



# International Covenant on Civil and Political Rights

Distr.: General  
14 August 2019

Original: English

## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2346/2014\*, \*\*

<i>Communication submitted by:</i>	E.K. (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	7 February 2014 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 11 February 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	24 July 2019
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Procedural issue:</i>	Insufficient substantiation of claims
<i>Substantive issues:</i>	Right to life; torture, cruel, inhuman or degrading treatment or punishment; non-refoulement; protection of aliens against arbitrary expulsion; right to a fair and public hearing by a competent, independent and impartial tribunal; right to freedom of religion or belief; right to the equal protection of the law
<i>Articles of the Covenant:</i>	6, 7, 13, 14, 18 and 26
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is E.K., an Afghan national born in 1992.<sup>1</sup> His request for asylum in Denmark was rejected and at the time of submission of the communication, he was in detention awaiting deportation to Afghanistan. At that time, the author claimed that, by forcibly returning him to Afghanistan, Denmark would violate his rights under articles 6, 7, 14, 18 and 26 of the Covenant. In the subsequent submission of 9 February 2016, the Committee was informed that the author was claiming a violation of

\* Adopted by the Committee at its 126th session (1–26 July 2019).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Bamariam Koita, 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> The author's nationality and year of birth have been contested at different stages of the asylum proceedings in Denmark.



article 13 instead of article 14 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The author is represented by counsel.

1.2 When submitting the communication, on 7 February 2014, the author requested that, pursuant to rule 94 of its rules of procedure, the Committee requested the State party to refrain from returning him to Afghanistan while his case was being considered by the Committee. On 11 February 2014, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to accede to the request. On 18 March 2014, counsel informed the Committee that on 17 March 2014 the author was forcibly returned to Afghanistan.

### **Factual background<sup>2</sup>**

2.1 The author entered Denmark on 15 September 2011 without any valid travel documents and applied for asylum on the same day. According to an asylum registration report of 21 September 2011, the author was registered in Denmark under the name of E.K. and as being born on 30 June 1992 in the Islamic Republic of Iran. The author argued, however, that he was born in Iran on 30 June 1996 and that he had had a blue card indicating he was an Afghan in the Islamic Republic of Iran. However, he contended that he had never been to Afghanistan and had never been issued with any documents from Afghanistan. The blue card had been revoked by the Iranian authorities in or around 2008, as an Iranian policy towards Afghans. After this revocation, the author and his family had stayed illegally in the Islamic Republic of Iran. His father had been returned to Afghanistan three and a half years earlier and the author had not seen him since and, according to what had been told by acquaintances, his father had died. In view of the poor economic situation of the author's family in the Islamic Republic of Iran, when told about conditions in Denmark, the author decided to go there. This had happened at the same time as the author had been falsely accused of having killed another man. Although he had not been subjected to arrest, imprisonment or house searches, the author feared being unjustly imprisoned in the Islamic Republic of Iran. In addition, the author had stayed illegally in the Islamic Republic of Iran and wanted a better life.

2.2 On 7 November 2011, the Danish Immigration Service decided on the basis of an assessment of the author's age made on 5 October 2011 that he would be registered as having been born on 30 June 1992 and accordingly not be considered an unaccompanied minor.

2.3 In his asylum application form of 23 September 2011, the author had stated that his name was E.K. and that he was born on 30 June 1996 in the Islamic Republic of Iran. He was an ethnic Hazara of the Shia Muslim faith. He had gone to school for five years and had worked as a tailor's apprentice in Tehran. Concerning his grounds for seeking asylum, the author stated that he was born and raised in the Islamic Republic of Iran. His father had been deported to Afghanistan due to his lack of documents. The author had subsequently been told by some friends that his father had been killed by the Taliban. One day a fight had broken out at the author's workplace in the Islamic Republic of Iran and one of his colleagues had stabbed another colleague with a knife. The family of the person killed had blamed the author for having organized the killing. They had come to the author's home and had attacked his mother. The police had also come to the author's home twice. The author said that he feared being deported to Afghanistan, as he did not want to suffer a similar fate to his father and as Afghanistan was at war, violence and killings occurred every day. The Taliban had killed the author's father, who had had no conflicts or problems with anyone in the Islamic Republic of Iran or Afghanistan.

2.4 The author stated during the interview conducted by the Danish Immigration Service on 12 December 2011 regarding his grounds for seeking asylum, inter alia, that his father was killed in Afghanistan after his deportation between two to three and a half years ago, when the Iranian authorities had refused to renew his residence card. The author was not

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<sup>2</sup> The facts on which the present communication is based have been reconstructed on the basis of the author's own incomplete account, the decisions of the Refugee Appeals Board of 6 February 2013 and 6 February 2014 and other supporting documents available on file.

aware of the conflicts that led his father to flee Afghanistan. He assumed that his father had been killed by the Taliban because they were responsible for many incidents in Afghanistan. The author could not go to Afghanistan, because the country was at war and because his father had been killed.

2.5 The author further stated that he had applied for asylum in Denmark because of a conflict that had emerged in the Islamic Republic of Iran and because one of his friends had told him to go to Denmark. The conflict had emerged about four months before the author's departure from the Islamic Republic of Iran when one of his colleagues had been stabbed to death with a knife during a lunch break in which the author was the only person at the workplace. The police and the victim's family had come to the author's home because they believed that he had killed his colleague. The author stated on that occasion that he did not fear being deported to Afghanistan, but he feared being arrested, imprisoned and executed in the Islamic Republic of Iran.

2.6 On 29 October 2012, the Danish Immigration Service rejected the author's asylum application pursuant to section 7 of the Danish Aliens Act.

2.7 At the Refugee Appeals Board hearing on 6 February 2013, the author stated that he had discovered the dead body of a colleague who had been killed at his workplace in the Islamic Republic of Iran. The author's employer had turned up and had called the police. Two hours later, the police had come to the author's home with an arrest warrant. The author's family had then decided that he should leave the country.

2.8 The author also stated that his father had been deported from the Islamic Republic of Iran to Afghanistan by the Iranian authorities four years earlier. Following his deportation, the author's father had lived in Afghanistan for two and a half to three months. The author also stated that he had had contact with his paternal uncle in the Islamic Republic of Iran a few months previously, who told him that the author's father had been killed by a stepbrother because of an inheritance dispute. The author stated that he feared that he would be in danger in Afghanistan, because his father was killed despite having lived in hiding. According to the author, the person who had killed his father would feel in danger if the author travelled to Afghanistan and would therefore also kill him.

2.9 On 6 February 2013, the Refugee Appeals Board upheld the refusal of the Danish Immigration Service to grant asylum. The Board established that the author was an ethnic Hazara, a Shia Muslim and an Afghan national. He was born and raised in the Islamic Republic of Iran and he was not a member of any political or religious association or organization, nor was he politically active in any other way. The Board found that it could not accept the author's statements as facts. In that connection, the Board took into account that the author had given inconsistent and elaborate statements on his main grounds for seeking asylum. The Board concluded therefore that the author's statements appeared to have been fabricated for the occasion in their entirety. For that reason, the Board found that the author had failed to substantiate his claim that he would be at specific and individual risk of persecution or abuse falling within section 7 of the Aliens Act in the event of his removal to Afghanistan.

2.10 By letter of 11 December 2013, the Danish Refugee Council requested the Refugee Appeals Board to reopen the author's asylum proceedings, referring to his conversion to Christianity after the Board's decision of 6 February 2013 and to the documentation produced by the author which showed that he was an Iranian national. According to the Council, the author had stated when interviewed by them on 10 December 2013 that he had grown up in a Muslim family and culture without meeting any Christians. He had first read the Bible during his stay in Greece when he had met some friends who went to church, and he felt that Christians acted according to what was written in the Bible, whereas Muslims did not behave according to what was written in the Koran. He had therefore decided to convert to Christianity. The author had started attending services at the free evangelical Kronborgvejens Church Centre in June 2013 and he had been baptized in that church on 13 October 2013. The author added that he now went to church every Sunday, that he prayed alone or with friends and that he read the Bible in Farsi twice a week. The author explained that he feared being killed upon his return to the Islamic Republic of Iran or if he travelled to Afghanistan because he had converted to Christianity. He had not therefore told his

family about his conversion and had told only a few friends. The author's conversion is rumoured among Muslims and he and his friend<sup>3</sup> had experienced religious harassment at the asylum centre and had been called infidels by other asylum seekers.

2.11 A certificate of baptism issued by the Kronborgvejens Church Centre was enclosed with the request to reopen the author's asylum proceedings, as well as a document allegedly proving that the author was an Iranian national. The Danish Refugee Council further submitted that, in its opinion, the author met the conditions for being granted a residence permit under section 7 (1) of the Aliens Act. In that respect, the Council referred to the previous decisions of the Refugee Appeals Board in cases concerning Christian converts from Afghanistan, stating that, although it had not yet been established at that time whether the Afghan or Iranian authorities had learned about the author's conversion, it could not be ruled out that there was a risk that they would learn about the author's conversion if he was deported to Afghanistan or the Islamic Republic of Iran. According to the Council, it would be difficult for the author, having converted to Christianity, to conceal his new affiliation if he was removed to either country. Moreover, because he would be returning from a European country, his behaviour would attract more attention among the local population, so that even the smallest non-compliance with religious norms and principles would leave the author in a particularly vulnerable situation. The Council additionally submitted that, according to previous decisions made by the Board in cases involving Christian converts, the author could not be required to hide his religious beliefs to avoid problems in his country of origin.

2.12 The Refugee Appeals Board had a translation made of the document enclosed with the Council's letter of 11 December 2013. It appeared from the translation that it was an identity certificate issued by the National Population Register of the Islamic Republic of Iran concerning E.H., born on 30 June 1996 in Tehran. The parents were Y. and K., both Afghan nationals. It also appeared that this birth certificate had allegedly been issued on 9 July 1996. The Board requested the Council by email of 9 January 2014 to submit any comments on the translation of the document. By email of 16 January 2014, the Council stated that the author had mentioned that H., the surname written in the document, was the family name of his mother's new husband, but that he had been registered in Denmark with the name of K., which was his father's surname.

2.13 By email of 30 January 2014, the Danish Refugee Council forwarded additional material to the Refugee Appeals Board in the form of a memorandum, dated 5 December 2013, written by a minister of the Kronborgvejens Church Centre, which stated that the author had regularly attended church services and that he had been coming to this church since 6 January 2013.

2.14 On 6 February 2014, the author was notified that the request to reopen the asylum proceedings had been refused. The Refugee Appeals Board referred to section 40 (1) of the Aliens Act, pursuant to which an asylum seeker must provide the information necessary to assess whether a residence permit could be granted pursuant to the Act. Hence, an alien who applied for a residence permit under section 7 of the Aliens Act must substantiate his identity and the grounds for asylum invoked by the alien. The Board also observed that the author had not provided any explanation as to why he now stated that he was an Iranian national, whereas he had previously stated during the asylum proceedings that he was an Afghan national. As regards the documents produced by the author in connection with the request to reopen the case, the Board observed that in view of their form and contents and the time of their production they seemed fabricated for the occasion and the Board could therefore not attach any evidential weight to those documents. It also observed that the documents did not appear to provide any information substantiating the claim that the person referred to in the documents was an Iranian national. Moreover, the relevant person was called E.H. not E.K. On those grounds, the Board still considered it a fact that the author was an Afghan national.

2.15 The Refugee Appeals Board also found that, in the event of his removal to Afghanistan, the author would not be at any risk of persecution falling within section 7 (1)

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<sup>3</sup> The name of the friend is available on file.

of the Aliens Act owing to his conversion, because the Board could not accept as a fact that the author's conversion was genuine. The Board observed in that respect that, during the original asylum proceedings, the author had not mentioned to the police, the Danish Immigration Service, his legal counsel or the Board his interest in Christianity, which had arisen during his stay in Greece prior to his entry into Denmark, according to the request to reopen the case. It was observed in that respect that, according to the memorandum of 5 December 2013, the author had started coming to the Kronborgvejens Church Centre on 6 January 2013. In its assessment of the information on the author's conversion, the Board also took into account, as appears from the reasoning of its decision of 6 February 2013, that the author had given elaborate and inconsistent statements concerning his grounds for seeking asylum and he had also provided new information on his nationality in his request to reopen the case. Against that background, the Board found that the author would not be at risk of persecution justifying asylum in the event of his removal to Afghanistan.

2.16 On an unspecified date, the author submitted a new request to the Board to reopen his asylum proceeding. He had appended a memorandum prepared by a prison minister, which stated that the author had been threatened at the Ellebæk Institution for detained asylum seekers and referred to a notice of 8 November 2013 which had apparently been posted at the website [www.asylret.dk](http://www.asylret.dk). The author had stated in this respect that he feared being contacted or assaulted by one or more of the Muslim Afghans forcibly returned after their stay at the Ellebæk Institution, because it was contrary to sharia law to leave Islam. In that respect, the author feared both private individuals from whom the authorities would not protect him and persecution by the authorities because he had violated sharia law.

2.17 On 14 March 2014, the author was notified that his request to reopen the asylum proceedings had been refused. The Refugee Appeals Board stated, inter alia, that for the reasons explained in its decision of 6 February 2014, it could still not accept as a fact that the author's conversion from Islam to Christianity was genuine. Moreover, the Board could not accept as a fact the information provided by the author that he had allegedly been threatened by other asylum seekers who had already been or, like the author, were about to be returned from Denmark, because the information seemed fabricated for the occasion. The Board emphasized in particular that the information had been provided immediately before a scheduled deportation after the Board had notified the author on 6 February 2014 of its refusal to reopen the case. Accordingly, and since the observations regarding the Board's previous decisions in cases involving asylum seekers who had converted from Islam to Christianity could not lead to a different outcome, the Board found that the author had not substantiated his claim that he would risk persecution justifying asylum under section 7 (1) of the Aliens Act or risk the death penalty or being subjected to torture or inhuman or degrading treatment or punishment under section 7 (2) if he was deported to Afghanistan.

### **The complaint**

3.1 The author claims that his deportation from Denmark to Afghanistan would constitute a violation of his rights under articles 6, 7, 14, 18 and 26 of the Covenant. In that connection, the author submits, inter alia, that he did not mention anything about his Christian faith during the original asylum proceedings because he was not a Christian at that time. His asylum proceedings should therefore have been reopened by the Refugee Appeals Board, because new and relevant information had been produced in the form of a certificate of baptism showing that he had converted to Christianity and a document proving that he was an Iranian national.

3.2 In support of his submission, the author refers to the *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, published by the Office of the United Nations High Commissioner for Refugees (UNHCR) on 6 August 2013, according to which individuals with, inter alia, the following profiles may be in need of international protection: individuals associated with, or perceived as supportive of, the Government of Afghanistan and the international community, including the international military forces; men and boys of fighting age; individuals perceived as contravening the Taliban's interpretation of Islamic principles, norms and values; and members of (minority) ethnic groups. The author explains that owing to his travel to Europe,

if he were deported to Afghanistan he would certainly be perceived as having contravened Islamic rules and as being supportive of the Government and/or the international community. Moreover, the author has converted to Christianity. He further claims that, given his age, he risks being forced to fight for either the Government or the Taliban and that he also risks being sexually abused.<sup>4</sup> The author adds that he cannot seek protection from his family and that he belongs to an ethnic minority group of Hazaras. In the light of the foregoing, the author submits that he risks being persecuted and killed like his father.

3.3 The author also claims that, pursuant to the UNHCR *Eligibility Guidelines* and contrary to the assessment by the Refugee Appeals Board in its decisions of 6 February 2013 and 6 February 2014, he needs international protection. Furthermore, the *Guidelines* make it clear that numerous factors should be taken into account in the evaluation of the availability of internal flight or relocation alternatives in Afghanistan. In that connection, the author submits that the Board's failure to take those factors into consideration in taking its decisions of 6 February 2013 and 6 February 2014 and in maintaining the initial order, obliging the author to leave Denmark, constitutes a violation of articles 6 and 7 of the Covenant.

3.4 The author also submits that his rights under article 14 of the Covenant have been violated, since a decision on his asylum application taken by the Board under the administrative procedure could not be appealed to a judicial body (see CERD/C/DEN/CO/17, para. 13). For him, this also raises the question of discrimination under article 26 of the Covenant, since under the State party's law, decisions of a great number of administrative boards that have the same composition as the Refugee Appeals Board, can be appealed before the ordinary courts. The author also argues that his new *sur place* grounds for being granted asylum, namely his conversion to Christianity while in Denmark, was only examined and dismissed by a person who was part of the Board secretariat, with the approval of the Chair of the Board. It was not therefore the Board as such that made the decision to reject the Danish Refugee Council's request to reopen his asylum proceedings.

3.5 In his subsequent submission of 9 February 2016, counsel informed the Committee that the author was claiming a violation of article 13 instead of article 14 of the Covenant. He argued, in particular, that the author's risk of persecution and suffering of irreparable harm upon if he was removed to Afghanistan had not been assessed in accordance with the procedural guarantees of this article, since he was unable to appeal the Board's decisions to a judicial body.

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

4.1 On 11 August 2014, the State party submitted that the communication should be declared inadmissible. Should the Committee declare the communication admissible, the State party submits that no provisions of the Covenant would be violated if the author were deported to Afghanistan.

4.2 The State party describes the structure, composition and functioning of the Refugee Appeals Board, which it considers to be an independent and quasi-judicial body,<sup>5</sup> and the legal basis of its decisions.<sup>6</sup>

4.3 As to the admissibility of the communication, the State party argues that the author has failed to establish a *prima facie* case for the purpose of admissibility with respect to the alleged violation of articles 6 and 7 of the Covenant, since it has not been established that there are substantial grounds for believing that he would be in danger of being deprived of his life or subjected to torture or to cruel, inhuman or degrading treatment or punishment if he was removed to Afghanistan. This part of the communication is therefore manifestly ill-founded and should be declared inadmissible.

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<sup>4</sup> No further details provided by the author.

<sup>5</sup> See *Ahmed et al. v. Denmark* (CCPR/C/117/D/2379/2014), paras. 4.1–4.3.

<sup>6</sup> Aliens Act, sections 7 (1)–(2) and 31 (1)–(2).

4.4 The State party recalls that article 14 of the Covenant lays down the principle of due process, including the right to have access to the courts in the determination of a person's rights and obligations in a suit at law. It follows from the Committee's jurisprudence 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 governed by article 13 of the Covenant.<sup>7</sup> Against that background, the State party submits that asylum proceedings fall outside the scope of article 14 of the Covenant, and that this part of the communication should therefore be considered inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol.

4.5 The State party further submits that it follows from section 48 of the rules of procedure of the Refugee Appeals Board that the chair of the individual board, a legal judge, will decide on the matter of reopening of an asylum case when, according to the contents of the request for reopening, there is no reason to assume that the Board will change its decision.<sup>8</sup> Accordingly, it was the Chair of the Board that first heard the case who approved the relevant decision and not the staff member who formally signed it. Against that background, the State party rejects the author's claim that article 14 of the Covenant was violated when his request for reopening the asylum proceedings was examined.

4.6 The State party further submits that the author has failed to establish a prima facie case for the purpose of admissibility of his claims under article 18 of the Covenant, because it has not been established that there are substantial grounds for believing that his rights in that regard have been violated. Thus, this part of the communication should be declared inadmissible.

4.7 The State party also observes that the author is seeking to apply the obligations under article 18 in an extraterritorial manner. In particular, he makes no allegations of violations of article 18 that are based on treatment that he has suffered in Denmark, or in an area where the Danish authorities are in effective control, or is due to the conduct of Danish authorities. The Committee accordingly lacks jurisdiction over the relevant violation in respect of Denmark and this part of the communication is thus also incompatible with the provisions of the Covenant. The State party submits that Denmark cannot be held responsible for violations of article 18 alleged to be committed by another State party outside the territory and jurisdiction of Denmark. It adds in this regard that the European Court of Human Rights has clearly stressed in its case law the exceptional character of extraterritorial protection of the rights contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>9</sup>

4.8 The State party recalls that, similarly the European Court of Human Rights, the Committee has found on a number of occasions that the deportation of persons by States parties to other States that would result in a foreseeable breach of their right to life or their freedom from torture would entail a violation of their Covenant rights. However, the Committee has never considered a complaint on its merits regarding the deportation of a person who feared violation of other provisions than articles 6 and 7 of the Covenant in the receiving State. In the State party's view, extraditing, deporting, expelling or otherwise removing a person who fears having his rights under, for example, article 18 of the Covenant violated by another State party will not cause such irreparable harm as that contemplated by articles 6 and 7 of the Covenant. For those reasons, the State party submits that this part of the communication should also be declared inadmissible *ratione loci* and *ratione materiae*, pursuant to rule 99 (d), read together with rule 99 (a) of the Committee's rules of procedure and article 2 of the Optional Protocol.

4.9 As to the author's claims under article 26 of the Covenant (see para. 3.4 above), the State party submits he has been treated no differently from any other person applying for

<sup>7</sup> *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 8.5.

<sup>8</sup> See Executive Order No. 1651 of 27 December 2013 on rules of procedure for the Refugee Appeals Board.

<sup>9</sup> See judgment of the European Court of Human Rights in *Soering v. the United Kingdom* (application No. 14038/88), 7 July 1989, para. 88. See also the decisions of the Court in *F v. the United Kingdom* (application No. 17341/03), 22 June 2004, and *Z and T v. the United Kingdom* (application No. 27034/05), 28 February 2006.

asylum in terms of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Since the author has not elaborated any further on the circumstances on which this part of the communication is based, the State party submits that the author has failed to establish a prima facie case for the purpose of admissibility with respect to the alleged violation of article 26 of the Covenant, because it has not been established that there are substantial grounds for believing that the author has been subjected to discrimination. This part of the communication should thus be declared inadmissible.

4.10 On the merits, the State party submits that, when making its decision on 6 February 2013, the Refugee Appeals Board took into account that the author had given inconsistent and elaborate statements about his main grounds for seeking asylum, which therefore appeared to have been fabricated for the occasion in its entirety. The Board therefore could not accept the author's statements as facts. In particular, in the course of the initial asylum proceedings, the author elaborated considerably on the information given for his otherwise very simple grounds for seeking asylum (see paras. 2.1, 2.3–2.5 and 2.8–2.9 above). The author also said when interviewed by the Danish Immigration Service that he feared being imprisoned in the Islamic Republic of Iran, but that he did not fear being removed to Afghanistan and that the conflict in the Islamic Republic of Iran related to the killing of his colleague was the reason why he had applied for asylum in Denmark. Furthermore, the author had only provided socioeconomic information that did not support his claim for asylum during the initial asylum proceedings, including that his family was poor in the Islamic Republic of Iran and that he wanted a better life.

4.11 As to the decision of the Refugee Appeals Board of 6 February 2014 not to open the author's asylum proceedings on the grounds of his conversion to Christianity, the State party recalls that pursuant to section 40 of the Aliens Act, asylum seekers must substantiate their grounds for seeking asylum (para. 2.14 above). Accordingly, the author should have disclosed his interest in Christianity and that he had started going to church one month before the hearing before the Board on 6 February 2013, at which the author gave oral evidence, aided by an interpreter and counsel. Furthermore, the author was asked about his religious affiliation several times in connection with the examination of his asylum application in Denmark and he stated that he was a Muslim. He was also told several times that it was important that he disclosed all matters that might be relevant for the determination of his asylum application.

4.12 Finally, the State party submits that it must be assumed to be common knowledge among Danish immigration lawyers, and asylum seekers in particular, that conversion from Islam to Christianity is a valid and relevant justification for seeking asylum. Against this background, the State party finds that it is not credible that the author has genuinely converted to Christianity. It refers moreover to the general lack of credibility as regards the other grounds cited by the author for claiming asylum.

4.13 The State party observes in addition that the author only disclosed to the Refugee Appeals Board that he had converted to Christianity in mid-December 2013 – at a point in time when his forced return was about to be effected. He made this choice despite the fact that religion played a significant role in his life according to his own information and despite the fact that he had been offered the opportunity to speak about his interest in Christianity and his dissociation with Islam at the oral hearing of the Board on 6 February 2013, but he chose not to do so.

4.14 As to the identity certificate issued by the National Population Register of the Islamic Republic of Iran, the Board observed that the author had stated during the entire asylum proceedings that he was an Afghan national and born to Afghan parents. For this reason and because it was produced at a late stage, no evidential weight could be attached to the identity certificate. For those reasons, the Board assessed that no findings of fact could be based on the identity certificate. In the State party's view, the author did not provide the Board with such information or sufficient grounds to substantiate his claim that he risked violation of his rights under article 6 or 7 of the Covenant if he were removed to Afghanistan.



4.15 As to the author's reference to the UNHCR *Eligibility Guidelines* (see para. 3.2 above), the State party submits that the fact that the author is a young man belonging to the ethnic minority group of Hazaras does not justify asylum as such. The State party observes in this respect that the author is an ethnic Hazara and that his father originally came from Behsud, bordering on Kabul province, in which ethnic Hazaras constitute 25 per cent of the population. Behsud also borders on an area in which the city of Bamian is the largest city and in which Hazara is the dominant ethnicity. Moreover, the author is a young unmarried male of working age with no health problems. He has never been to Afghanistan and has therefore never experienced any problems with the Afghan authorities. Accordingly, the author appears inconspicuous and the State party therefore finds that his removal to Afghanistan does not entail a specific and individual risk of violation of his rights under articles 6 and 7 of the Covenant by the authorities, the Taliban or others in Afghanistan.

4.16 Regarding the author's submission that the Refugee Appeals Board has failed to decide on the issue of an internal flight alternative (see para. 3.3 above), the State party observes that this issue is irrelevant, considering that the Board has found in its three decisions on the case – and continues to find – that the author would not be at a specific and individual risk of being subjected to persecution or abuse justifying asylum under section 7 (1) or (2) of the Aliens Act if he was removed to Afghanistan.

4.17 The State party submits that the Refugee Appeals Board, which is a collegiate body of a quasi-judicial nature, made its decision of 6 February 2013 based on a procedure during which the author had the opportunity to present his views, both in writing and orally, to the Board with the assistance of legal counsel. The Board has conducted a comprehensive and thorough examination of the evidence in the case. The State party recalls that the Committee has stated on several occasions that it is generally for the courts of States parties to evaluate the facts and evidence of a particular case, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice. The State party finds that the Board included all relevant information in its decisions and that the submission of the communication to the Committee has not brought to light any information substantiating the author's claim that he would risk persecution or abuse if he was removed to Afghanistan.

4.18 The State party recalls that the author is considered not to have given any reasons why article 18 of the Covenant is relied upon in this case (see para. 4.6 above). For that reason, the State party submits that the author has failed to establish that he has been deprived of his rights under article 18. Furthermore, the State party reiterates its position that Denmark cannot be held responsible for violations of article 18 alleged to be committed by another State party outside the territory and jurisdiction of Denmark (see paras. 4.7–4.8).

4.19 The State party also submits that the author has been treated no differently from any other person applying for asylum in terms of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (see para. 4.9 above). The author has thus not been subjected to treatment contrary to article 26 of the Covenant.

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

5.1 On 9 February 2016, the author's counsel informed the Committee that, despite the author's forcible removal to Afghanistan, he would continue to represent him before the Committee, since the power of attorney given to him remained in force. He also stated that the author was claiming a violation of article 13 instead of article 14 of the Covenant, in that the author was only allowed an administrative procedure to assess his grounds for being granted asylum and was denied access to the courts to appeal the Board's rejection of his request to reopen the asylum proceedings.

5.2 The author's counsel does not have any comments in relation to the assessment of the author's initial grounds for being granted asylum by the Danish Immigration Service and the Refugee Appeals Board.

5.3 The author's counsel recalls that the author's new *sur place* grounds for being granted asylum, his conversion to Christianity in Denmark, was only examined and

dismissed by a person who was a member of the legal staff of the Refugee Appeals Board, with the approval of the Chair of the Board. It was not therefore the Board as such that made the decision to reject the request to reopen the author's asylum proceedings. He argues in this connection that 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* grounds for being granted asylum and he would then have had access to the Board as the second instance to take a decision on the matter.<sup>10</sup> The lack of possibility for the author to prove in the framework of a new oral hearing before the Board that his conversion to Christianity was genuine, constitutes a separate violation of article 13 of the Covenant.

5.4 The author's counsel also argues that the lack of possibility for the author to appeal against the rejection of his new *sur place* grounds for being granted asylum also amounts to discrimination under article 26 of the Covenant. He submits, in particular, that in the entire Danish administrative system only new *sur place* grounds are examined by the Board as the first and only instance of the asylum proceeding and that the Board's negative decisions could only be appealed to the United Nations treaty bodies or to the European Court of Human Rights.

5.5 The author's counsel submits that the security situation in Afghanistan is extremely dangerous. He recalls in that regard the author's references to the UNHCR *Eligibility Guidelines* (see paras. 3.2–3.3). In addition, he refers to the interview with the Minister for Refugees and Repatriation of Afghanistan published on 21 February 2015.<sup>11</sup> In that interview, the Minister appealed to European countries to halt deportations to Afghanistan. The Minister specifically stated that they "should not deport anyone because we cannot take care of them here". He explained that memorandums of understanding signed by Afghanistan with some European countries in 2011 "clearly stated that those refugees who [were] coming from dangerous provinces [would] not be returned". According to the Minister, most of those currently being returned came from "very dangerous" provinces and could not go back to them. The Minister observed that the 7 million Afghans who were living in exile could not all be resettled in Kabul, which was considered to be safe by the deporting countries.

5.6 The author's counsel argues in that connection that so-called non-believers are persecuted even in Kabul. Furthermore, Afghans from unsafe areas can no longer expect to be resettled in Kabul owing to the great number of Afghan returnees taking up residence in that city. The author's life is therefore constantly in danger because of his conversion to Christianity and the decisions of the Danish asylum authorities not to reopen his asylum proceedings constitute a violation of articles 6 and 7 of the Covenant.

5.7 The counsel maintains that the author's claims under articles 6, 7, 13, 18 and 26 of the Covenant should be declared admissible because he did not receive a fair trial with regard to his conversion to Christianity and his fear of persecution due to his new *sur place* grounds for being granted asylum. Since the author could not appeal the decision of the Refugee Appeals Board of 6 February 2014 to any other body in Denmark, it constitutes a violation of articles 13 and 26 of the Covenant. Furthermore, the Board's decision of 6 February 2014, as such, has resulted in a violation of the author's rights under articles 6, 7 and 18 of the Covenant.

#### **State party's additional observations**

6.1 On 17 May 2016, the State party provided additional observations to the Committee and stated that the submission by the author's counsel of 9 February 2016 had not provided any essential new or specific information on the author's personal situation. The State party therefore generally refers to its observations of 11 August 2014.

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<sup>10</sup> According to the author's counsel, as of 12 January 2012, the Danish Immigration Service is precluded from receiving requests for reopening asylum proceedings after a decision is taken by the Refugee Appeals Board.

<sup>11</sup> Available at <https://kabalblogs.wordpress.com/2015/02/21/afghan-minister-for-refugees-and-repatriation-stop-deportation-to-afghanistan/>.

6.2 Furthermore, the State party observes that, in his initial submission to the Committee, the author claimed that Denmark had also violated article 14 of the Covenant. In that respect, the State party submitted in its observations of 11 August 2014 that asylum proceedings fell outside the scope of that article. The State party notes that the author's counsel has subsequently invoked a violation of article 13 of the Covenant, owing to the impossibility of appealing the rejection by the Refugee Appeals Board of the request to reopen the author's asylum proceedings before a court. He also claimed a violation of articles 13 and 26 of the Covenant, since the decision of 6 February 2014 refusing to reopen the author's asylum proceedings was made by the secretariat of the Board, with the approval of the Chair, and not by the Board itself.

6.3 In response to those claims, the State party refers to the Committee's jurisprudence, which states that article 13 offers some of the guarantees afforded by article 14 (1) of the Covenant, but not the right to appeal<sup>12</sup> or the right to a court hearing.<sup>13</sup> Since the author has not elaborated any further on the circumstances on which this part of the communication is based, the State party submits that he has failed to establish a prima facie case for the purpose of admissibility of his claims under article 13 of the Covenant. This part of the communication is therefore manifestly ill-founded and should be declared inadmissible.

6.4 Regarding the reopening of asylum proceedings, the State party generally observes that when the Board has decided a case, the asylum seeker may request the Board to reopen the asylum proceedings. The power to decide on the reopening of an asylum case is vested in the Chair, who is always a judge, of the panel that made the original decision in the case when, according to the contents of the request for reopening, there is no reason to assume that the Board will change its decision, or the conditions for being granted asylum must be deemed evidently satisfied.<sup>14</sup>

6.5 The secretariat of the Refugee Appeals Board assists the Executive Committee in drafting decisions, which become final when endorsed by the Chair 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 Chair of the relevant panel. The circumstance that a decision is signed by an employee of the secretariat does not alter this fact. Consequently, there is no basis for claiming that decisions refusing requests to reopen are made by the secretariat.

6.6 With reference to its observations of 11 August 2014, the State party submits that the author has been treated no differently from any other person applying for asylum (see paras. 4.9 and 4.19 above). He has therefore failed to establish a prima facie case for the purpose of admissibility of his claim under article 26 of the Covenant, as it has not been established that there are substantial grounds for believing that the author has been subjected to discrimination. This part of the communication should therefore be declared inadmissible.

6.7 With regard to the author's alleged conversion to Christianity, the State party finds that there is no basis for setting aside the assessment by the Refugee Appeals Board that it would not constitute a violation of articles 6, 7 and 18 of the Covenant to remove the author to Afghanistan, as it still cannot be considered as a fact that his conversion from Islam to Christianity is genuine (see paras. 2.15 and 4.12 above). As regards the Board's assessment of evidence on the author's alleged conversion and his other asylum grounds, the State party refers to its observations of 11 August 2014.

6.8 The State party also draws the Committee's attention to the fact that public debate in Denmark in general, and among asylum seekers in particular, has focused to a considerable degree 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 considered

<sup>12</sup> See *Mr. X and Ms. X v. Denmark* (CCPR/C/112/D/2186/2012), para. 6.3.

<sup>13</sup> See *Maroufidou v. Sweden* (CCPR/C/12/D/58/1979). In this communication, the Committee did not dispute the assertion that an administrative review of a decision expelling an alien from Sweden did not amount to a violation of article 13 of the Covenant.

<sup>14</sup> See section 53 of the Aliens Act and rule 48 of the Board's rules of procedure.

grounds for asylum that may, depending on the circumstances, result in the granting of residence if the conversion is genuine and if it is accepted as a fact that the asylum seeker will practise his new faith upon return to his country of origin and therefore will be at such a risk of persecution in that country as to justify asylum.

6.9 Furthermore, the attention of the Committee is drawn to a report by the Norwegian Country of Origin Information Centre, Landinfo, on the situation of Christians and converts in Afghanistan published on 4 September 2013 (in Norwegian). Towards the end of the report, several sources state that, even if it becomes known in the country of origin that a person has indicated conversion as his grounds for seeking asylum in another country, that does not mean that the person will become vulnerable upon return, since Afghans show great understanding for compatriots who try anything to obtain residence in Europe. The State party adds that paragraph 36 of the 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” states, 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.”<sup>15</sup>

6.10 The State party observes in this respect that the circumstance that a person has been baptized and has participated in various religious activities does not independently render it probable that the said person has in actual fact converted. In every single asylum case in which a person claims to have converted, the Refugee Appeals Board therefore makes an overall assessment of all the circumstances of the case, including the asylum seeker’s educational background, knowledge of Christianity, motives for the conversion, considerations of the consequences of the conversion, the entire process preceding the conversion, participation in church activities and the general credibility of the asylum seeker.

6.11 The State party further observes that the Refugee Appeals Board found in its decision of 6 February 2014 that the conversion was not genuine. The circumstance that the author has undertaken several activities of a Christian nature does not independently render it probable that these activities reflect genuine faith. For the same reason, the State party also finds that statements from persons who have met the author in a church context or have expressed an opinion about the author’s faith cannot independently be found to lead to a different assessment. The State party finds that such persons will have difficulty assessing whether the conversion is genuine, or whether the author merely acts as is expected of him in that religious context. The State party therefore cannot consider as a fact solely on the basis of the production of such statements that the activities subsequently undertaken by the author reflect genuine faith.

6.12 The State party reiterates its position that, in the event of the author being removed to Afghanistan, contrary to article 7 of the Covenant, he would not risk abuse owing to his age and ethnicity (see para. 4.15 above). Accordingly, the State party finds that the general situation in Afghanistan, including in Kabul, is not in itself of such a kind that, for that reason alone, the author meets the conditions for being granted asylum.

6.13 The State party observes that the Afghan authorities agreed to take the author back when he was forcibly removed on 17 March 2014.

6.14 In conclusion, the State party submits that the Refugee Appeals Board made a thorough assessment of the author’s specific circumstances and the background information available and found that he had failed to support the plausibility of his claim that he would be in danger of being killed or subjected to torture or to cruel, inhuman or degrading treatment or punishment if he was removed to Afghanistan. In the State party’s opinion, the author’s communication merely reflects that the author disagrees with the Board’s assessment of his specific circumstances and background information. In his communication, the author also failed to identify any irregularity in the decision-making process or any risk factors that the Board failed to take properly into account. The author is

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<sup>15</sup> See also *X v. Norway* (CCPR/C/115/D/2474/2014), para. 7.6.

trying to use the Committee as an appellate body to have the factual circumstances put forward in support of his asylum claim reassessed by the Committee. However, the Committee must give considerable weight to the findings made by the 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 Board's assessment, according to which the author has failed to establish that there are substantial grounds for believing that he would be in danger of being killed or subjected to torture or to cruel, inhuman or degrading treatment or punishment if he was removed to Afghanistan. Against this background, the author's removal to Afghanistan would not constitute a violation of articles 6, 7 and 18 of the Covenant.

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

#### *Consideration of admissibility*

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

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

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

7.4 The Committee notes the author's claims under articles 6 and 7 of the Covenant that his forcible removal to Afghanistan would expose him to a real risk of being killed or subjected to torture or to cruel, inhuman or degrading treatment or punishment, because of his conversion from Islam to Christianity. In that context, the Committee notes that the other grounds for seeking asylum presented by the author to the State party's authorities at different stages of the asylum proceedings are not part of the present communication to the Committee (see para. 5.2 above).

7.5 The Committee recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such a risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>16</sup> The Committee observes that in its decision of 6 February 2014, the Refugee Appeals Board could not accept as a fact that the author's conversion to Christianity was genuine, despite the existence of a certificate of baptism and a memorandum written by a minister of the Kronborgvejens Church Centre. In its assessment of the information on the author's conversion, the Board had also taken into account, as appears from the reasoning of its decisions of 6 February 2013 and 6 February 2014, that the author had given elaborate and inconsistent statements on his grounds for seeking asylum and had also provided new information on his nationality in the request to reopen his asylum proceedings submitted on his behalf by the Danish Refugee Council, which was rejected by the Board as fabricated for the occasion.

7.6 The Committee also notes that, although the author generally contests the assessment and findings of the Danish authorities as to the risk of harm he faces in Afghanistan owing to his conversion to Christianity, he has not presented any evidence to sufficiently substantiate his claims under articles 6 and 7 of the Covenant. The Committee observes in particular that the author has never been to Afghanistan and has therefore never personally experienced any problems with the Afghan authorities, the Taliban or others in Afghanistan. In the light of the foregoing, the Committee considers that the information at its disposal demonstrates that the State party took into account all the elements available

<sup>16</sup> See *Y.A.A. and F.H.M. v. Denmark* (CCPR/C/119/D/2681/2015), para. 7.3, and *Rezaifar v. Denmark* (CCPR/C/119/D/2512/2014), para. 8.3.

when evaluating the risk of irreparable harm faced by the author if he was removed to Afghanistan and that the author has not identified any irregularity in the decision-making process. The Committee also considers that, while the author disagrees with the factual conclusions of the State party's authorities and with their decision not to reopen his case, he has not shown that the decisions of the Refugee Appeals Board were arbitrary or manifestly erroneous, or amounted to a denial of justice. Accordingly, 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.

7.7 The Committee notes the author's claim under article 13 of the Covenant that he was unable to appeal the negative decisions of the Board to a judicial body. In that regard, the Committee refers to its jurisprudence, according to which this provision offers asylum seekers some of the protection afforded under article 14 of the Covenant, but not the right of appeal to judicial bodies.<sup>17</sup> The Committee therefore concludes that the author has failed to sufficiently substantiate this particular claim under article 13 of the Covenant, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7.8 The Committee further notes that the author also claimed a violation of articles 13 and 26 of the Covenant, since the decision of 6 February 2014 refusing to reopen his asylum proceedings was made by the secretariat of the Refugee Appeals, with the approval of the Chair, and not by the Board itself. The Committee also takes note of the State party's arguments that the author's asylum proceedings, including his request that his case be reopened, were conducted in conformity with Danish law and that he had been treated no differently than any other person applying for asylum. The Committee observes that the author had the opportunity to submit and challenge evidence concerning his forcible removal to Afghanistan and had his asylum application examined by the Danish Immigration Service, reviewed by the Board and reviewed twice by the Chair of the Board, who, inter alia, examined the new *sur place* grounds for granting asylum and the evidence submitted by the author. The Committee considers, therefore, that the author has not sufficiently substantiated his claims concerning the procedure before the Board under articles 13 and 26 of the Covenant for purposes of admissibility and that this part of the communication must therefore be declared inadmissible in accordance with article 2 of the Optional Protocol.

7.9 Finally, the Committee notes that the author has invoked a violation of article 18 of the Covenant, without however providing any information, evidence or explanation as to how his rights under this article would be violated by the State party through his removal to Afghanistan. The Committee therefore concludes that this part of the communication is insufficiently substantiated and declares it inadmissible pursuant to article 2 of the Optional Protocol.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.

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<sup>17</sup> See, for example, *Omo-Amenaghawon v. Denmark* (CCPR/C/114/D/2288/2013), para. 6.4, and *S.Z. v. Denmark* (CCPR/C/120/D/2625/2015), para. 7.12. See also, 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.