting the author either a hearing or a right to appeal. However, the Committee considers that the author has failed to justify how this in itself affected his rights under the relevant provisions. Therefore, the Committee considers that this claim is insufficiently substantiated for the purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

7.7 Lastly, the Committee notes the State party's challenge to admissibility on the grounds that the author's claim under article 7 of the Covenant and on the basis of an

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Statements from persons who have met the asylum seeker in a church context are also included in the analysis. See *X v. Norway* (CCPR/C/115/D/2474/2014), para. 7.6.

<sup>34</sup> *P.K. v. Canada* (CCPR/C/89/D/1234/2003), paras. 7.4–7.5.

<sup>35</sup> *Omo-Amenaghawon v. Denmark* (CCPR/C/114/D/2288/2013), para. 6.4; and the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 17 and 62.

<sup>36</sup> *K.H. v. Denmark* (CCPR/C/123/D/2423/2014), para. 7.5.

alleged risk to his integrity is unsubstantiated. However, the Committee considers that, for the purposes of admissibility, the author has adequately explained the reasons why he fears that his forcible return to the Islamic Republic of Iran would result in a risk of treatment contrary to article 7 of the Covenant owing to his conversion to Christianity. Therefore, the Committee declares the communication admissible insofar as it raises issues under article 7 and proceeds to its consideration of the merits.

#### *Consideration of the merits*

8.1 The 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.

8.2 The Committee notes the author's claim that returning him to the Islamic Republic of Iran would expose him to a risk of irreparable harm, in violation of article 7 of the Covenant. He alleged that he would face persecution by the Iranian authorities because he had converted from Islam to Christianity.

8.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which 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 by articles 6 and 7 of the Covenant (para. 12). The Committee has also indicated that the risk must be personal<sup>37</sup> and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>38</sup> Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>39</sup> The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists,<sup>40</sup> unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>41</sup>

8.4 The Committee notes the finding of the Danish Refugee Appeals Board that the author failed to substantiate that he would be at risk of persecution or abuse by the Iranian authorities as a result of his conversion, of the alleged judgments issued in absentia by the Iranian courts, of his participation in demonstrations in Denmark and of the fact that he does not hold a valid Iranian passport. The Committee also notes that the Refugee Appeals Board found that the author had failed to substantiate that his conversion was genuine, despite the existence of a certificate of baptism and letters of support. In this connection, the Committee observes the inconsistencies found by the Board in the author's statements.

8.5 In this regard, the Committee considers that when an asylum seeker submits that he or she has converted to another religion after his or her initial asylum request has been dismissed in the country of asylum, it may be reasonable for the States parties to conduct an in-depth examination of the circumstances of the conversion.<sup>42</sup> However, the test for the Committee remains whether, regardless of the sincerity of the conversion, there are substantial grounds for believing that such conversion may have serious adverse consequences in the country of origin so as to create a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant. Therefore, even when it is found that the reported conversion is not sincere, the authorities should proceed to assess whether, in

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<sup>37</sup> *K. v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3; *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2; and *X v. Denmark*, para. 9.2.

<sup>38</sup> *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

<sup>39</sup> *Ibid.* See also *X v. Denmark*, para. 9.2.

<sup>40</sup> *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4; and *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

<sup>41</sup> See, for example, *K. v. Denmark*, para. 7.4.

<sup>42</sup> Office of the United Nations High Commissioner for Refugees, "Guidelines on International Protection: Religion-based Refugee Claims under Article 1 A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees", para. 34. Available at [www.unhcr.org/afr/40d8427a4.pdf](http://www.unhcr.org/afr/40d8427a4.pdf).

the circumstances of the case, the behaviour and activities of the asylum seeker in connection with, or to justify, his or her conversion, such as attending a church, being baptised or participating in proselytizing activities, could have serious adverse consequences in the country of origin so as to put him or her at risk of irreparable harm.<sup>43</sup>

8.6 In the present case, the Committee observes that it is uncontested that the author was baptised on 16 December 2012 and participates in church activities. However, the Board observed that he had almost no knowledge of the Christian faith. The Board also considered that the author had failed to establish that his conversion was genuine, on the basis of his general credibility and of inconsistencies in his statements about the moment when he decided to become a Christian and about his involvement in church activities. The Board also took note of the author's statement that only his friend and possibly a couple of other persons in Denmark knew about his conversion. Thus, the State party considers that there is no risk that the Iranian authorities will become aware of the author's conversion if he enters the Islamic Republic of Iran without a valid passport because his conversion is not genuine.

8.7 With respect to the other allegations brought by the author, the Committee observes that the Danish authorities have analysed the summonses and the judgments allegedly handed down by the Iranian courts and expressed reservations as to their authenticity, considering that the convictions alleged by the author had been fabricated. The Danish authorities have equally analysed the photos uploaded by the author on his Facebook account and the photos taken during his participation in some demonstrations in front of the Iranian Embassy in Copenhagen, but considered that the author had failed to demonstrate that he had become a person of interest for the Iranian authorities following those actions and events.

8.8 The Committee further notes that, although the author contests the assessment and findings of the Danish authorities as to the risk of harm he faces in the Islamic Republic of Iran, he has not presented any evidence to substantiate his allegations under article 7 of the Covenant. The Committee also considers that the information at its disposal demonstrates that the State party took into account all the elements available when evaluating the risk faced by the author and that the author has not identified any irregularity in the decision-making process. The Committee further considers that, while the author disagrees with the factual conclusions of the State party authorities and with their decision not to reopen his case, he has not shown that the decision of 25 November 2014 was arbitrary or manifestly erroneous or that it amounted to a denial of justice. Consequently, the Committee considers that the evidence and circumstances invoked by the author have not adduced sufficient grounds for demonstrating that he would run a real and personal risk of being subjected to treatment contrary to article 7 of the Covenant. In view thereof, the Committee is not able to conclude that the information before it shows that the author's rights under article 7 of the Covenant would be violated if he were removed to the Islamic Republic of Iran.

9. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not permit it to conclude that the author's expulsion to the Islamic Republic of Iran would, if implemented, violate his rights under article 7 of the Covenant.

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<sup>43</sup> *S.A.H. v. Denmark* (CCPR/C/121/D/2419/2014), para. 11.8.