



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. 2409/2014*, **

<i>Communication submitted by:</i>	Abdilafir Abubakar Ali and Mayul Ali Mohamad (represented by the Danish Refugee Council)
<i>Alleged victims:</i>	The authors and their two children
<i>State party:</i>	Denmark
<i>Date of communication:</i>	28 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 2 June 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	29 March 2016
<i>Subject matter:</i>	Deportation from Denmark to Italy
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment or punishment
<i>Articles of the Covenant:</i>	7
<i>Articles of the Optional Protocol:</i>	2

1.1. The authors of the communication are Abdilafir Abubakar Ali (27 years old at the time the communication was submitted) and Mayul Ali Mohamad (24 years old at the time the communication was submitted), Somalian nationals from Mogadishu. They have two

* 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 Muhumuza Laki, Photini Pazartzis, Sir Nigel Rodley, Fabian Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. Three opinions signed by six Committee members are annexed to the present Views.

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children: Ali Abdilafir Abubakar (2 years old at the time the communication was submitted) and Abdi Rahman Abdilafir Abubakar Ali (6 months at the time the communication was submitted).¹ The authors and their children 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 Covenant. The authors are represented by the Danish Refugee Council. The Optional Protocol entered into force for Denmark on 23 March 1976.

1.2 On 2 June 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 and their children to Italy while their case was under consideration by the Committee.

1.3 On 4 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 are from Mogadishu. They are Muslim and belong to the Hawie clan. Having received threats from Al-Shabaab, they fled Somalia to Libya, where they met while in detention for having entered the country illegally. They therefore submitted their claim for refugee status separately and on different grounds. Abubakar Ali fled to Libya in 2008. His brother was a soldier in the Somali army and was killed by Al-Shabaab in 2007. Following the killing of his brother, Abubakar Ali was threatened by Al-Shabaab because he was suspected of being a spy for the Government. Mayul Ali Mohamad fled to Libya after having given an interview on the radio early in 2009, in which she stated that her brother and her then husband had been killed by Al-Shabaab because they used to work for the Government. Mayul Ali Mohamad claims that after the interview Al-Shabaab members repeatedly threatened her and looked for her at her home.

2.2 The authors were detained in Libya for one year approximately, during which time Mayul Ali Mohamad gave birth to a girl. In 2011, the authors travelled by boat to Italy. During the trip, they were separated and their daughter drowned.² The authors applied for asylum in Italy in April and June 2011 respectively. Once in Italy, they reunited and lived together in an asylum centre. There, they were given food by charities, in particular a church. On 21 December 2011, Mayul Ali Mohamad gave birth to their son Ali Abdilafir Abubakar in a hospital in Italy. The baby was not well, but the authors allege that no one listened to them or attended to them when they asked for medical assistance.

2.3 While still in the asylum centre, the authors received a temporary residence permit. As they do not speak Italian, they did not understand for how long the permit would be valid. In January 2012, they were asked to leave the asylum centre. They lived in the streets for approximately four months, from January to June 2012. They were not offered any assistance to find shelter, permanent housing or work, and they lost their residence permits.³ They slept in train stations with their son and received food from churches. The health of their newborn son deteriorated because of a congenital heart defect that had not yet been

¹ No precise date of birth was provided for the authors.

² According to the source, Mayul Ali Mohamad travelled with her daughter, but the girl drowned and died.

³ In its decision of 7 October 2013, the Refugee Appeals Board indicates that Abubakar Ali was in possession of a valid residence permit for Italy upon his arrival in Denmark; however, the expiration date of the residence permit is not provided. The Board also indicates that Mayul Ali Mohamad informed the Danish authorities that she lost her temporary residence permit while she was living in the streets in Rome.

diagnosed. The authors allege that they were exposed to violence. In February or March 2012, for example, Abubakar Ali was attacked by three persons who kicked him until he fell to the floor. The police intervened but did not take any measure against the aggressors. They just told the authors not to sleep at the train station. The authors did not file a complaint because they could not speak Italian.

2.4 Because of the very bad conditions they were facing, the authors decided to leave for Denmark, where they arrived on 20 June 2012 and applied for asylum. On 24 April 2013, the Danish Immigration Service decided that, even though the authors were in need of subsidiary protection, they should be transferred to Italy, as it was their first country of asylum. On 7 October 2013, the Refugee Appeals Board upheld the decision of the Danish Immigration Service, finding that the case of the authors fell under section 7 (2) of the Aliens Act⁴ and, consequently, that the question was if Italy could serve as their first country of asylum, in accordance with section 7 (3) of that Act.⁵ The Board indicated that, for a country to be considered as the first country of asylum, it must, at a minimum, be a place where the authors were protected against refoulement, were able to enter and stay lawfully, and had their personal integrity and safety protected. Taking into account the information provided by the Italian authorities and by the authors,⁶ the Board considered as a fact that both authors had been granted residence in Italy under the Convention relating to the Status of Refugees. The Board further stated that the concept of protection comprises certain social and financial elements that allow asylum seekers to enjoy basic rights and that the authors would be able to obtain, including rights affecting their socioeconomic conditions in Italy, their first country of asylum.

2.5 On 21 May 2013, the authors' son underwent heart surgery in Denmark after the doctors diagnosed him with a congenital heart defect. According to the authors, the doctors also concluded that the baby had not been sufficiently examined at the hospital in Italy when he was born. In November 2013, Mayul Ali Mohamad gave birth to Abdilafir Abubakar Ali, in Denmark.

2.6 The authors claim that they have exhausted all available domestic remedies, as the decision of the Refugee Appeals Board of 7 October 2013 is final and cannot be appealed. They contend that the Board based its negative decision on the fact that they had received a temporary residence permit in Italy, that they could enter and reside there legally, and that they may obtain adequate socioeconomic conditions there as well.

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 Covenant.⁷ They submit that, since they were asked to leave the asylum centre early in 2012, they have not been

⁴ Section 7 (2) reads: "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 ...".

⁵ Section 7 (3) reads: "A residence permit under subsections (1) and (2) may be refused if the alien has already obtained protection in another country, or if the alien has close ties with another country where the alien must be deemed able to obtain protection."

⁶ In its decision, the Refugee Appeals Board does not specify what information was received from the Italian authorities. It highlights that the authors made contradictory statements regarding whether they requested help from the Italian authorities in relation to their situation, in particular regarding their son's health.

⁷ The authors cite the following: European Court of Human Rights, *M.S.S. v. Belgium and Greece*, application No. 30696/09, judgment adopted on 15 December 2010, and *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, application No. 27725/10, decision adopted on 2 April 2013.

able to find housing, work or any form of durable humanitarian solution in Italy. In addition, they submit that if they are returned to Italy, they may face homelessness or be obliged to live in self-organized settlements, which are overcrowded and have very bad living conditions, because, as they were granted protection and benefited from the reception system when they first arrived in Italy, they are no longer entitled to accommodation in reception centres.⁸

3.2 The authors further submit that reception and living conditions in Italy for refugees with valid or expired residence permits do not comply with basic humanitarian standards and with international obligations of protection.⁹ They contend that their experience demonstrates systemic failures of the support provided to asylum seekers and refugees in Italy, especially to members of vulnerable groups. They argue that it is likely that they would face homelessness, destitution and very limited access to medical care in Italy.¹⁰ The authors therefore consider that Italy does not currently meet the humanitarian standards necessary for the principle of first country of asylum to be applied and that they would be at a real risk of being subjected to inhuman and degrading treatment if they were returned to Italy. The authors draw attention to the fact that they have two small children. They also consider that their older son, Ali, would be at risk of not receiving adequate medical treatment and follow-up to his heart disease in Italy, where he did not receive proper medical assistance when he was born and where his congenital heart disease was not discovered. The authors further note that, after they were told to leave the Italian reception facilities early in 2012, they were not able to find shelter, medical care, work or any durable humanitarian solution for them and their children, despite having been granted subsidiary protection.

State party's observations on admissibility and the merits

4.1 On 2 December 2014, the State party submitted its observations on admissibility and the merits of the communication. The State party considers that the communication should be declared inadmissible because it is manifestly ill-founded. Should the Committee find the communication to be admissible, the State party considers that the Committee should declare the authors' return to Italy not to be in violation of article 7 of the Covenant. More specifically, the State party argues that the authors did not produce any essential new information about their case before the Committee beyond that already submitted in connection with their asylum proceedings. It considers that the information provided was already thoroughly reviewed by the Refugee Appeals Board in its decision of 7 October

⁸ The authors cite several reports on the situation of returnees in Italy: European network for technical cooperation of the application of the Dublin II Regulation, *Dublin II Regulation National Report: Italy* (December 2012); Swiss Refugee Council, *Reception Conditions in Italy: Report on the Current Situation of Asylum Seekers and Beneficiaries of Protection, in particular Dublin Returnees* (Bern, October 2013); Jesuit Refugee Service Europe, *Protection Interrupted: the Dublin Regulation's Impact on Asylum Seekers' Protection* (June 2013); and United States Department of State country reports on human rights practices (April 2013).

⁹ Asylum Information Database, *Country Report: Italy* (May 2013); Swiss Refugee Council, *Reception Conditions in Italy: Report on the Current Situation of Asylum Seekers and Beneficiaries of Protection, in particular Dublin Returnees* (Bern, October 2013); and European network for technical cooperation of the application of the Dublin II Regulation, *Dublin II Regulation National Report: Italy* (December 2012).

¹⁰ The authors quote a report according to which refugees spend most of their time covering their basic needs: queuing up for meals and finding somewhere to shower, wash and sleep. Under these circumstances, it is almost impossible for them to become integrated into society, and this is even more difficult for parents who have to take care of children. See Swiss Refugee Council, *Reception Conditions in Italy: Report on the Current Situation of Asylum Seekers and Beneficiaries of Protection, in particular Dublin Returnees* (Bern, October 2013).

2013. The State party notes that the Board found that the case of the authors fell under section 7 (2) of the Danish Aliens Act (protection status). However, the authors had previously been granted subsidiary protection in Italy and could return and stay there lawfully with their children. Italy is considered the “first country of asylum”, which justifies the refusal by the Danish authorities to grant them asylum in accordance with section 7 (3) of the Aliens Act.

4.2 The State party further clarifies that, when applying the principle of country of first asylum, the Refugee Appeals Board requires, at a minimum, that the asylum seekers be protected against refoulement and that they be able to legally enter and take up lawful residence in the first country of asylum. 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 country of first asylum. The State party also considers, however, that it is not possible to require that asylum seekers have the exact same social and living standards as nationals of the country.

4.3 In response to the allegations regarding the humanitarian situation in Italy, the State party refers to the 2013 decision of inadmissibility of the European Court of Human Rights in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*. In that case, taking into account reports of governmental and non-governmental organizations, the Court considered 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*”.¹¹ The Court found the applicant’s allegations in that case manifestly ill-founded and inadmissible and that the applicant could be returned to Italy. With regard to the present case, the State party considers that, although the authors have relied on the Court’s finding in *M.S.S. v. Belgium and Greece* (2011), the Court’s decision in the *Mohammed Hussein* case (2013) is more recent and specifically addresses the conditions in Italy. The State party further submits that, as the Court noted, a person granted subsidiary protection in Italy would be provided with a three-year renewable residence permit that allowed the holder to work, obtain a travel document for aliens and benefit from family reunification, as well as from the general schemes for social assistance, health care, social housing and education.

4.4 The State party further refers to the 2013 country report on Italy quoted by the authors, according to which some asylum seekers who did not have access to asylum centres were obliged to live in “self-organized settlements”, which are often overcrowded. The State party submits that, in the November 2013 update of that country report, it is indicated that those were the reception conditions in Italy for asylum seekers and not for aliens who, like the authors, had already been issued residence permits. Concerning the authors’ son’s heart condition and their claims that he would need medical assistance and follow-up not available in Italy, the State party submits that the child’s treatment has been successfully completed following surgery carried out in Denmark.¹² It further considers that, according to available background information, the authors’ son would have access to medical treatment in Italy.

¹¹ See *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, para. 78.

¹² The State party refers to a medical report according to which follow-up examination would be needed in around five years, but since the patient and his family are refugees who are going to be expelled from Denmark, this will most likely not happen.

4.5 In addition, the State party refers to another decision of the European Court of Human Rights, *Tarakhel v. Switzerland*,¹³ in which the Court found that the return of an Afghan family from Switzerland to Italy would constitute a breach of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (prohibition of inhuman or degrading treatment), if the Swiss authorities were to send the asylum seekers back to Italy under the Dublin Regulation without having first obtained individual guarantees from the Italian authorities that the applicants would be taken in charge in a manner adapted to the age of their children and that the family would be kept together. The State party considers that *Tarakhel v. Switzerland* does not deviate from the Court's jurisprudence regarding individuals and families with residence permits for Italy,¹⁴ as it concerns a case of asylum seekers. It submits that States parties cannot be expected to obtain individual guarantees from the Italian authorities before returning individuals or families in need of protection who have already been granted residence in Italy.

4.6 The State party concludes that the authors have failed to substantiate the claim that they would be at risk of irreparable harm in Italy and that deporting them and their children back to Italy would not amount to a violation of article 7.

Authors' comments on the State party's observations

5.1 On 28 January 2015, the authors submitted their comments on the State party's observations. They 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 place. Asylum seekers and recipients of subsidiary protection thus often face the same severe difficulties in Italy in terms of finding basic shelter, access to sanitary facilities and food.¹⁵ The authors refer to the 2013 Jesuit Refugee Service report, in which it is stated that the real problem concerns those who are sent back to Italy and who were already granted some kind of protection, as they may no longer be entitled to accommodation in the government reception centres for asylum seekers if they have already stayed in at least one of the accommodation options available upon initial arrival and if they left the centre voluntarily before the established time.¹⁶ Most people occupying abandoned buildings in Rome fall in that category. The findings show that the lack of places to stay is a big problem, especially for returnees, most of whom have been granted international or humanitarian protection.¹⁷

5.2 The authors also dispute the interpretation of the European Court of Human Rights jurisprudence referred to by the State party. They contend that the decision in the case *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* was based on an assumption that the Italian authorities would prepare a suitable solution for the arrival of the applicant's family in Italy.¹⁸ The authors contend that there is no basis for assuming that

¹³ European Court of Human Rights, *Tarakhel v. Switzerland*, application No. 29217/12, judgment adopted on 10 September 2014.

¹⁴ As established in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*.

¹⁵ The authors reference their complaint and the various sources cited therein.

¹⁶ Jesuit Refugee Service Europe, *Protection Interrupted: The Dublin Regulation's Impact on Asylum Seekers' Protection* (June 2013), p. 152.

¹⁷ *Ibid.*, p. 161. In addition, the authors quote another report indicating that persons with protection status have no access to the accommodation provided through the European Fund for Refugees either, because the fund is only for asylum seekers. Therefore, it is extremely difficult for people who have been granted protection status who are returned to Italy to find accommodation. See Swiss Refugee Council, *Reception Conditions in Italy: Report on the Current Situation of Asylum Seekers and Beneficiaries of Protection, in particular Dublin Returnees* (Bern, October 2013).

¹⁸ The author cites the decision in the case *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* (paras. 77-78).

the Italian authorities will prepare for their return in accordance with basic human rights standards.

5.3 The authors consider that, contrary to the State party's interpretation, the case law more relevant for the present case is *Tarakhel v. Switzerland*, taking into account that, as stated above, the living conditions and difficulties in finding shelter, health assistance and food are similar for asylum seekers and persons who have already been granted protection. The authors note that in that case the European Court of Human Rights stated that the presumption that a State participating in the Dublin system will respect the fundamental rights enshrined in the European Convention on Human Rights cannot be rebutted. The Court further 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".¹⁹ 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 on Human Rights by transferring them to Italy. The authors argue that, in the light of this finding, the harsh conditions faced by recipients of subsidiary protection returning to Italy would fall within the scope of article 3 of the European Convention on Human Rights and article 7 of the Covenant. Accordingly, they reiterate that their deportation to Italy would constitute a violation of article 7 of the Covenant.²⁰

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

6.3 The Committee 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 State party's challenge to the admissibility of the communication on the ground that the authors' claims under article 7 of the Covenant are manifestly ill-founded. The Committee considers, however, that the inadmissibility argument adduced by the State party is intimately linked to the merits and should thus be considered at that stage.

6.5 The Committee declares the communication admissible insofar as it appears to raise issues under article 7 of the Covenant and proceeds to a consideration of the merits.

¹⁹ See *Tarakhel v. Switzerland*, para. 115.

²⁰ The authors quote the European Court of Human Rights, which in *Tarakhel v. Switzerland* indicated that if proper reception facilities adapted to children are not available, "the conditions in question would attain the threshold of severity required to come within the scope of the prohibition under article 3 of the Convention". See *Tarakhel v. Switzerland*, para. 119.

Consideration of the merits

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

7.2 The Committee notes the authors' claim that deporting them and their two minor children to Italy on the basis of the Dublin 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 actual treatment they received after they were granted residence permits in Italy and on the general conditions of reception for asylum seekers and refugees entering Italy, as found in various reports.

7.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, which prohibits cruel, inhuman or degrading treatment. 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.²¹ The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists,²² unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.²³

7.4 The Committee notes that the authors, according to their own uncontested submissions, lived in a reception centre between June 2011 and January 2012, when they were asked to leave, without being provided with alternative accommodation, with their son born on 21 December 2011. Subsequently, they lived in the streets and in railway stations, and were dependent on food provided by churches. They were thus left without shelter and means of subsistence. The Committee also notes the authors' submissions that their newborn son did not receive the medical attention he needed at birth, despite the requests made to the competent authorities. Out of fear that they would be unable to provide for their child and find a humanitarian solution to their situation, the authors left Italy and went to Denmark, where they requested asylum in June 2012. The authors, asylum seekers with two minor children,²⁴ now find themselves in a situation of great vulnerability.

7.5 The Committee takes note of the various reports submitted by the authors highlighting the lack of available places in the reception facilities in Italy for asylum seekers and returnees under the Dublin Regulation. The Committee notes, in particular, the authors' submission that returnees who have already been granted a form of protection and who have benefited from the reception facilities while in Italy are, like themselves, in fact not entitled to accommodation in the centres for asylum seekers.²⁵

7.6 The Committee notes the finding of the Refugee Appeals Board that Italy should be considered the first country of asylum in the present case and the position of the State party

²¹ 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.

²² See communication No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

²³ See, inter alia, communications No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2; and No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

²⁴ See para. 2.5.

²⁵ See www.asylumineurope.org/sites/default/files/report-download/aida_italy_thirdupdate_final_0.pdf.

that the first country of asylum is obliged to provide asylum seekers with basic human rights, although it is not required to provide for such persons the same social and living standards as nationals of the country (see para. 4.2 above). The Committee further notes the reference made by the State party to a decision of the European Court of Human Rights according to which, although the situation in Italy had shortcomings, it did not disclose “a systemic failure to provide support or facilities catering for asylum seekers”.²⁶

7.7 The Committee considers, however, that the State party’s conclusion did not adequately take into account the information provided by the authors, based on their own personal experience that, despite being granted a residence permit in Italy, they faced intolerable living conditions there. In that connection, the Committee notes that the State party does not explain how, in case of a return to Italy, the residence permits would actually protect them and their two minor children, one of whom needs follow-up medical attention, from exceptional hardship and destitution, which they have already experienced in Italy.²⁷

7.8 The Committee recalls that States parties should give sufficient weight to the real and personal risk that a person might face if deported²⁸ and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the authors would face in Italy, rather than rely on general reports and on the assumption that, as they had benefited from subsidiary protection in the past, they would, in principle, be entitled to the same subsidiary protection today. The Committee considers that the State party failed to take into due consideration the special vulnerability of the authors who, notwithstanding their entitlement to subsidiary protection, face homelessness and are not able to provide for themselves in the absence of any assistance from the Italian authorities, including the medical assistance needed for their newborn son. It has also failed to seek proper assurances from the Italian authorities that the authors and their two minor children would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7 of the Covenant, by requesting that Italy undertake: (a) to reissue or renew their residence permits²⁹ and to issue residence permits to their children and not to deport them from Italy; and (b) to receive the authors and their children in conditions adapted to the children’s age and the family’s vulnerable status, which would enable them to remain in Italy.³⁰

7.9 Consequently, the Committee considers that, under the circumstances, the removal of the authors and their two minor children to Italy on the basis of the decision of the Danish Refugee Appeals Board would be in violation of article 7 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the deportation of the authors and their two children to Italy would violate their rights under article 7 of the Covenant.

9. In accordance with article 2 (1) of the Covenant, which establishes that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including full reconsideration of their claim, taking into account the State party’s obligations under the Covenant, the Committee’s present Views and the need for assurances from Italy, as set out in paragraph

²⁶ See *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, para. 78.

²⁷ See communication No. 2360/2014, *Warda Osman Jasin v. Denmark*, Views adopted on 22 July 2015, para. 8.8.

²⁸ See, for example, communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, paras. 11.2 and 11.4.

²⁹ Taking into account the authors’ claim that they lost their residence permits (see para. 2.3).

³⁰ See communication No. 2360/2014, *Warda Osman Jasin v. Denmark*, Views adopted on 22 July 2015, para. 8.9.

7.8 above, if necessary. The State party is also requested to refrain from expelling the authors to Italy while their request for asylum is being reconsidered.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them translated into the official language of the State party and widely distributed.

Annex I

Individual opinion of Committee members Yuval Shany, Konstantine Vardzelashvili and Sir Nigel Rodley (dissenting)

1. We disagree with the Committee's conclusion that the facts in the present case suggest a violation of article 7 of the Covenant by Denmark, should the authors and their two children be deported to Italy.

2. According to the well-established case law of the Committee, States parties are obliged not to deport persons 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, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed".^a Not every exposure to personal hardship in the country of removal would, however, fall within the scope of the removing State's non-refoulement obligations.^b

3. Individuals who are likely to face, after being deported, economic destitution and inadequate living conditions, may have legitimate claims from the country of removal under the International Covenant on Economic, Social and Cultural Rights and possibly also under the International Covenant on Civil and Political Rights. Still, with the possible exceptions of those individuals who face special hardships owing to their particular vulnerabilities, which render their plight exceptionally harsh and irreparable in nature, non-availability of social assistance does not constitute grounds for non-refoulement. A contrary interpretation, recognizing all economically destitute individuals as potential victims of article 7 of the Covenant, has no support in the case law of the Committee or in State practice, and would extend the protections of article 7 and the non-refoulement principle (which are absolute in nature) beyond breaking point.

4. Although we supported the Views adopted by the Committee in *Jasin v. Denmark*,^c the facts in that case were significantly different from those in the present case, and do not warrant the same legal conclusion. In *Jasin v. Denmark*, the author was in a particularly vulnerable situation, which made it nearly impossible for her to confront the exceptional hardships expected were she to be deported to Italy. She was the single mother of three small children who had to contend with health problems, who had lost her immigration status in Italy and whom the Italian welfare system had demonstrably failed to assist. Under those exceptional circumstances, we were of the view that, without specific assurances of social assistance, Italy could not be considered a safe country of removal for the author and her children (raising, as a result, the possibility of de facto refoulement from Italy to her country of origin).

5. In the present case, the two authors are able-bodied adults who may, pursuant to their subsidiary protection status in Italy, lawfully work and support themselves and their two minor children. The facts of the case also suggest that the Italian authorities have responded in the past, at least in part, to the social needs of the authors, who resided in an asylum centre for several months. Although one of the authors' children suffered in the past from a congenital heart problem (atrial septal defect), the record before us suggests that the operation he underwent in Denmark was successful, that the medical problem has been

^a See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

^b See communication No. 265/87, *Vuolanne v. Finland*, Views adopted on 7 April 1989.

^c See communication No. 2360/2014, *Jasin v. Denmark*, Views adopted on 22 July 2015.

fully cured and that the child does not require any further medical treatment, nor does his condition require close monitoring (other than one follow-up examination five years after the operation). While deportation to Italy may put the authors in a more difficult situation, we do not have before us information suggesting that their plight is expected to reach the exceptional level of harshness and irreparability that would result in a violation of article 7.

6. Under these circumstances, we cannot conclude that the decision of the Danish authorities to deport the authors to Italy was manifestly arbitrary and would entail a violation of article 7 of the Covenant by Denmark.

Annex II

Individual opinion of Committee member Photini Pazartzis (dissenting)

1. I find myself in disagreement with the Committee's view that the facts in this case amount to a violation of article 7 of the Covenant, were the authors and their two children to be deported to Italy.

2. In its conclusions, the Committee recalls (see para. 7.3 of the Views) the obligation of States parties not to 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 article 7 of the Covenant, which prohibits cruel, inhuman or degrading treatment.^a The Committee further recalls its established jurisprudence that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of the States parties to review and evaluate facts and evidence in order to determine whether such real risk exists, unless it finds that the evaluation was clearly arbitrary and amounted to a denial of justice. This does not appear to be the case. In its decision of 7 October 2013, the Danish Refugee Appeals Board confirmed the need for subsidiary protection (which had already been granted to the authors by Italy) and took into account all the information provided by the authors in concluding that there were no substantial grounds that the authors would suffer irreparable harm if returned to Italy.

3. Notwithstanding the dire situation of vulnerability in which asylum seekers may find themselves, the assessment of a risk of personal and irreparable harm depends on the particular factual circumstances of each case. In the present case, the authors and their two children had already been granted subsidiary protection and working permits by the Italian authorities. In Denmark, the son underwent heart surgery for a congenital heart defect and the child's treatment has been successfully completed. The present case is thus different from *Jasin v. Denmark*, where the Committee arrived at a different conclusion owing to the exceptional situation of the author, a single mother who was facing health problems and had three children.^b

4. The prospect that the authors might face difficulties in finding housing or work if returned to Italy does not, in my opinion, amount to a real risk of hardship, or of hardship severe enough to constitute torture or cruel, inhuman or degrading treatment and to fall within the scope of article 7 of the Covenant.

^a See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

^b See communication No. 2360/2014, *Jasin v. Denmark*, Views adopted on 22 July 2015, appendix II.

Annex III

Individual opinion of Committee members Anja Seibert-Foehr joined by Yuji Iwasawa (dissenting)

1. We deplore the precarious living conditions in which many refugees entitled to subsidiary protection experience under a regulatory regime adopted by a union of States that is founded on the indivisible, universal value of human dignity, freedom, equality and solidarity.^a We also recognize the need for action by the union in order to fulfil this commitment.

2. However, on the basis of the International Covenant on Civil and Political Rights and for reasons that will be explained below, we are unable to agree with the finding of the majority of the Committee in the present case that Denmark would violate its obligation not to subject the authors to cruel, inhuman or degrading treatment pursuant to article 7 if it deported them to Italy.

3. 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".^b In paragraph 7.3 of the present Views, the Committee reaffirms this principle, stressing in addition that this risk must be personal and that the threshold for providing substantial grounds is high.

4. 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 treatment contrary to article 7.

5. In the present case, we believe that the authors have failed to sufficiently substantiate their claim under article 7.

6. Before they left for Denmark, both authors had been granted subsidiary protection in Italy and had received a temporary residence permit that, according to the uncontested submission by the State party, allowed them to work and benefit from the general schemes for social assistance, health care, social housing and education. There is no indication that they would not be able to renew their residence permits when they return to Italy.

7. The authors claim that they may face homelessness, destitution and very limited access to medical care or be obliged to live in self-organized settlements (para. 3.1). They base their claim under article 7 on the absence of an effective integration scheme in Italy (para. 5.1) and the fact that they were not offered assistance by the Italian authorities to find housing or work in Italy (para. 2.3).

8. This submission is insufficient to show a real risk of irreparable harm contemplated by article 7 of the Covenant. As a universally accepted standard of protection, this article provides that no one shall be subjected to cruel, inhuman or degrading treatment. The authors have failed to sufficiently substantiate that they would be exposed to a real risk of being subjected to such treatment in Italy. The non-availability of social assistance as such

^a Preamble of the Charter of Fundamental Rights of the European Union.

^b See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

does not amount to a violation of article 7.^c The level of hardship and destitution claimed by the authors does not rise to a level that would render their deportation cruel, inhuman or degrading. The facts in the present case, where both authors are entitled and able to work, are substantially different from the facts in *Jasin v. Denmark*, because the author in that case — the single mother of three small children whose residence permit expired while in Italy and who was suffering from health problems — would have been left upon deportation in a situation threatening her and her children's existence.^d In contrast, in the present case, the legal status of the authors as recipients of subsidiary protection that permits them to work and their situation as a family with two healthy adults fit for work do not warrant the sweeping conclusion of the majority of the Committee that they cannot provide for themselves.

9. Nor have the authors substantiated the claim that their deportation would expose their older son to the risk of not receiving adequate medical treatment for heart disease in Italy, since it is uncontested that their son's treatment has been successfully completed following the surgery carried out in Denmark.

10. For these reasons, we believe that the authors have failed to demonstrate that their future prospects, if returned to Italy, disclose a real risk of harm severe enough to fall within the scope of article 7. In the absence of sufficient substantiation of their claims, Denmark cannot be reproached for having failed to adequately take into account the information provided by the authors.

^c See communication No. 2402/2014, Views adopted on 29 March 2016, para. 6.6.

^d *Jasin v. Denmark*, communication No. 2360/2014, Views adopted on 22 July 2015. In that case, the Committee ultimately found a violation of article 7 because the State party had failed to take the author's particular situation of extreme precariousness into account in an individualized risk assessment.