

**International Covenant on  
Civil and Political Rights**Distr.: General  
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**Human Rights Committee****Decision adopted by the Committee under article 5 (4) of the  
Optional Protocol, concerning communication No.  
2402/2014\*, \*\***

<i>Communication submitted by:</i>	A.A.I. and A.H.A. (represented by the Danish Refugee Council)
<i>Alleged victim:</i>	The authors and their two children
<i>State party:</i>	Denmark
<i>Date of communication:</i>	27 May 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 27 May 2014 (not issued in document form)
<i>Date of adoption of decision:</i>	29 March 2016
<i>Subject matter:</i>	Deportation from Denmark to Italy
<i>Procedural issues:</i>	Insufficient substantiation
<i>Substantive issues:</i>	Risk of being exposed to inhuman or degrading treatment
<i>Article of the Covenant:</i>	7
<i>Article of the Optional Protocol:</i>	2

\* 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, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Sir Nigel Rodley, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

Four opinions signed by five Committee members are annexed to the present decision.

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1.1 The authors of the communication are A.A.I. and A.H.A., and they submit the communication also on behalf of their children, A.A. and A.I., who are minors. The authors are nationals of Somalia who are seeking asylum in Denmark and are subject to deportation to Italy following the Danish authorities' rejection of their application for refugee status in Denmark. The authors claim that by forcibly deporting them and their children to Italy, Denmark would violate their rights under article 7 of the International Covenant on Civil and Political Rights. The authors are represented by the Danish Refugee Council. The Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976.

1.2 On 27 May 2014, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the authors to Italy while their case was under consideration by the Committee. On 11 June 2014, the Refugee Appeals Board suspended the time limit for the authors' departure from Denmark until further notice, in accordance with the Committee's request.

1.3 On 23 February 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request to lift the interim measures.

### **Factual background**

2.1 The authors were born on 1 October 1986 and 23 January 1989, respectively, in Mogadishu, Somalia. They belong to the Gaaljecel clan, and are Muslim. They married in March 2012 in Italy and have two children, A.A. and A.I., who were born in Denmark in 2013 and 2014 respectively.

2.2 The first author, A.A.I., fled Somalia in January 2009 after having been forcefully recruited by the Al-Shabaab militia. He fears being killed by Al-Shabaab members if he is returned to Somalia. In addition, during his forced recruitment, the first author was wrongly accused of having killed a boy from the Biyomaal clan who was killed by Al-Shabaab. He thus also fears being killed by Biyomaal clan members as revenge if he is returned to Somalia.

2.3 On 28 June 2011, he arrived in Lampedusa, Italy, from where he was transferred by the Italian police to Turin, where he applied for asylum. In Turin he was housed in a reception centre. In October 2012, he was granted subsidiary protection and was issued with a residence permit valid for three years, until 11 October 2015.

2.4 The second author, A.H.A., fled Somalia in November 2007 after she had been assaulted by three armed uniformed Somali officials who searched her home and tried to rape her. After her departure from Somalia, her home was searched again by officials who were looking for her in connection with crimes she had not committed. The second author fears being killed by the authorities if she is returned to Somalia. Furthermore, she fears being killed if returned to Somalia owing to her husband's conflict with the Al-Shabaab militia.

2.5 In May 2008, the second author arrived in Italy and on an unspecified date, she applied for asylum. She was housed in reception centres first in Sicily and then in Turin. In early 2009, she was granted subsidiary protection by the Italian authorities and was issued with a residence permit valid for three years. Subsequently, she was not permitted to stay at the reception centre, so she moved into a shelter for homeless persons in Turin.

2.6 The second author's residence permit allowed her to stay in Italy and work. She was not receiving financial or any other assistance from the Italian authorities.

2.7 The homeless shelter where the second author was staying was overcrowded, violent and also housed alcoholics, so she decided to move out and was living on the streets, in the

absence of other housing alternatives. She spent the nights at railway stations, churches or informal settlements. She sought assistance from the Italian authorities, including to find an alternative living arrangement and a job, but to no avail. At the same time she was actively looking for accommodation and work, with no success. She remained homeless, with no means of subsistence.

2.8 Given that her situation in Italy had become desperate, in August 2009 the second author travelled to the Norway, where her father and siblings lived. There she applied for asylum and family unification. The Norwegian authorities carried out a DNA test, which determined that she was not her father's biological daughter. She was therefore returned to Italy by the Norwegian authorities in January 2012 and initially housed in a reception centre in Turin, where she met the first author. Shortly after her return to Italy, her residence permit was extended until 4 March 2015. On 11 March 2012, the authors got married while still housed in the reception centre in Turin.

2.9 In March 2012, the authors were requested to leave the reception centre, without being offered any assistance in finding alternative temporary shelter, more permanent housing or work. The authors became homeless. They mostly lived on the streets, and occasionally in homeless shelters and in churches. They registered with the local employment office, but were never contacted concerning work opportunities. They did not receive any financial or other assistance from the Italian authorities.

2.10 The second author became pregnant in 2012 with the first author's child. She subsequently contacted the police, hoping to receive assistance in finding a solution to their housing dilemma, as the homeless shelters where the authors stayed occasionally were overcrowded and not safe. The police offered no assistance and she was forcefully removed from the police station.

2.11 Facing homelessness and destitution, being dependent on receiving food from churches, and fearing being unable to provide for their future child, the authors travelled to Norway in December 2012 and applied for asylum there. Their applications were refused, in accordance with the Dublin II Regulation (Council Regulation (EC) No. 343/2003) as they held valid residence permits for Italy. The authors therefore faced deportation to Italy by the Norwegian authorities. Refusing to go back to Italy, the authors left Norway for Denmark on 26 December 2012 without informing the authorities.

2.12 On 21 January 2013, the authors applied for asylum in Denmark. On 9 February 2013, the second author gave birth to their first child, A.A.

2.13 On 28 October 2013, the Danish Immigration Service found that the authors were in need of subsidiary protection, and ought to be returned to Italy as Italy was their first country of asylum. The authors appealed that decision before the Refugee Appeals Board, which on 24 January 2014 upheld the decision of the Immigration Service, stating that the authors' case fell within section 7 (2) of the Danish Aliens Act,<sup>1</sup> meaning that they were in need of subsidiary protection, but should be returned to Italy as that was their first country of asylum. In March 2014, the second author gave birth to their second child, A.I., in Denmark.

2.14 The authors claim that they have exhausted all domestic remedies in Denmark and that the negative decision of 24 January 2014 handed down by the Danish Refugee Appeals Board is final and cannot be appealed before another court.

<sup>1</sup> Article 7 (2) of the Denmark Aliens Act reads as follows: "Upon application, a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin. An application as referred to in the first sentence hereof is also considered an application for a residence permit under subsection (1)".

### The complaint

3.1 The authors submit that, by forcibly returning them and their children to Italy, the Danish authorities would violate their rights under article 7 of the International Covenant on Civil and Political Rights.<sup>2</sup> They submit that since they were asked to leave the reception centre in Turin in March 2012, they have not been able to find housing, work or any durable humanitarian solution. They also submit that reception centres for asylum seekers and refugees with temporary residence permits in Italy do not meet basic humanitarian standards and that Italy is therefore not meeting its international protection obligations.<sup>3</sup>

3.2 The second author submits that she had already tried seeking asylum in Norway after having been granted a residence permit in Italy in 2009. Upon her forced return to Italy in 2012, apart from being housed in a reception centre for a few months only, she was not offered assistance from the Italian authorities in finding shelter, work or permanent housing. She claims that in their current situation, the authors would be returning with two children with no right to access reception centres, as persons who have already been housed in such centres are not allowed access to them again if they are returning from another European country. Thus deportation to Italy would expose the authors and their children to inhuman and degrading treatment, because there would be no other solution for them but to live on the streets in destitution, with no prospect of finding durable humanitarian solutions.

3.3 On the principle of first country of asylum, the authors refer to conclusion No. 58 (XL) of the Executive Committee of the Office of the United Nations High Commissioner for Refugees (1989) on the problem of refugees and asylum seekers who move in an irregular manner from a country in which they had already found protection, according to which that principle should be applied only if the applicants upon return to the first country of asylum “are permitted to remain there and to be treated in accordance with recognized basic human standards until a durable solution is found for them” (para. f (ii)).

3.4 On the Italian reception system for asylum seekers and beneficiaries of international protection, the authors cite other reports that state that international protection seekers returning to Italy who had already been granted a form of protection and benefited from the reception system when they were first in Italy were de facto not entitled to accommodation in the reception facilities in Italy.<sup>4</sup> This is a result of the lack of available places in reception centres and the fragmentation of the reception system, which mostly affects returnees from European countries. As a consequence, many such returnees are living on the streets or in the self-organized informal settlements that have flourished in the metropolitan areas, where they face overcrowding and sub-standard living conditions and have limited access to public services and no prospect of social integration.

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<sup>2</sup> The authors cite European Court of Human Rights, *M.S.S. v. Belgium and Greece* (application No. 30696/09), judgment of 15 December 2010; and European Court of Human Rights, *Mohammed Hussein and Others v. the Netherlands and Italy* (application No. 27725/10), decision of 2 April 2013.

<sup>3</sup> The authors refer to Swiss Refugee Council, “Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees” (Berne, October 2013); Asylum Information Database, “Country report: Italy” (May 2013); Council of Europe, “Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012” (CommDH(2012)26).

<sup>4</sup> The authors cite Dublin Transnational Project, “Dublin II Regulation: National report, Italy”, 19 December 2012, available from [www.dublin-project.eu/dublin/Dublin-news/New-report-Dublin-II-regulation-lives-on-hold](http://www.dublin-project.eu/dublin/Dublin-news/New-report-Dublin-II-regulation-lives-on-hold); Asylum Information Database, “Country report: Italy”, p. 37; United States of America, Department of State, “Country Reports on Human Rights Practices for 2012: Italy”; Swiss Refugee Council, “Reception conditions in Italy”, pp. 4-5; and Jesuit Refugee Service Europe, “Protection Interrupted: The Dublin Regulation’s impact on asylum seekers’ protection”, June 2013, pp. 152 and 161.

3.5 The second author states that her circumstances differ from those of the authors in the case of *Mohammed Hussein and Others v. the Netherlands and Italy*,<sup>5</sup> as she has already been transferred from Norway to Italy. After being housed for a few months in a reception centre in Turin, she did not receive any assistance from the Italian authorities to secure her basic needs, namely, shelter and food, nor was she provided with any assistance to find work, more permanent housing or to integrate into Italian society.

3.6 The authors maintain that the background information presented above concerning the situation of asylum seekers and refugees with temporary residence permits in Italy, together with their previous experiences, indicate systemic failures regarding basic support for asylum seekers and refugees in Italy, especially members of vulnerable groups. It thus seems that there is a serious and real risk that, if deported, the authors and their children will face homelessness, destitution with no prospects of finding a durable humanitarian solution.

3.7 The authors assert that, in view of that situation, including the fact that they have two infant children, their deportation to Italy constitutes a violation of article 7 of the Covenant as Italy does not currently meet the necessary humanitarian standards for the principle of first country of asylum to be applied.

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

4.1 In its observations dated 27 November 2014, the State party informed the Committee that in a decision dated 24 January 2014, the Danish Refugee Appeals Board upheld the refusal by the Danish Immigration Service of the authors' asylum application. In its evaluation of whether Italy could serve as the applicants' first country of asylum, the Board took note of the authors' account, but found that their integrity and safety were sufficiently protected. The State party considers that the authors failed to establish a prima facie case for the admissibility of their communication under article 7 of the Covenant. Thus it has not been established that there are substantial grounds for believing that the authors risk being subjected to torture or to cruel, inhuman or degrading treatment if returned to Italy, and therefore the communication is manifestly ill-founded and should be declared inadmissible. For the same reasons, the State party considers that the communication is wholly without merit.

4.2 In more specific terms, the State party considers that the authors did not produce any essential new information or views on their circumstances, beyond the information already relied upon during the asylum proceedings, which the Refugee Appeals Board had already considered in its decision of 24 January 2014. The Board found that the authors had previously been granted subsidiary protection in Italy and that they may enter Italy legally and stay there while applying for renewal of their residence permits. Therefore, Italy is considered the country of first asylum, which justifies the refusal of the Danish authorities to grant them asylum, in accordance with section 7 (3) of the Aliens Act. When applying the principle of country of first asylum, the Board requires, at a minimum, that the asylum seeker is protected against refoulement and that he or she be able to enter legally and take up lawful residence in the country of first asylum, and that the asylum seeker's personal integrity and safety must be protected in that country.

4.3 According to the State party, such protection includes certain social and economic elements, as asylum seekers must be treated in accordance with basic human standards and their personal integrity must be protected. The core element of such protection is that the persons concerned must enjoy personal safety, both upon entering and while staying in the

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<sup>5</sup> See *Mohammed Hussein and Others v. the Netherlands and Italy*.

country of first asylum. However, requiring that asylum seekers have exactly the same social and living standards as nationals of the country is not possible.

4.4 In response to the authors' allegations that they will not have access to accommodation and are most likely to live on the streets if returned to Italy, the State party refers to the decision of inadmissibility handed down by the European Court of Human Rights in *Mohammed Hussein and Others v. the Netherlands and Italy* in 2013. In that case, the Court observed that a person granted subsidiary protection will be provided with a residence permit valid for three years, renewable by the Territorial Commission that granted it. Such a permit entitles the person concerned to a travel document for aliens, to work, to family reunion and to benefit from the general schemes for social assistance, health care, social housing and education under Italian domestic law.<sup>6</sup> The Court also ruled that in the absence of exceptionally compelling humanitarian grounds against removal, the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed from the contracting State is not sufficient in itself to give rise to a breach of article 3. It then considered, while taking into account the reports drawn up by both governmental and non-governmental organizations, that "while the general situation and living conditions in Italy of asylum seekers, accepted refugees and aliens who have been granted a residence permit for international protection or humanitarian purposes may disclose some shortcomings ..., it has not been shown to disclose a systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group of people, as was the case in *M.S.S. v. Belgium and Greece*".<sup>7</sup> The Court found the applicant's allegations manifestly ill-founded and inadmissible and that the applicant could be returned to Italy.

4.5 With regard to the present case, the State party considers that, although the authors have relied on the European Court's finding in *M.S.S. v. Belgium and Greece*, the Court's decision in the *Mohammed Hussein* case is more recent and specifically addresses the conditions in Italy.

4.6 The 2013 Asylum Information Database country report on Italy, also cited by the authors, states that some asylum seekers who did not have access to asylum centres were obliged to live in "self-organized settlements", which are often overcrowded. The November 2013 update of that report indicates that those were the reception conditions in Italy for asylum seekers and not for aliens who had already been issued residence permits. Moreover, the 2012 United States of America Department of State country report on Italy, also cited by the authors, was already available when the Court handed down its decision in the *Mohammed Hussein* case. Information that some aliens lived in abandoned buildings in Rome and had limited access to public services was included in the *Mohammed Hussein* decision. The authors have relied primarily on reports and other background material relating to reception conditions in Italy that were relevant to asylum seekers, including returnees under the Dublin II Regulation, and not to persons, like themselves, who had already been granted subsidiary protection.

4.7 With reference to the more recent judgment of the European Court of Human Rights in the case of *Tarakhel v. Switzerland*,<sup>8</sup> the State party notes that while the majority of judges ruled that there would be a violation of article 3 if the Swiss authorities were to send the applicants back to Italy under the Dublin II Regulation without having first obtained individual guarantees from the Italian authorities that they would take charge of the applicants in a manner appropriate to the age of the children and that the family would be

<sup>6</sup> Ibid., para. 38.

<sup>7</sup> Ibid., para.78.

<sup>8</sup> See European Court of Human Rights, *Tarakhel v. Switzerland* (application No. 29217/12), judgment of 4 November 2014.

kept together, the Court reiterated that article 3 could not be interpreted as obliging the high contracting parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) to provide everyone within their jurisdiction with a home, nor did article 3 entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living.<sup>9</sup> In the opinion of the State party, the *Tarakhel* case, which concerned a family with the status of asylum seekers in Italy, does not deviate from the findings in the Court's previous case law on individuals and families with a residence permit for Italy, as expressed in, inter alia, the *Mohammed Hussein* decision. Accordingly, the State party expresses the view that it cannot be inferred from the *Tarakhel* decision that States are required to obtain individual guarantees from the Italian authorities before returning individuals or families in need of protection who had already been granted residence permits in Italy.

4.8 In that respect, the State party reiterates that the decision in the *Mohammed Hussein* case indicates that persons recognized as refugees or granted subsidiary protection in Italy are entitled to benefit from the general schemes for social assistance, health care, social housing and education under Italian domestic law.

4.9 Accordingly, the State party submits that article 7 of the Covenant does not prevent it from enforcing the Dublin II Regulation in respect of individuals or families who have been granted residence permits in Italy, as is the case for the authors.

4.10 Consequently, the State party concludes that its deportation of the authors and their children to Italy would not constitute a breach of article 7 of the Covenant.

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

5.1 In their comments dated 28 January 2015, the authors assert that the living conditions in Italy for asylum seekers and beneficiaries of international subsidiary protection are similar, since there is no effective integration scheme in Italy. Asylum seekers and recipients of subsidiary protection often face the same severe difficulties in finding basic shelter, access to sanitary facilities and food.<sup>10</sup> The authors refer to a report of the Jesuit Refugee Service Europe, which states that "the real problem concerns those who are sent back to Italy and who already have some kind of protection. Probably they would have already stayed in at least one of the accommodation options available and, if they left the centre voluntarily before the established time, they have no right to go back to the accommodation system", thus are no longer entitled to accommodation in the Government reception centres for asylum seekers (p. 152). Moreover, most of the people occupying abandoned buildings in Rome fall into that category. The findings show that the lack of places to stay is a major problem, especially for returnees who are, in most cases, holders of international or humanitarian protection (p. 161). The Swiss Refugee Council report quoted by the authors also indicated that it is extremely difficult for people who have been granted protection status who are returned to Italy to find accommodation.<sup>11</sup>

5.2 The authors submit that, regardless of whether they have been granted international protection or not, they risk facing serious difficulties in finding shelter, access to sanitation facilities and food. Therefore, based on the above-mentioned reports and the authors' previous experiences, they submit that living conditions in Italy for asylum seekers and beneficiaries of international protection are similar, and that they are even worse for beneficiaries of international protection who return to Italy, as would be the case for them.

<sup>9</sup> Ibid., para. 95.

<sup>10</sup> The authors refer to their initial communication and the reports cited therein.

<sup>11</sup> Swiss Refugee Council, "Reception conditions in Italy", pp. 4-5.

5.3 The authors dispute the State party's interpretation of the jurisprudence of the European Court of Human Rights. The authors argue that the entitlements of beneficiaries of international protection enumerated in the *Mohammed Hussein* decision reflect relevant Italian domestic law, and that this information is partly challenged in reports from the United Nations High Commissioner for Refugees and from non-governmental organizations.<sup>12</sup> In reality, the actual living conditions of returnees in Italy under the Dublin II Regulation are disputed. The authors contend that the *Mohammed Hussein* decision was based on the assumption that upon notification, the Italian authorities would prepare a suitable solution for the arrival of the applicant's family in Italy.<sup>13</sup> The second author submits that she was also transferred from Norway to Italy and was not provided with any assistance by the Italian authorities to find temporary or permanent shelter apart from a brief stay in a reception centre upon her return from Norway. Thus, based on the second author's experience, there is no basis for assuming that the Italian authorities will prepare for the authors' return in accordance with basic human rights standards until a durable solution is found for them.

5.4 Furthermore, the authors argue that the more recent European Court decision in *Tarakhel v. Switzerland*, which involved similar facts, supports their claim that they should not be sent back to Italy. The authors note that, in the *Tarakhel v. Switzerland* case, the Court stated that the presumption that a State participating in the Dublin system will respect the fundamental rights in the European Convention on Human Rights is not irrebuttable.<sup>14</sup> The Court found that, in the current situation in Italy, "the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, cannot be dismissed as unfounded".<sup>15</sup> It emphasized children's "specific needs" and "extreme vulnerability" and stated that "reception conditions for children seeking asylum must be adapted to their age, to ensure that those conditions do not 'create ... for them a situation of stress and anxiety, with particular traumatic consequences'".<sup>16</sup> The Court required Switzerland to obtain assurances from its Italian counterparts that the applicants, a family, would be received in facilities and conditions adapted to the age of the children. If such assurances were not made, Switzerland would be violating article 3 of the European Convention by transferring them to Italy.

5.5 The authors submit that the decision in the *Tarakhel v. Switzerland* case seems to indicate that the fact that a person does not risk refoulement to Italy does not mean that being returned there does not constitute a violation of article 3 of the European Convention, given the harsh living conditions in the overcrowded reception facilities for asylum seekers, especially for families with children. Accordingly, the authors claim that the fact that they may face harsh living conditions, homelessness and destitution upon returning to Italy would fall within the scope of article 7 of the Covenant, even if their residence permits in Italy are to be renewed. The authors conclude by stating that the current living conditions in Italy for returnees under the Dublin II Regulation who are beneficiaries of international protection do not meet basic humanitarian standards, as required by the Executive Committee of the Office of the United Nations High Commissioner for Refugees in its conclusion No. 58, and thus returning them to Italy would constitute a violation of article 7 of the Covenant.

<sup>12</sup> See *Mohammed Hussein and Others v. the Netherlands and Italy*, paras. 43-44 and 46-50.

<sup>13</sup> *Ibid.*, para. 77.

<sup>14</sup> See *Tarakhel v. Switzerland*, para. 103.

<sup>15</sup> *Ibid.*, para. 115.

<sup>16</sup> *Ibid.*, para. 119.



## 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 it is admissible under the Optional Protocol.

6.2 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.

6.3 The Committee notes the authors' claim that they have exhausted all effective domestic remedies available to them. 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.

6.4 The Committee notes the authors' claim that deporting them and their two minor children to Italy, based on the Dublin II Regulation principle of first country of asylum, would expose them to the risk of irreparable harm, in violation of article 7 of the Covenant. The authors base their arguments on, inter alia, the economic situation they faced after they were granted residence permits in Italy, and on the general conditions of reception for asylum seekers and refugees entering Italy. They claim that, after they had to leave the reception centre in March 2012, they lived on the streets and occasionally in homeless shelters, which were overcrowded and not safe, and in churches. They assert that they might face harsh living conditions, homelessness and destitution upon returning to Italy. The Committee also notes the State party's argument that the authors failed to establish a *prima facie* case for the admissibility of their communication under article 7 of the Covenant, and that it has not been established that there are substantial grounds for believing that the authors risk being subjected to torture or to cruel, inhuman or degrading treatment if returned to Italy, and therefore the communication is manifestly ill-founded and should be declared inadmissible. The Committee also notes the State party's submission that the prohibition of torture and inhuman or degrading treatment or punishment cannot be interpreted as obliging States parties to provide everyone within their jurisdiction with a home nor as entailing any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living.<sup>17</sup>

6.5 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, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by 7 of the Covenant, which prohibits torture and cruel, inhuman or degrading treatment (para. 12). The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.<sup>18</sup> The Committee recalls its jurisprudence indicating 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 or evaluate facts and evidence in order to determine whether such

<sup>17</sup> Ibid., para. 95.

<sup>18</sup> See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6; and No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

risk exists,<sup>19</sup> unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or to a denial of justice.<sup>20</sup>

6.6 The Committee observes that the authors had been granted subsidiary protection in Italy. It also observes that the Danish Immigration Service had confirmed their need for subsidiary protection. The authors have not pointed to any procedural irregularities in the decision-making procedure of the Danish Immigration Service or the Refugee Appeals Board. Nor have they substantiated that the decision to return them to Italy as their first country of asylum was manifestly unreasonable or arbitrary in nature.<sup>21</sup> In this respect the Committee notes the authors' claim that while they had been issued valid residence permits in Italy for three years before they travelled to Norway in December 2012, they had not received financial or other assistance from the Italian authorities to find accommodation, work or permanent housing and that there was no effective integration scheme in Italy. The Committee also notes the authors' claim that if returned to Italy they would be returning with two children with no right to access reception centres. The Committee notes, however, that in January 2012, upon the second author's return from Norway after her asylum application had been rejected by the Norwegian authorities with reference to the Dublin II Regulation, she was hosted in a reception centre in Turin for two months and thereafter her residence permit was renewed for three additional years. As for the first author, the Committee notes that he had stayed in reception centres since his arrival in Italy in June 2011 until March 2012. The Committee concludes that the authors' previous experiences in Italy do not substantiate their claim that if returned to Italy they will be at a real risk of cruel, inhuman or degrading treatment.

7. In the light of the above considerations, the Committee considers that the authors' claims under article 7 of the Covenant have not been sufficiently substantiated for the purposes of admissibility. Accordingly, the Committee concludes that the communication is inadmissible under article 2 of the Optional Protocol.

8. The Committee therefore decides:

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

<sup>19</sup> See communication No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

<sup>20</sup> See, inter alia, *Lin v. Australia* and communication No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

<sup>21</sup> The authors' situation is different from the facts in communication No. 2360/2014, *Jasin et al. v. Denmark*, Views adopted on 22 July 2015. In that case, the author was a single mother of three small children who was suffering from health problems. Her residence permit entitling her to work and benefit from the schemes of social assistance, health care, social housing and education had expired while in Italy. The State party had failed to take the author's situation into account in an individualized risk assessment.

## Annex I

### Individual opinion of Committee member Yadh Ben Achour (dissenting)

[Original: French]

1. I am afraid I cannot endorse the Committee's decision to find communication No. 2402/2014 inadmissible. From my point of view, the communication is admissible and, on the merits, there is a risk of a violation of article 7 if the authors are deported to Italy. The reasoning behind my opinion is explained below.

2. At the end of paragraph 6.6 of the issues and proceedings before the Committee, the Committee notes a number of facts, some of which argue in favour of the authors' case, while others argue against it and could justify their deportation. After taking note of all the facts, the Committee concludes that "the authors' previous experiences in Italy do not substantiate their claim that if returned to Italy they will be at a real risk of cruel, inhuman or degrading treatment". In order to come to this conclusion, the Committee appears to have given disproportionate weight to the factual arguments against the authors. It should, in my opinion, have taken a more balanced view of the facts. Paragraphs 2.5, 2.7, 2.8 and 2.9 of the factual background contain enough elements to assert that the authors' deportation to Italy might pose a real risk of them being subjected to treatment contrary to article 7. The fact that the authors enjoyed subsidiary protection in Italy, that they were granted residence permits, that the wife was "hosted in a reception centre in Turin for two months and thereafter her residence permit was renewed for three additional years" and that the author (her husband) "stayed in reception centres since his arrival in Italy in June 2011 until March 2012" in no way alleviates the situation of distress the authors experienced in Italy. On the contrary, the situation was aggravated by the fact that their deportation to Italy would take place subsequently to the birth of two children to the couple, after 2012. This important factor should be taken into consideration to the extent that, objectively speaking, it can only make their situation more unstable and vulnerable if deported to Italy.

3. In this case, the Committee could have relied on precedent from 2015, *Jasin et al. v. Denmark*,<sup>a</sup> which is similar in some regards to the present case. In *Jasin et al. v. Denmark*, the Committee found that the author's deportation to Italy along with her three minor children would expose them to a risk of irreparable harm. And yet, like in the present case, the author had enjoyed protection and been given housing and a residence permit, which did not prevent the Committee from concluding, based on the circumstances of the case, that she was in a highly vulnerable personal situation, which, coupled with the proven shortcomings of the reception system for asylum seekers and refugees in Italy, gave rise to a real risk of her being subjected to treatment contrary to article 7 of the Covenant. It is therefore hard to understand why the two cases are being treated differently. The Committee should have come to the same conclusion as in communication No. 2360/2014.

4. The Committee could also have drawn on certain cases considered by the European Court of Human Rights, in particular the judgment in the case of *Tarakhel v. Switzerland*,<sup>b</sup> which dealt with the deportation to Italy of an Afghan couple and their six children. The Court criticized Switzerland for not sufficiently taking into account the complainant's personal and family circumstances. It ruled that article 3 of the European Convention on

<sup>a</sup> Communication No. 2360/2014, *Jasin et al. v. Denmark*, Views adopted on 22 July 2015.

<sup>b</sup> European Court of Human Rights, *Tarakhel v. Switzerland* (application No. 29217/12), decision of 4 November 2014.

Human Rights would be violated if the Swiss authorities deported the applicants to Italy under the Dublin II Regulation without first obtaining guarantees from the Italian authorities that the applicants would receive appropriate assistance adapted to the family and the age of the children.

5. It is true that, more recently, the Court appears to have ruled otherwise, for example in the judgments in the cases of *A.M.E. v. the Netherlands*<sup>c</sup> and *A.S. v. Switzerland*.<sup>d</sup> However, these judgments are based on facts which are unlike those in *Tarakhel v. Switzerland*. In fact, the Court took pains to expressly note this difference in the facts compared with the *Tarakhel v. Switzerland* decision, in paragraph 34 of *A.M.E. v. the Netherlands* and paragraph 36 of *A.S. v. Switzerland*. In the latter case, the issue was strictly limited to the problem of whether Italy would provide appropriate medical treatment for the applicant's condition. The Court found that the applicant had failed to demonstrate that he would not have access in Italy to the treatment required by his condition and, moreover, that his situation was not of exceptional gravity. The issues are not the same and the Committee should rather have followed the *Tarakhel* precedent. The fact that there are children involved, the pain of being uprooted and the level of vulnerability experienced by the family in the country of first entry are decisive risk criteria, of which the Committee has not taken sufficient account.

6. All of these considerations lead me to believe that, in the present case, the communication was admissible and that, in view of the heightened instability and vulnerability of the complainants' situation, their deportation to Italy would put them at real, serious and specific risk, in violation of article 7 of the Covenant.

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<sup>c</sup> European Court of Human Rights, *A.M.E. v. the Netherlands* (application No. 51428/10), decision of 13 January 2015.

<sup>d</sup> European Court of Human Rights, *A.S. v. Switzerland* (application No. 39350/13), decision of 30 June 2015.

## Annex II

### Individual opinion of Committee member Olivier de Frouville (dissenting)

[Original: French]

I wish to associate myself with the arguments put forward by my colleague Mr. Yadh Ben Achour in his dissenting opinion. For all the reasons he explained, I disagree with the decision taken by the Committee in this case. Like Mr. Ben Achour, I consider that the communication should have been declared admissible and that the Committee should have found on the merits that there would be a risk of irreparable harm in violation of article 7 if the authors were deported to Italy. In addition, it is difficult to understand what distinguishes this case from not only the case of *Jasin et al. v. Denmark*<sup>a</sup> but also that of *Ali et al. v. Denmark*.<sup>b</sup> As the Committee indicated in both those Views, in this type of case, Denmark needs to establish a proper procedure for seeking adequate assurances from the Italian authorities that the authors will be received in conditions compatible with the requirements under article 7 of the Covenant.

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<sup>a</sup> Communication No. 2360/2014, *Jasin et al. v. Denmark*, Views adopted on 22 July 2015.

<sup>b</sup> Communication No. 2409/2014, *Ali et al. v. Denmark*, Views adopted on 29 March 2016.

## Annex III

### **Individual opinion of Committee member Anja Seibert-Fohr (concurring)**

1. I concur with the Committee's Views. I write separately in the hope of shedding further light on the Committee's reasoning, which is summarized in paragraph 6.6 and led to the conclusion that the communication is inadmissible under article 2 of the Optional Protocol.
2. According to the Committee's standing jurisprudence, States parties are under an obligation "not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant".<sup>a</sup> The existence of a risk under article 7 must be determined on a case-by-case basis. It is for the authors of a communication to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being subjected to cruel, inhuman or degrading treatment. In order to substantiate the universally applicable threshold of article 7, it is insufficient if an author submits that he or she will not receive financial or other assistance from the authorities of the receiving State. The non-availability of social assistance as such does not amount to treatment in violation of article 7.
3. In the present case, the authors had been granted temporary residence permits by Italy, which allowed them to work and benefit from the general schemes for social assistance, health care, social housing and education. They submit that, having been granted subsidiary protection and having benefited from the reception system before, they would now return to Italy without the right to access reception centres. However, the authors' previous experience in Italy does not support this submission. When the second author returned from Norway to Italy in January 2012, she was not denied access but housed again in a reception centre in Turin where she had been before in 2008/09. There are no reasons to assume that this would not be the case if she is deported to Italy again. Neither is there any indication that the authors would not be able to renew their residence permits when they return.
4. In order to substantiate the claim that Denmark would violate their right not to be subjected to cruel, inhuman or degrading treatment, it also does not suffice to submit, as the authors do, that they did not (and will not) receive financial or any other assistance from the Italian authorities in finding alternative living arrangements and work.<sup>b</sup> The same applies to their claim that there is no effective integration scheme in Italy. The living conditions claimed by the authors do not rise to a level that would render their deportation cruel, inhuman or degrading. The facts in this case, in which both authors are entitled to and capable of work, are substantially different from the facts in *Jasin et al. v. Denmark*, where the Committee found a violation of article 7, because as a single mother of three small children, whose residence permit had expired while in Italy and who was suffering from health problems, the author would have been left upon deportation in a situation threatening her and her children's existence.<sup>c</sup> In contrast, in the present case, the legal status of the authors permits them to work and their situation as a family with two healthy adults fit for work does not warrant the same conclusion.

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<sup>a</sup> See the Committee's general comment No. 31, para. 12.

<sup>b</sup> See the author's submission in para. 6.6.

<sup>c</sup> Communication No. 2360/2014, *Jasin et al. v. Denmark*, Views adopted on 22 July 2015.

5. Since the authors have failed to submit to the Committee facts to support the claim that there are substantial grounds for believing that, if deported to Italy, they would be exposed to a real risk of being subjected to cruel, inhuman or degrading treatment pursuant to article 7, the communication is inadmissible under article 2 of the Optional Protocol.<sup>d</sup> I would like to emphasize that the Committee's inadmissibility decision is based on the facts before us, in application of the Covenant and without prejudice to obligations under other legal regimes. Although I recognize the need for a union of States that is founded on the indivisible, universal value of human dignity and solidarity<sup>e</sup> to take action in order to abide by this commitment and to improve the living conditions in which many refugees entitled to subsidiary protection are left under a regulatory regime for which this union is responsible, this, for the reasons given above, does not allow the Committee to find a violation of article 7 of the International Covenant on Civil and Political Rights in the case before it.

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<sup>d</sup> See rule 96 (b) of the Committee's rules of procedure (CCPR/C/3/Rev.10). For a similar finding, see communication No. 2351/2014, *R.G. v. Denmark*, Views adopted on 2 November 2015, para. 7.8, in which the Committee also found the communication inadmissible owing to insufficient substantiation.

<sup>e</sup> See the preamble to the Charter of Fundamental Rights of the European Union.

## Annex IV

### Individual opinion of Committee members Sarah Cleveland and Fabián Omar Salvioli (dissenting)

1. We disagree with the Committee's Views and write separately to object to the determination of inadmissibility in this case.
2. In *Jasin et al. v. Denmark*<sup>a</sup> and *Ali et al. v. Denmark*,<sup>b</sup> the Committee concluded that the authors' removal to Italy with their young children on the basis of the initial decision of the Danish Refugee Appeals Board would violate article 7 of the Covenant.<sup>c</sup> In both cases, the Committee found that the State party had failed to devote sufficient analysis to the individual authors' personal experience regarding the demonstrable failure of the Italian social service network and to the foreseeable consequences of forcibly returning them and their families to Italy. The Committee concluded that the State had failed to seek proper assurance from the Italian authorities that the authors and their minor children would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7.<sup>d</sup>
3. The State party properly acknowledges that the concept of protection includes certain social and economic elements, as asylum seekers must be treated in accordance with basic human standards. Like the authors in *Jasin et al. v. Denmark* and *Ali et al. v. Denmark*, the authors in the present case were granted subsidiary protection and residence permits, which legally entitled them to work and to various forms of social protection under Italian law. However, as in the above-mentioned cases, the authors soon found themselves destitute and living on the streets, with no assistance from the Italian authorities. As in the above-mentioned cases, the authors allege facts based on their personal experience, supported by reports regarding the conditions in Italian reception centres, indicating that there is a real risk that they and their two young children will be left similarly destitute and homeless if returned to Italy without assurances. Notably, as in *Jasin et al.*, the second author in this case actually left Italy and was returned there, and after two months in a reception centre again was turned out onto the streets. As in *Jasin et al.*, she thus was able to present specific evidence based on her own experience regarding the fate of persons who have previously been granted subsidiary protection by Italy and returned there.
4. The fact that in *Jasin et al.* the author's residence permit had expired does not itself distinguish that case or that of *Ali et al.* from the circumstances here. Under Italian law the residence permit given to a person who is granted subsidiary protection, even if expired or lost, is renewable so long as the individual remains entitled to subsidiary protection. Indeed, in the present case, both authors' residence permits were scheduled to expire in 2015, well before the Committee adopted its decision.
5. The Committee does not typically articulate the legal standard for finding a communication inadmissible for lack of substantiation.<sup>e</sup> However, the Committee has made clear that this form of admissibility requires the author to "submit sufficient evidence in

<sup>a</sup> Communication No. 2360/2014, *Jasin et al. v. Denmark*, Views adopted 22 July 2015.

<sup>b</sup> Communication No. 2409/2014, *Ali et al. v. Denmark*, Views adopted 29 March 2016.

<sup>c</sup> See *Jasin et al. v. Denmark*, para. 8.10, and *Ali et al. v. Denmark*, para. 7.9.

<sup>d</sup> See *Jasin et al. v. Denmark*, paras. 8.8-8.9, and *Ali et al. v. Denmark*, paras. 7.7-7.8.

<sup>e</sup> See article 2 of the Optional Protocol and rule 96 (b) of the Committee's rules of procedure (indicating that the claim must be "sufficiently substantiated").



substantiation of the allegations as will constitute a prima facie case”.<sup>f</sup> States parties have understood this to be the standard,<sup>g</sup> and at times have treated it as equivalent to the “manifestly ill-founded” standard applied by the European Court of Human Rights<sup>h</sup> and our sister treaty bodies.<sup>i</sup>

6. Reasonable minds perhaps may differ over whether the situation of the authors in this case is distinguishable from that in *Ali et al.* and *Jasin et al.*. But their circumstances are far too similar for the claim here to be inadmissible for lack of substantiation. It is untenable to contend that the claims in *Ali et al.* and *Jasin et al.* were admissible and established a violation of article 7, but that the authors’ claims here fail to even state a prima facie case. Nor does the Committee provide the reader with any meaningful justification for the radically different outcome here. An inadmissibility determination is particularly inappropriate given that under Committee procedures, cases considered inadmissible by the working group are discussed by the plenary only upon the affirmative request of a Committee member.<sup>j</sup> For all of these reasons, we believe this case should have been deemed admissible and decided on the merits.

<sup>f</sup> See the report of the Human Rights Committee (A/39/40(SUPP) and corr. 1 and 2), para. 588.

<sup>g</sup> See para. 4.1 of the present decision, alleging that the authors failed to establish a prima facie case for admissibility. See also communications No. 2272/2013, *P.T. v. Denmark*, Views adopted 1 April 2015, para. 4.1; No. 1544/2007, *Hamida v. Canada*, Views adopted 18 March 2010, para. 4.3; No. 2186/2012, *Mr. X and Ms. X v. Denmark*, Views adopted 22 Oct. 2014, para. 4.2; and Yogesh Tyagi, *The UN Human Rights Committee Practice and Procedure* (Cambridge, Cambridge University Press, 2011), p. 463 (“in effect, the submission must constitute a prima facie case”).

<sup>h</sup> The European Convention on Human Rights states that “the Court shall declare inadmissible any individual application ... if it considers that the application is ... manifestly ill-founded” (art. 35 (3)).

<sup>i</sup> The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women states that “the Committee shall declare a communication inadmissible where ... it is manifestly ill-founded or not sufficiently substantiated” (art. 4 (2) (c)); the same is indicated in the Optional Protocol to the Convention on the Rights of Persons with Disabilities (art. 2 (e)) and in the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (art. 3 (2) (e)); and the International Convention for the Protection of All Persons from Enforced Disappearance considers requests for urgent action that are “not manifestly unfounded” (art. 30 (2) (a)). States have used both the “prima facie” and “manifestly ill-founded” standards. Compare *Jasin et al. v. Denmark*, para. 4.1 above, arguing that the communication was “manifestly ill-founded”; *Ali et al. v. Denmark*, para. 4.1 above, arguing the same point; and communication No. 2149/2012, *M.I. v. Sweden*, Views adopted 25 July 2013, para. 4.3, in which the State party argues that the communication is “manifestly unfounded”. See also J. Th. Möller and A. de Zayas, *The United Nations Human Rights Committee Case Law, 1977-2008: A Handbook* (Kehl/Strasbourg, N. P. Engel Verlag, 2009), p. 91 (“the [Human Rights Committee’s] ‘insufficient substantiation ground’ has become synonymous with the ‘manifestly ill-founded’ ground in other international procedures”).

<sup>j</sup> See rule 93 (3) of the Committee’s rules of procedure.