



# 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. 2422/2014\* \*\*

<i>Communication submitted by:</i>	Z (represented by counsel, Marianne Vølund)
<i>Alleged victim:</i>	Z
<i>State party:</i>	Denmark
<i>Date of communication:</i>	10 June 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 97, transmitted to the State party on 10 June 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	11 March 2016
<i>Subject matter:</i>	Deportation of author to country of origin (Armenia)
<i>Procedural issues:</i>	Admissibility—manifestly ill founded
<i>Substantive issues:</i>	Non-refoulement, refugee status and torture
<i>Articles of the Covenant:</i>	7 and 26
<i>Article of the Optional Protocol:</i>	2 and 3

\* Adopted by the Committee at its 116th session (7-31 March 2016).

\*\* The following members of the Committee participated in the examination of the communication:  
Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla,  
Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Mauro Politi, Sir Nigel Rodley, Victor Manuel  
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Konstantine Vardzelashvili and Margo Waterval.

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1.1 The author of the communication, which was received on 18 March 2014, is Z, an national of Armenia born in 1989 and residing in Denmark. The author is subject to deportation to Armenia, following the rejection of his asylum application by Denmark on 27 May 2014. The author claims that, by forcibly deporting him to Armenia, Denmark would violate his rights under articles 7 and 26 of the Covenant, as he would face persecution and discrimination in Armenia due to his Azerbaijani origins and his unauthorized desertion from the Armenian army.<sup>1</sup> The author is represented by counsel, Marianne Vølund.

1.2 On 10 June 2014, pursuant to rules 92 and 97 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to remove the author to Armenia while the communication was under consideration by the Committee. On 23 March 2015, the Committee denied the State party's request to lift interim measures. The author remains in Denmark.

### **Facts as presented by the author**

2.1 The author states that his father was from Armenia and his mother from Azerbaijan. He submits that, when he was 7 years old, unknown armed men abducted his father for unknown reasons, and he never saw his father again. After the abduction, his family was harassed by village residents "because his mother was from Azerbaijan".

2.2 The author's mother subsequently left him and his brother, V, at an orphanage, after "placing their birth certificates on their chests beneath their clothes". Two years later, the author and V received a letter in which their mother stated that she regretted having had to leave them. She provided her address and stated that they "could seek her out when they got older". The author and V "wrapped up the letter in tin foil and took turns keeping it in a string around their necks".

2.3 When he and V turned 18 in 2007, they were drafted to perform military service. Upon boarding a bus heading to the military barracks, they gave their birth certificates to an officer. They were taken to barracks in the village of Djabrahil to join the 9th defence regiment in Nagorno-Karabakh.

2.4 Upon arrival at the barracks, the brothers' names were called out, and they were assigned to their quarters. Then, the author and V were told to remain where they were. Two officers accompanied them to the office of the commander, who shouted at them, "Get over here, you Turks!". He told them that they would not be allowed the honour of being a soldier, and that they were only fit to clean toilets. He then kicked the author in the groin and punched V in the stomach. He spat on them and told the officers to "take them and show them where they'll stay". The officers then led the author and V to a horse stable, where they were shoved into "an empty box".

2.5 Within a few days, everyone at the regiment, including the other conscripts and officers, had discovered that the author's mother was from Azerbaijan. He and V were treated "almost as slaves," and were constantly ordered to fetch water, cigarettes and other items. The soldiers would put their boots in the laps of the brothers and tell them to shine them. In the evenings, when the soldiers had finished work, they would use the brothers "for competitions". For example, one soldier would sit on the author's shoulders, and another would sit on V's shoulders. The brothers were then forced to run around like horses, while the soldiers beat them with a stick and told them to run faster. The other soldiers would place bets on the outcome while shouting and cheering. In other instances,

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<sup>1</sup> The first Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976.

the author and V were forced to race while carrying a bag full of stones, with the soldiers betting money on the outcome.

2.6 The author and V ate and slept in the horse stables, and were ordered to clean, scrub toilets, peel potatoes, empty trucks and clean the stables. The author asserts that they were driven back and forth between the barracks, where they would spend five consecutive days, and the border between Armenia and Azerbaijan, where they would spend 10 consecutive days. The first time they were driven to the border, they had to dig a new trench approximately 150 metres from the river along the border. When they arrived, there were two Azerbaijani hostages, H and A, who also had to dig the new trench. One soldier was posted to keep guard. Behind the new trench was an older trench, at which “there were about 30 soldiers, of whom 15 were on guard and the other 15 [were resting] in a house by the trench”. The author maintains that he, V, H and A were the only conscripts assigned to the new trench and would dig there each day that they were stationed at the border “from 7:00 in the morning until late in the evening, mostly until 24:00”. He further asserts that they slept in the trenches while they were stationed at the border.

2.7 When the author was last stationed at the barracks, he was restrained by two soldiers while two soldiers tried to rape V. The author managed to break free and rescue V. When the brothers returned to their post at the border, H suggested that they should escape. The author “was afraid of fleeing, but the attempted rape of his brother convinced [him and V] to consent to fleeing with H and A. Additionally, H and A promised to help find their mother”. That night, H struck a guard in the head with a shovel, and the four individuals then fled towards a river. Before they could reach it, however, V was shot in the head. The author wanted to stop running, but H “made him come along”, and they ran across a bridge and entered Azerbaijan.

2.8 When the author, H and A arrived at a village near the border, he was still upset and in shock about his brother’s death, as they had been very close. H and A asked the author to sit down and wait for them; they returned a few hours later in a “military car”. The author states that he does not know where they procured the car. The next morning, H and A stopped the car, and the author got out and waited for a few hours. H then returned with an elderly man, whom the author showed the letter that his mother had sent him at the orphanage. The elderly man was familiar with the address and came with them in the car. After a two-hour drive, they arrived at the author’s mother’s address in the city of Imishli.

2.9 The author lived with his mother in Imishli for the next two years. During this time, he “mostly stayed indoors, because it was risky for him as half-Armenian to walk the streets in the Azerbaijani village”. After two years, however, he could no longer tolerate living in hiding. He called H, who helped him emigrate to Belarus. For the next three years, the author worked for and lived with H’s uncle in Belarus without a residence permit. When H’s uncle was no longer willing to risk having the author live with him as a migrant with irregular status, he helped the author to leave Belarus. On 28 August 2013, the author arrived in Denmark. He applied for asylum before the Danish Immigration Service on 30 August 2013. His application was rejected on 29 October 2013.

2.10 On 27 May 2014, the Danish Refugee Appeals Board dismissed the author’s appeal of the rejection of his asylum application. The author disputes the Board’s finding that many elements of his story were implausible, and that he had given contradictory accounts in key respects. The author maintains that he gave a consistent, coherent and detailed account of the facts. The Board considered it unlikely that he, V, H and A had been ordered to dig trenches in an area close to the border after dark. However, the author argues that they were able to see because of the moonlight and stopped digging when it became

completely dark.<sup>2</sup> The Board also found it unlikely that the conscripts had succeeded in fleeing an area guarded by 30 Armenian soldiers by striking a sentry with a shovel while they were being shot at, and that they had not been pursued. In response, the author asserts that only 15 soldiers were guarding the area around the trenches while the other 15 were sleeping in a house behind the trenches, and that the first 15 soldiers were guarding the Azerbaijani border and not the 4 people who were digging trenches in front of it.

2.11 The Refugee Appeals Board further found it implausible that the author, H and A had managed to flee to Azerbaijan across a bridge that was not guarded by Azerbaijani soldiers. The author responds that they were in fact pursued, since they were shot at and V was killed by a bullet from a soldier. The author further maintains that the soldiers probably did not chase them because they were not instructed to guard them but were only tasked with ensuring that no Azerbaijani soldiers crossed the border to the Armenian side. The author also claims that it was dark when they fled, and that they travelled along a riverside to an unguarded bridge.<sup>3</sup> Finally, the author claims that the Board had no basis for claiming that the bridge was or should have been guarded.

2.12 The Board also found it implausible that H and A, approximately two hours after arriving at the border region village, had been able to procure a military truck. In response, the author maintains that this allegation is indeed plausible, because it is likely that soldiers would live or stay in a village near a border. He further claims that it was reasonable for him to not ask where H and A had procured the military truck because he was still shaken by his brother's death.

2.13 The Board further considered it unlikely that the author would have stayed in a room in his mother's house without leaving it, and that the author had then lived in Belarus with H's uncle for three years. The author maintains that those claims are not implausible, and that in any case any implausibility in that regard would not be a sufficient ground for rejecting the author's entire account.

2.14 The Board also found it implausible that the author had been able to keep his mother's letter around his neck for several years, including during his time in the military. The author responds that he and V took turns keeping the letter hidden beneath their clothes, and claims that it was wrapped in tin foil and hung around their necks on a string. The author further maintains that he never claimed before the Danish authorities that he had undressed or had his belongings confiscated when he was conscripted, and that it is thus entirely plausible that he was able to keep the letter hidden.

2.15 The Board further considered it implausible that the author had been able to locate his mother using her letter without any difficulty. The author argues that his mother had expressly provided her address so that her sons could find her when they were older. He also claims that this address was only 180 km from the border where his military barracks were located. The author alleges that it is not unlikely that his mother lived at the same address for nine years.

2.16 Finally, the Board considered that the author had inaccurately answered questions regarding the way he and his brother had tended a horse stable at the barracks. In response, the author claims that he did not provide inaccurate responses concerning that or any other subject. The author asserts that he was often so detailed in his answers during his oral

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<sup>2</sup> According to the State party's observations, the author also alleged before the Refugee Appeals Board that H and A were Azerbaijani spies being held hostage by the Armenian army. In his comments on the State party's observations, the author states that H and A "worked as investigators for Azerbaijan".

<sup>3</sup> The author attached an image of the bridge in question.

testimony before the Board that counsel had to interrupt him on several occasions. He maintains that, when asked during the oral hearing, he explained that he had put woodchips and dried grass/hay on the floor beneath the horses, and not straw, and slept with his brother in haystacks in an empty box in the stables.

2.17 The author further alleges that he suffers from post-traumatic stress disorder and has an “inclination [towards] paranoid interpretations and near-psychotic symptoms”.<sup>4</sup> He claims that he presented his medical records during the oral hearing before the Board, and that his “very poor mental condition was apparent” during the hearing.

2.18 The author submits that he has exhausted all remedies available in Denmark, because the decision of the Board is final and may not be appealed before the Danish courts. The author also states that he has not submitted the present matter for consideration before any other international body.

### The complaint

3.1 The author submits that the State party would violate his rights under articles 7 and 26 of the Covenant by forcibly removing him to Armenia, where he “deserted the army because of discrimination and inhumane treatment, and fears disproportionately severe punishment and imprisonment” that would constitute “inhuman or degrading treatment”.<sup>5</sup> The author maintains that the State party has an obligation to refrain from deporting persons who are at risk of being deprived of their human rights, in this case the right to protection against discrimination on the ground of national origin. The author alleges that military deserters in Armenia are subjected to harassment and abuse, and that in 2007 the punishment for desertion under ordinary circumstances in Armenia was changed by law from three to six years of imprisonment.<sup>6</sup> The author also claims that the Armenian Penal

<sup>4</sup> The author provided an informally translated summary of his medical record for the period from September 2013 to May 2014. The translation states in its entirety:

Very severely traumatized man. The father died when he was 7 years old. Went to an orphanage, where he was abused. When he grew up, he entered the army. Saw his brother get killed. Was at the front and saw many die. It is six years ago, but he still has disturbed sleep caused by nightmares where he sees his deceased brother covered in blood. When he wakes he still sees blood on his hands. He is very short-tempered and afraid that someone is pursuing him. If he is in big crowds of people he re-experiences the time in the military.

<sup>5</sup> Concerning the author’s reasons for applying for asylum, the asylum interview report by the Danish Immigration Service states that:

The applicant feared being killed in case of return to his country of origin. He had been accused of being a traitor. If he would not be killed, he would go to prison. The applicant stated that he would have two options in prison: he would either commit suicide or be killed. The applicant was a traitor because he had helped the Azerbaijani spies (H and A) escape. The applicant was asked whether there were other reasons why he could not return to Armenia – in addition to having helped the Azerbaijani spies escape from the Armenian army. He responded that he and his family had been suppressed their whole lives because of their Turkish origin.

The report states that the interview was conducted in Armenian, and that the author accepted the contents of the interview report as translated and was told to speak up immediately if he had problems understanding the interpreter. The communication does not refer to a fear of being prosecuted for treason, or accusations of treason.

<sup>6</sup> The author refers to an informal English translation of excerpts from a Landinfo report dated 6 December 2010. The excerpt specifies the legal penalties for military desertion. It also states in relevant part:

Mistreatment of soldiers and accidents that are unrelated to military operations are considered relatively common. Since the military is quite a closed institution, statistics on instances of harassment and such can be unreliable. Presumably, there are huge dark figures [sic]. A

Code allows for five years of imprisonment for desertion, and three to eight years of imprisonment for desertion following a prior agreement among a group of persons. He further maintains that torture and unsanitary conditions and lack of medical services are common in Armenian prisons.

3.2 The author maintains that his allegations are supported by various credible sources, such as the chapter on Armenia in the Human Rights Watch *World Report 2014*, which states that:

According to local human rights defenders, torture and ill treatment in police custody persist, and the definition of torture in Armenian law does not meet international standards, as it does not include crimes committed by public officials. Authorities often refuse to investigate allegations of ill treatment or pressure victims to retract complaints. Police use torture to coerce confessions and incriminating statements from suspects and witnesses.<sup>7</sup>

The author further cites the 2012 United States Department of State country report on human rights practices in Armenia as stating that “police allegedly continued to employ torture to obtain confessions and reportedly beat citizens during arrest and interrogation. Many prisons were overcrowded, unsanitary, and lacking in medical services for inmates.”<sup>8</sup>

3.3 The author also argues that the findings of the Refugee Appeals Board concerning his credibility were subjective and flawed, for the reasons described above.<sup>9</sup>

#### **State party’s observations on admissibility and merits**

4.1 In its observations dated 10 December 2014, the State party describes the structure and operation of the Refugee Appeals Board, which it considers to be an independent,

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widespread culture of corruption can also make it difficult to acquire certain statistics. On 27 May 2009 the Ombudsman published a report regarding mistreatment and torment of soldiers in the Armenian military (as quoted in [the] U.S. Department of State [report of] 2010. ... According to the report, there is a general lack of holding the assailants responsible. The range of penalties for evasion and desertion are the same in the case of ordinary military service as in alternative service.

<sup>7</sup> The author provides a copy of that chapter, which further states: “As of October 31, the Helsinki Citizens’ Assembly Vanadzor office had reported 29 non-combat army deaths, including 7 suicides. Local human rights groups have documented the defence ministry’s failure to investigate adequately and expose the circumstances of non-combat deaths and to account for evidence of violence in cases where the death is ruled a suicide.”

<sup>8</sup> The author also refers to a 2013 Amnesty International report entitled “Armenia: no space for difference”. The report states, in its paragraph 2.1, that:

In recent years, stories of human rights abuses against conscripts, hazing (bullying) and non-combat deaths in the armed forces have begun to appear in the media. Activists accuse the military of failing to properly investigate abuses and of portraying murders or other unlawful killings as suicides. There are ongoing concerns about suspicious deaths in the Armenian Armed Forces under non-combat conditions, as well as over the practice of hazing and other mistreatment of conscripts, while investigations into these crimes rarely produce results. In 2012, the Armenian Government reported that during the year 18 servicemen died under non-combat conditions. Local and international human rights groups such as the Vanadzor Office of the Helsinki Citizens’ Assembly and the Helsinki Association of Armenia report that, in many cases, autopsies reveal the deceased soldier to have been beaten or abused. Several hidden recordings showing the abuse of army conscripts have been leaked to social networking sites and have provoked popular outrage.

The report goes on to state that it is common for individuals who expose abuses occurring in the Armenian armed forces to be subjected to intimidation.

<sup>9</sup> See paras. 2.10 to 2.17 above.

quasi-judicial body. The Board is considered to be a court within the meaning of Council of the European Union directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.<sup>10</sup> The Board is composed of a chair and deputy chair, who are judges, and other members, who must either be attorneys, be nominated by the Danish Refugee Council (a civil society organization) or serve as part of the central administration of either the Ministry of Foreign Affairs or the Ministry of Justice. After two terms of four years, Board members cannot be reappointed. Under the Aliens Act, Board members are independent and cannot seek instructions from the appointing or nominating authority. The Board issues a written decision, which may not be appealed; however, under the Constitution of Denmark, applicants may bring an appeal before the ordinary courts, which have the authority to adjudicate any matter concerning limits on the mandate of a government body. As established by the Supreme Court, the ordinary courts' review of decisions made by the Board is limited to a review of points of law, including any flaws in the basis for the relevant decision and the illegal exercise of discretion, whereas the Board's assessment of evidence is not subject to review.

4.2 The State party notes that, pursuant to section 7, paragraph 1, of the Aliens Act, a residence permit can be granted to an alien if the person falls within the provisions of the Convention relating to the Status of Refugees. For this purpose, article 1.A of that Convention has been incorporated into Danish law. Although this article does not mention torture as one of the grounds justifying asylum, it may be considered as an element of persecution. Accordingly, a residence permit can be granted in cases in which it is found that the asylum seeker has been subjected to torture before coming to Denmark, and in which his or her resulting fear is considered well founded. This permit is granted even if a possible return is not considered to entail any risk of further persecution. Likewise, pursuant to section 7, paragraph 2, of the Aliens Act, a residence permit can be issued to an alien upon application if the alien is at risk of the death penalty or being subjected to torture or inhuman or degrading treatment or punishment if returned to his or her country of origin. In practice, the Refugee Appeals Board considers that these conditions are met if specific and individual factors render it probable that the person will be exposed to such a real risk.

4.3 The State party observes that decisions of the Refugee Appeals Board are based on an individual and specific assessment of each case. In practice, the Board assigns counsel free of charge to all asylum seekers. Oral proceedings before the Board are attended by the asylum seeker and counsel, as well as an interpreter and a representative of the Danish Immigration Service. During the hearing, the asylum seeker is allowed to make a statement and answer questions. The asylum seeker's statements regarding the motive for seeking asylum are assessed in the light of all relevant evidence, including general background material on the situation and conditions in the country of origin, in particular whether systematic gross, flagrant or mass violations of human rights occur. Background reports are obtained from various sources, including the Danish Refugee Council, other Governments, the Office of the United Nations High Commissioner for Refugees, Amnesty International and Human Rights Watch.

4.4 The State party considers that the author's claim under article 7 of the Covenant is manifestly ill founded, and is therefore inadmissible, because the author has not established a *prima facie* case that he would be subjected to torture or other ill treatment upon return to Armenia. The author did not produce any essential new information or views on his circumstances beyond the information already considered by the Refugee Appeals Board.<sup>11</sup> The author is therefore attempting to use the Committee as an appellate body to have the

<sup>10</sup> The State party cites article 39 of that directive.

<sup>11</sup> The State party provides a full English translation of the Refugee Appeals Board decision, the contents of which are summarized in paras. 2.10-2.16 above.

factual circumstances of his asylum claim reassessed by the Committee. The Committee must give considerable weight to the factual findings of the Refugee Appeals Board, which is better placed than the Committee to assess the factual circumstances in the author's case. The Board found that the author's allegations<sup>12</sup> were not credible. In addition, the author made several additional uncertain and inconsistent statements during domestic proceedings. First, during the hearing before the Board, the author was asked why his mother had made her children take their birth certificates to the orphanage when she knew that they would face problems as a result, since they were half Azerbaijani. The author responded that a birth certificate was required to live at the orphanage. Second, it was only at the Board hearing that the author introduced his claims regarding the competitions in which he and V had been forced to participate at the military barracks.

4.5 Third, concerning the attempted rape of V, the author stated in his asylum application that he and V had gone to the stables one night after work to sleep. The author claimed that a few men entered and beat the author and that, when one of the men tried to rape V, the author managed to break free and hit one of the men on the mouth. However, when interviewed by the Danish Immigration Service, the author stated that he and his brother had been taken back to the barracks and detained in a room in which the author was restrained by two soldiers, while two other soldiers attempted to rape V. Then, at the hearing before the Refugee Appeals Board, the author stated that five drunk soldiers had entered the place where he and V were sleeping. The five soldiers tried to rape V. The author hit the soldier who had restrained V. Suddenly, the door opened, and the five soldiers escaped after being warned that someone was coming.

4.6 Fourth, regarding the digging of trenches, when interviewed by the Danish Immigration Service, the author stated that he had had to dig trenches in the evening. When told that it seemed strange that the trenches were being dug at night, the author stated that they were often ordered to dig in the middle of the night. However, at the Refugee Appeals Board hearing, the author stated that he had dug trenches from 7 a.m. until midnight. Fifth, the author was only able to give very limited information about H and A at the Board hearing, even though, according to the information the author provided, H had assisted him in escaping first to Azerbaijan and later to Belarus. Sixth, the Board considered that the author's claims regarding his two-year stay in Azerbaijan and a stay of more than three years in Belarus were completely unsubstantiated. On the basis of the aforementioned issues, the Board did not accept as fact any part of the author's statements concerning his reasons for seeking asylum.

4.7 The State party considers that the Committee, in its jurisprudence on evaluating a risk of treatment contrary to the provisions of articles 6 and 7 of the Covenant, has focused on whether the author has identified an irregularity in the decision-making process, or a risk factor that the State party's authorities have failed to take properly into account.<sup>13</sup> In the instant case, the author has failed to identify such an issue. Because there are no grounds for doubting the Refugee Appeals Board decision, which was made through a comprehensive quasi-judicial process in which the author had the opportunity to present his views, both in writing and orally, with the assistance of legal counsel, the author's claim

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<sup>12</sup> See paras. 2.10 to 2.16 above.

<sup>13</sup> The State party cites communication No. 2186/2012, *Mr. X. and Ms. X. v. Denmark*, Views adopted on 22 October 2014, para. 7.5.



under article 7 is manifestly ill founded. For the same reasons, the State party considers that this claim is wholly without merit.<sup>14</sup>

4.8 The State party further considers that the author's claim under article 26 is inadmissible *ratione loci* and *ratione materiae* under rule 96 (a) and (d) of the Committee's rules of procedure and article 2 of the Optional Protocol, because article 26 does not have extraterritorial application. The author's allegations of a violation of article 26 do not rest on any treatment that he has suffered in Denmark or in an area where Danish authorities are in effective control, or due to the conduct of Danish authorities, but rather on consequences that he will allegedly suffer when returned to Armenia. States parties cannot be held responsible for violations of this provision occurring on territory outside of their jurisdiction and perpetrated by other States. The State party asserts that the European Court of Human Rights has clearly stressed in its jurisprudence the exceptional character of extraterritorial protection of rights contained in the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Indeed, the Court has observed that "on a purely pragmatic basis, it cannot be required that an expelling contracting State only return an alien to a country which is in full and effective enforcement of all the rights and freedoms set out in the Convention".<sup>15</sup> The State party also refers to the Court's judgment in *Z. and T. v. the United Kingdom* (application No. 27034/05), in which it stated that extraterritorial effect should be applied primarily to violations of articles 2 and 3 of the European Convention on Human Rights and to articles 5 and 6 of the same Convention, if the person expelled would be at risk of a flagrant violation of his or her rights in the receiving State. The State party considers that a violation of article 26 by another State party will not cause such irreparable harm as contemplated by articles 6 and 7 of the Covenant, and that article 26 should therefore not have extraterritorial application.

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

5.1 In his comments dated 12 March 2015, the author questions the integrity of the asylum process in Denmark, and states that there is no right to appeal the decisions of the Refugee Appeals Board to an ordinary Danish court. The author asserts that the Board lacks many of the attributes of a real court, as evidenced by the following aspects of its operation: (a) board hearings are never open to the public or to persons whom the applicant might wish to be present; (b) witnesses are generally not allowed at Board hearings; (c) there is no educational requirement for the interpreters used by the Board; and (d) one member of the five-member Board is appointed by the Ministry of Justice and is usually an employee of the Ministry, which can easily create a conflict of interest because the Ministry is the superior administrative authority to the Danish Immigration Service, which renders the first administrative decision in asylum cases.

5.2 With regard to the State party's observations on the merits, the author asserts that, although the State party repeatedly refers to the findings of the Refugee Appeals Board, it should be noted that it was a "majority of the Refugee Appeals Board" who found that the author's application should be rejected.

5.3 The author further maintains that his account of the relevant facts was consistent, detailed and credible throughout the asylum proceedings. The author refers to his complaint and reiterates his objections concerning the alleged inconsistencies or implausibilities

<sup>14</sup> Before the Danish authorities, the author does not appear to have alleged that he would be imprisoned for military desertion if returned to Armenia. Before the Danish Immigration Service, he argued that he would be imprisoned for treason, for assisting H and A, who were spies from Azerbaijan.

<sup>15</sup> See *F v. United Kingdom*, European Court of Human Rights, application no. 17341/03, judgment dated 22 June 2004, para. 3.

raised by the Refugee Appeals Board and the State party.<sup>16</sup> The author further responds to the State party's observations on additional credibility issues. The author claims that he did not stay in the same room at his mother's house for two years, but did hide indoors in the house for two years. He maintains that he stayed in the basement when there were visitors, because he "feared for his and his mother's life, if the people of the village found out that his mother was hiding an Armenian soldier in Azerbaijan". He also asserts that it is not unlikely that, after two years of living in hiding, he was unable to tolerate his situation and therefore contacted H to obtain help in fleeing Azerbaijan.

5.4 The author further argues that there is nothing unlikely or inconsistent in his explanation concerning his birth certificate. The author states that he cannot explain why his mother attached his and V's birth certificates around their chests, as he does not know what she was thinking. The author also maintains that, although the State party considers that he was unable to provide adequate information about the way in which he and V were treated in the military, he cannot be expected to provide every detail about this, because such an explanation would be very long, and because the treatment he experienced was very humiliating and is difficult to discuss. Although the State party raises credibility issues concerning the digging of the trenches, the author further argues that at no point has he claimed that he dug trenches "in the evening"; rather, he stated at the Board hearing that he had been "digging trenches from 7 a.m. until midnight".

5.5 Finally, the author submits that, although the State party considers that he was unable to give detailed information about H and A, this is because H and A were very secretive, and the author and his brother were "very shy and scared". On the basis of the foregoing, the author maintains that he would be at "great risk of being exposed to deprivation of his life or to torture or other degrading treatment" if he were removed to Armenia.

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

### *Consideration of admissibility*

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

6.2 The Committee has ascertained, as required by article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that it is undisputed that the author has exhausted all available domestic remedies, as required by article 5 (2) (b) of the Optional Protocol.

6.3 The Committee takes note of the State party's argument that the author's claim under article 7 of the Covenant is manifestly ill founded and is therefore inadmissible. However, the Committee considers that the author has explained the reasons for which he fears that forcible return to Armenia would result in a risk of treatment incompatible with article 7 of the Covenant. The author also explains why he believes that the findings of the Refugee Appeals Board concerning his credibility were subjective and flawed. The Committee is therefore of the opinion that this part of the communication, raising issues under article 7 of the Covenant, has been sufficiently substantiated for purposes of admissibility.

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<sup>16</sup> See paras. 2.10 through 2.16 above.

6.4 The Committee also notes the State party's argument that the author's claim under article 26 of the Covenant is inadmissible *ratione loci* and *ratione materiae* because article 26 does not have extraterritorial application and the State party therefore cannot be held responsible for violations of this article that may be committed outside its territory and jurisdiction by another State. 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.<sup>17</sup> Under the particular circumstances of the case, the Committee does not consider examination of whether the State party violated article 26 to be distinct from examination of the violation of the author's right under article 7 of the Covenant. The Committee therefore considers that the author's claims in this regard are incompatible with article 2 of the Covenant, and inadmissible under article 3 of the Optional Protocol.

6.5 In the light of the foregoing, the Committee considers that the communication is admissible insofar as it raises issues under article 7 of the Covenant and proceeds with its examination on the merits.

#### *Consideration of the merits*

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

7.2 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. The Committee has also indicated that the risk must be personal<sup>18</sup> and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>19</sup> The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.<sup>20</sup>

7.3 The Committee notes the State party's observations that the Refugee Appeals Board did not find it credible that the author would face a risk of ill treatment if returned to Armenia. The Committee also notes the author's assertion that he provided detailed, consistent and credible responses to the questions raised by the domestic immigration authorities, and that the decision of the Board was arbitrary and erroneous. Specifically, the Committee notes the author's arguments that the Board did not convincingly articulate why it found implausible the following statements by the author: (a) that he had lived in Belarus;

<sup>17</sup> See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

<sup>18</sup> See, inter alia, communications No. 2393/2014, *K v. Denmark*, Views adopted on 16 July 2015, para. 7.3; No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.2; and No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

<sup>19</sup> See *X v. Denmark*, para. 9.2; and communication No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>20</sup> See, inter alia, *K v. Denmark*, para. 7.4.

that he had been able to locate his mother in Azerbaijan using the address provided in the letter she had sent him at the orphanage; that he had spent two years living indoors in his mother's house; that H and A had been able to procure a military truck after crossing the border to Azerbaijan; and that the author had been able to cross a bridge to Azerbaijan after fleeing the army without encountering any guards. However, the Committee considers that, while the author disagrees with the Board's conclusions on these issues, he has not shown that the conclusions were manifestly unreasonable or arbitrary in nature on the ground that inadequate consideration was given to the claims of the author in the domestic proceedings. Moreover, concerning the author's claim that he suffered harassment, and physical and verbal abuse, in the army on account of his partial Azerbaijani descent, the Committee observes that the author has not responded to the State party's observations concerning the material contradictions in his testimony before the domestic authorities regarding the alleged attempted rape of his brother by army officers,<sup>21</sup> or concerning the fact that, during his interview with the Danish Immigration Service, he did not raise his claim regarding the competitions during which he and his brother were physically and verbally abused by military officers on account of their ethnicity.<sup>22</sup> Accordingly, the Committee cannot conclude from the information before it that there are substantial grounds for believing that the author will face a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, if returned to Armenia.

7.4 For the foregoing reasons, the Committee cannot conclude that the State party would violate article 7 of the Covenant if it removed the author to Armenia.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to Armenia would not violate his rights under article 7 of the Covenant.

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<sup>21</sup> See para. 4.5 above.

<sup>22</sup> See para. 4.4 above.