



# 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. 2378/2014\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	A.S.M. and R.A.H. (represented by counsel, Helle Hom Thomsen)
<i>Alleged victim:</i>	The authors and their three minor children
<i>State party:</i>	Denmark
<i>Date of communication:</i>	14 April 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 15 April 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	7 July 2016
<i>Subject matter:</i>	Deportation from Denmark to Italy
<i>Procedural issues:</i>	Failure to sufficiently substantiate allegations; incompatibility <i>ratione materiae</i>
<i>Substantive issues:</i>	Torture; cruel, inhuman or degrading treatment or punishment; right to a fair trial; right to privacy; family and reputation
<i>Articles of the Covenant:</i>	7, 17 and 24
<i>Articles of the Optional Protocol:</i>	2 and 3

1.1 The authors of the communication are A.S.M. and his wife R.A.H., Somali nationals born on 1 July 1985 and 1 January 1990, respectively. They submit the communication on behalf of themselves and their minor children, X, Y and Z, born in Italy on 13 October 2009 and 8 June 2011 and in Denmark in July 2014, respectively.<sup>1</sup> They claim that by

\* Adopted by the Committee at its 117th session (20 June-15 July 2016).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Sir Nigel Rodley, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

\*\*\* Individual opinions by Committee members Yadh Ben Achour (dissenting) and Fabián Salvioli (concurring) and a joint opinion by Committee members Sarah Cleveland and Sir Nigel Rodley (concurring) are annexed to the present Views.

<sup>1</sup> At the time of the submission of the communication to the Committee, the authors were expecting their third child, who was subsequently born in the State party.



forcibly deporting them and their children to Italy, the State party would violate their rights under articles 7, 17 and 24 of the Covenant. The Optional Protocol entered into force for Denmark on 23 March 1976. The authors are represented by counsel.

1.2 On 15 April 2014, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the authors and their children to Italy while their case was under consideration by the Committee. On 16 April 2014, the Refugee Appeals Board suspended their deportation until further notice, in compliance with the Committee's request.

### **Factual background**

2.1 The authors were married in 2007 in Somalia. They claim that R.A.H. is an ethnic Murusade Hawiye and a Muslim. She did not attend school and can neither read nor write. She has never had a job. A.S.M. is an ethnic Quranyow Garre and a Sunni Muslim. In Somalia, he worked for the non-governmental organization Primary Alternative Education and as the headmaster of a school. From June 2007 until the family's departure from Somalia, he was mayor of the town of Qoryooley. The authors claim that, on 11 November 2008, Al-Shabaab launched an attack against A.S.M.'s workplace, during which security guards were killed, and that, subsequently, Al-Shabaab members came to the authors' home to look for A.S.M. Given that they feared persecution by Al-Shabaab, which regarded them as unfaithful for having cooperated with the Government of Somalia, they fled Somalia on 12 November 2008.

2.2 On 11 April 2009, the authors entered Italy and applied for asylum. In October 2009, they were granted asylum (refugee status under the Convention relating to the Status of Refugees) and subsidiary protection on humanitarian grounds and were issued residence permits, A.S.M. for five years and R.A.H. for three years. According to the statement that the authors provided to the Danish Immigration Service, after their arrival in Italy, A.S.M. stayed in a refugee camp for seven months, whereas R.A.H. was hospitalized for a long period during her pregnancy and stayed in a different refugee camp. She gave birth to her first child in a hospital in Italy. A.S.M. was not present at the delivery. They were not reunited until they were granted residence permits.

2.3 The authors received financial support and social housing from the Italian authorities. On 26 October 2009, they signed an agreement for international protection seekers and refugees with the local government integration and protection service in Palagiano and were provided with housing in an apartment in Palagiano for six months, as part of project "Koine". Prior to living in the apartment, they lived in different asylum centres for three months. They were provided with health insurance cards and access to medical treatment; however, they claim that in practice they had limited access to health services, despite the fact that R.A.H. required treatment for the effects of a car accident that she had suffered in Somalia when she was a child. In addition, for a skin rash acquired while living in the apartment in Palagiano, only a cream was prescribed. In June 2010, their housing contract expired and they were required to leave the apartment. They were given 600 euros and left on their own.

2.4 In the absence of any assistance from the authorities, on an unspecified date, the authors decided to move to Bologna. Given that they had already received assistance for six months, pursuant to the provisions of the Protection System for Asylum Seekers and Refugees, they could not be granted social housing in Bologna. For a short period, they lived with another Somali national, then decided to travel to Germany, where they applied for asylum in July 2010. Their application was refused, because they had already been granted residence in Italy, and, on 22 February 2011, they were transferred back to Rome, in accordance with the Dublin Regulation determining the member State responsible for examining an application for international protection. At the time, R.A.H. was pregnant with her second child.

2.5 The authors claim that, upon their arrival in Rome, they were not provided with housing or social assistance and that R.A.H. and their daughter stayed in a church on the first night, while A.S.M. had to sleep on the street. The next day they were referred to

Caritas, and R.A.H. and their daughter were offered accommodation by that organization for a period of about one to two months. The authors also received a Caritas voucher for two meals a day for two months. They claim that A.S.M. continued living on the street during that period and that he requested assistance from various “local administrators” without success, because the family was ineligible for assistance, given that they had already been provided with accommodation for six months.

2.6 When R.A.H. and their daughter could no longer stay in the accommodation in Rome, in April 2011, they moved to Perugia, where R.A.H. and their daughter were provided with temporary accommodation by Caritas. A.S.M. was again obliged to sleep on the street or at the homes of Somali nationals, who allowed him to sleep in their gardens or on their balconies. The authors claim that A.S.M. was only allowed to visit R.A.H. and their daughter every fortnight and that he was not present when their second child was born, in June 2011, but that he was allowed to visit R.A.H. and their newborn child in the hospital on the following evening.

2.7 The authors claim that A.S.M. was unable to obtain legal employment, because, he was told, he did not speak an adequate level of Italian and needed a driving licence. As a result, he took unreported employment on various plantations, where he was underpaid. Sometimes he was not paid for his work, and he could not complain to the police because he was illegally employed.

2.8 Two months after their second child was born, R.A.H. was obliged to leave the Caritas shelter. The family returned to Rome and lived on the street. For a while, they also lived in an abandoned building occupied by refugees, which was not a suitable dwelling due to the violence, criminality and abuse pervasive among the inhabitants of the building. On one occasion, the authors’ belongings were stolen and R.A.H. was almost assaulted.

2.9 The authors decided to move to Denmark, where they arrived on 18 December 2012 and applied for asylum. They claimed that they feared persecution by Al-Shabaab and that their lives would be at serious risk if returned to Somalia. If returned to Italy, they feared that they would be obliged to live on the street with their minor children. They argued that the Italian authorities would be unable to protect them from abuse from civilians, that they had received no benefits or services from the Italian authorities, such as social assistance, health care, social housing or education, and that they would be unable to apply for assistance in Italy, given that they had already benefited from the Protection System for Asylum Seekers and Refugees for six months.

2.10 On 20 December 2013, the Danish Immigration Service determined that, given that the authors and their children already had a residence permit for Italy, they were precluded from seeking asylum in Denmark and should be transferred to Italy, in accordance with section 7 (3) of the Aliens Act. The Service noted that the authors’ allegations that they would be forced to live on the street if returned to Italy could not influence that determination, because such socioeconomic factors fell outside the scope of section 7 of the Aliens Act. The authors appealed the decision before the Refugee Appeals Board. They claimed that, inter alia, they should be granted asylum protection pursuant to section 7 (1) of the Aliens Act, because their situation fell within the purview of the Convention relating to the Status of Refugees; in assessing Italy as the country of first asylum, the authorities should have taken into account conclusion No. 58 (XL) (1989) of the Executive Committee of the Office of the United Nations High Commissioner for Refugees (UNHCR), according to which there is an obligation to take socioeconomic factors into consideration when assessing the application of the principle of country of first asylum; and their physical safety and freedom had not been sufficiently protected in Italy.

2.11 On 3 April 2014, the Refugee Appeals Board upheld the decision of the Danish Immigration Service. It pointed out that, inter alia, according to the European Court of Human Rights decision of 2 April 2013 in *Samsam Mohammed Hussein and others v. the Netherlands and Italy*, persons who were granted refugee status, subsidiary protection or residence permits on humanitarian grounds in Italy were entitled to renewable residence permits and its holders were entitled to work and to social assistance, health care, social housing and education under Italian law; on 25 October 2013, the Service had informed the

authors that, according to documents received from the Italian authorities, it appeared that they held residence permits in Italy; and A.S.M. had been granted asylum as a refugee.

2.12 The Refugee Appeals Board also noted that A.S.M. had stated that: in 2009, they had been provided with housing for six months in Palagiano and had received money from the Italian authorities in connection with their integration process; they had health insurance cards and access to medical care; although he did not remember the validity period of the health insurance cards, he had noted that it had been extended several times; they had been registered with the office of a family physician where they could go every month; and the physician had told them that they were fine and had therefore not referred them to specialists. He also submitted that, in Palagiano, he had worked in an olive field but had been fired because of the colour of his skin; and he had been the victim of abuse in connection with another job. Upon their return from Germany, Caritas had provided accommodation for R.A.H. and their child, whereas he had stayed in various places, including in the homes of Somali families and on the street. A.S.M. had also stated that, in Perugia, he had contacted the employment centre to get a job and that there had been a job but it was seasonal and poorly paying. R.A.H. had stated before the Board that she had been denied medical care in Rome in connection with her second pregnancy; she had been examined once in Perugia before the delivery of the child in hospital and twice at Caritas; after the delivery, her son had been examined at the hospital; they had been obliged to leave Caritas two months after her child's birth; and the child had not subsequently been examined by doctors.

2.13 The Refugee Appeals Board considered that the authors' complaint fell within the scope of section 7 (2) of the Aliens Act owing to their fear of persecution by Al-Shabaab<sup>2</sup> and that, consequently, the question was whether Italy could serve as their country of first asylum, in accordance with section 7 (3) of the Aliens Act.<sup>3</sup> The Board found that the authors could enter Italy and stay there legally while they applied for a renewal of their residence permits. It also found that, in case of return to Italy, the authors would be protected against refoulement, that their personal integrity and safety would be protected in Italy to the extent necessary and that the financial and social conditions offered to them in Italy would be adequate. On the basis of the foregoing and on the background information available, the Board found that Italy could serve as the authors' country of first asylum, with reference to section 7 (3) of the Aliens Act, regardless of the [authors'] statements concerning their problems during their stay in Italy.

2.14 The authors claim that they have exhausted all available domestic remedies, given that the Refugee Appeals Board decision of 3 April 2014 is final and cannot be challenged before a court.

### **The complaint**

3.1 The authors submit that, by forcibly returning them and their children to Italy, the State party would violate their rights under articles 7, 17 and 24 of the Covenant.

3.2 The authors claim that the Refugee Appeals Board should grant A.S.M. refugee protection pursuant to section 7 (1) of the Aliens Act, given that he is at risk of persecution in Somalia by Al-Shabaab, due to his political activities and his position as mayor of Qoryooley. They also claim that, if returned to Italy, the State party would violate their rights under article 7 of the Covenant, because the conditions in which they lived in Italy amounted to inhuman and degrading treatment. If returned to Italy, they would have no social assistance from the authorities, given that they had already benefited from the reception system when they first arrived, and would therefore be forced to live with their

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<sup>2</sup> Section 7 (2) establishes that "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".

<sup>3</sup> Section 7 (3) establishes that "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".

minor children on the street. Against that background, they contend that their personal integrity would not be reasonably protected in Italy.<sup>4</sup>

3.3 The authors claim that returning them and their children to Italy would constitute a violation of article 17 of the Covenant. On several occasions during their stay in Italy, they were prevented from having a family life and living together. It would amount to a violation of their children's rights under article 24 of the Covenant, because they would not have measures of protection. They also claim that, in its decision, the Refugee Appeals Board did not take into account the best interests of their children and the fact that they might face abuse and social marginalization and lack access to school and adequate health care.

3.4 In the *UNHCR Recommendations*, the High Commissioner pointed out that there were shortcomings in both Italian legislation and practice, which might hinder the efforts of refugees to become self-reliant; that the Protection System for Asylum Seekers and Refugees, given its low capacity, was limited in its ability to assist all beneficiaries of international protection with securing adequate accommodation; and that an increasing number of such beneficiaries ended up homeless or squatting in abandoned buildings.<sup>5</sup> In its report on reception conditions in Italy, the Swiss Refugee Council noted that persons with international protection status generally had no access to accommodation funded by the European Refugee Fund (*Fondo Europeo per i Rifugiati*) nor to the government accommodation centres for asylum seekers (*Centri di Accoglienza per Richiedenti Asilo*); that it was extremely difficult for people who had been granted protection status and were returned to Italy to find accommodation; that, although beneficiaries of protection had the same status as native Italians concerning social rights, what the social assistance system provided was, in general, insufficient; that the maximum length of stay in a Protection System housing project was six months, which could be extended to one year or longer in the case of vulnerable persons; and that the length of stay was insufficient to enable people to provide for themselves beyond that period, especially in view of the current state of the job market. The Council also noted that, in Rome, high numbers of asylum seekers and people with international protection status were living in squats and slums, which were completely inadequate for children, and that women and children in particular faced threats and violence there. Families with both parents were not considered vulnerable in Italy. Although Italian law provided that all children must have accommodation and that they had the right to live with their parents, that right was not always guaranteed and families were often separated. Vulnerable persons were given priority to the extent that there were special places for them in accommodation centres. Due to the limited number of suitable places and the long waiting list, however, they risked ending up on the street.<sup>6</sup>

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

4.1 On 15 October 2014, the State party provided observations on the admissibility and the merits of the communication. It submits that the communication should be declared inadmissible for non-substantiation. The State party also informed the Committee that, in July 2014, R.A.H. gave birth to her third child.

4.2 The State party considers that the authors failed to establish a prima facie case for the admissibility of their allegations under article 7 of the Covenant. There are no substantial grounds for believing that the authors risk being subjected to torture or to cruel, inhuman or degrading treatment if returned to Italy, therefore the communication is manifestly ill-founded and should be declared inadmissible.

4.3 With regard to the authors' allegations under articles 17 and 24 of the Covenant, the State party submits that the authors are seeking to apply those obligations in an extraterritorial manner. The authors' allegations are not based on any treatment that they

<sup>4</sup> The authors refer to UNHCR, *UNHCR Recommendations on Important Aspects of Refugee Protection in Italy*, July 2012; and Swiss Refugee Council "Reception conditions in Italy: report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees", October 2013.

<sup>5</sup> *UNHCR Recommendations*, pp. 12-13.

<sup>6</sup> Swiss Refugee Council, "Reception conditions in Italy", pp. 21, 24, 35, 39, 41, 51 and 56.

and their children have suffered in Denmark, or related to an area over which Danish authorities are in effective control, but rather on consequences that they would allegedly suffer if returned to Italy. The Committee accordingly lacks jurisdiction over the relevant violations in respect of Denmark, and this part of the communication is incompatible with the provisions of the Covenant. Article 1 of the Optional Protocol provides that the Committee has competence to receive and consider communications from individuals who are subject to the jurisdiction of a State party and who claim to be victims of a violation by the State party of any of the rights set forth in the Covenant. Extraditing, deporting, expelling or otherwise removing a person who is afraid of having his rights violated under articles 17 and 24 of the Covenant by another State would not cause such irreparable harm as that contemplated by articles 6 and 7 of the Covenant.<sup>7</sup> Accordingly, that part of the communication should be rejected as inadmissible *ratione loci* and *ratione materiae*, pursuant to rule 96 (d), read together with rule 96 (a) of the Committee's rules of procedure and article 2 of the Optional Protocol.

4.4 The State party provided a detailed description of the asylum proceedings under the Aliens Act and the decision-making process and functioning of the Refugee Appeals Board.<sup>8</sup>

4.5 Should the Committee declare the communication admissible, the State party maintains that article 7 of the Covenant would not be violated if the authors and their three minor children were returned to Italy. The State party notes that the authors did not provide the Committee with information or views on their circumstances beyond the information already relied upon during the asylum proceedings. The Refugee Appeals Board found that: the authors fell under section 7 (2) of the Aliens Act (protection status); they had been granted temporary residence in Italy in 2009, as a consequence of their allegation of persecution in Somalia; and they could enter Italy and take up lawful residence while applying for renewal of their residence permits. In that regard, the Board referred to the background information on conditions for asylum seekers in Italy, including the decision of the European Court of Human Rights in *Samsam Mohammed Hussein and others v. the Netherlands and Italy*, and found that Italy could serve as the authors' country of first asylum. It thus upheld the decision of the Danish Immigration Service of 20 December 2013 to refuse asylum to the authors pursuant to section 7 (3) of the Aliens Act.

4.6 When applying the principle of country of first asylum, the Refugee Appeals Board requires, at a minimum, that the asylum seeker be protected against refoulement and that he or she be able to legally enter and take up lawful residence in the country of first asylum. Such protection includes certain social and economic elements, given that asylum seekers must be treated in accordance with basic human rights standards and their personal integrity be protected. The core element of such protection is that they must enjoy personal safety, both upon entering and while staying in the country of first asylum. The State party considers, however, that it is not possible to require that asylum seekers have the exact same social and living standards as nationals of a country. It is a mandatory minimum requirement that the asylum seeker be protected against being returned to the country of persecution or to a country in which the asylum seeker is not protected against return to the country of persecution.

4.7 In response to the authors' allegations that they would not have access to accommodation in Italy and consequently have no way of attaining a minimum standard of living, the State party recalls that in *Samsam Mohammed Hussein and others v. the Netherlands and Italy*, the European Court of Human Rights observed that persons granted subsidiary protection would be provided with a residence permit valid for three years, and renewable by the territorial commission that had granted it. The Court 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 is not sufficient in itself to give rise to a breach of article 3 of the

<sup>7</sup> The State party refers to the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant.

<sup>8</sup> For a full description, see communication No. 2379/2014, *Hussein Ahmed et al v. Denmark*, Views adopted on 7 July 2016, paras. 4.1-4.4.

European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court held that “while the general situation and living conditions in Italy of asylum seekers, accepted refugees and aliens who [had] been granted a residence permit for international protection or humanitarian purposes may disclose some shortcomings, it [had] 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.”<sup>9</sup> The Court noted that a person granted subsidiary protection in Italy would be provided with a three-year renewable residence permit that allowed the holder to work, to obtain a travel document for aliens, to reunite with family and to benefit from the general schemes for social assistance, health care, social housing and education. In addition, an alien was allowed, after the expiry of a residence permit, to apply for the renewal of the permit upon re-entry.

#### **Authors’ comments on the State party’s observations on admissibility and the merits**

5.1 On 23 December 2014, the authors submitted their comments on the State party’s observations and reiterated their allegations of violations of articles 7, 17 and 24 of the Covenant.

5.2 The authors claim that the Committee has the competence *ratione loci* to examine their allegations under articles 17 and 24 of the Covenant. If there is a real, personal and foreseeable risk of violation of the right to family, to private life or to measures of protection for a child, States parties have a positive obligation to protect individuals from being exposed to such risk. In their case, the lack of accommodation in Italy had an impact on their family and their children’s rights, because it prevented them from living together in the same place and forced them to live on the street. Should the Committee consider that those articles were not directly applicable, they should be read in conjunction with article 7 of the Covenant, given that allegations under those three provisions are closely interlinked.

5.3 The authors claim that they should be considered asylum seekers and not recognized refugees. At the time of submission of their comments to the Committee, A.S.M.’s residence permit had already expired and R.A.H.’s residence permit would expire in July 2015. Both authors were no longer in possession of their Italian residence permits. In that regard, in its decision in *Samsam Mohammed Hussein and others v. the Netherlands and Italy*, the European Court of Human Rights indicated that it was possible to renew a residence permit issued to an accepted refugee or granted for subsidiary protection or compelling humanitarian reasons by filing a request with the competent police immigration department. However, as such a request must in principle be accompanied by the original permit paper, this could be a serious problem for Dublin Regulation returnees, who usually no longer had this permit in their possession when they were transferred to Italy.<sup>10</sup>

5.4 They claim that asylum seekers and recognized refugees should be considered members of a particular underprivileged and vulnerable group in need of special protection. The authors refer to the report of the Jesuit Refugee Service, in which the Service noted that the real problem concerned those who were sent back to Italy and who had already been granted some kind of protection; they might have already stayed in at least one of the accommodation options available upon initial arrival, but, if they had left the centre voluntarily before the established time, they were no longer entitled to accommodation in the government reception centres for asylum seekers.<sup>11</sup> Most people occupying abandoned buildings in Rome fall into that last category. The findings show that the lack of places to stay is a big problem, especially for returnees who are, in most cases, holders of international or humanitarian protection.

5.5 The authors contend that they are fully dependent on State support due to their lack of language skills, a network, accommodation and work. There is no effective integration scheme in Italy, and persons who are granted international protection are left on their own. There is no basis for assuming that the Italian authorities would prepare for their return in accordance with basic human rights standards.

<sup>9</sup> See *Samsam Mohammad Hussein and others v. the Netherlands and Italy*, para. 78.

<sup>10</sup> *Ibid.*, para. 48.

<sup>11</sup> Jesuit Refugee Service, *Protection Interrupted: the Dublin Regulation’s Impact on Asylum Seekers’ Protection*, June 2013, pp. 148-149 and 152.

5.6 The authors argue that the more recent judgment of the European Court of Human Rights of 4 November 2014 in *Tarakhel v. Switzerland*, which allegedly involved similar facts, supports their claim that they should not be sent back to Italy. In that judgment, the Court noted that the presumption that a State participating in the system under the Dublin Regulation would respect the fundamental rights set out in the European Convention on Human Rights was not irrebuttable. 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>12</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 ages of the children; if such assurances were not made, Switzerland would be in violation of article 3 of the European Convention on Human Rights if it transferred them to Italy. The authors argue that, in the light of that finding, together with their previous experiences, it should be concluded that, if returned to Italy, they would be exposed to a situation amounting to a violation of article 7 of the Covenant. The State party’s assessment should have also taken into account the impact of their return on their rights under articles 17 and 24, in particular whether the family would be able to live together in Italy.

#### **State party’s additional observations**

6.1 On 18 May 2016, the State party reiterated its previous arguments on the admissibility and the merits of the communication and provided additional observations. It informed the Committee that, according to a response received from the Italian authorities in the third quarter of 2015 in the context of its consultations with Italy, an alien with a residence permit for Italy who was recognized as a refugee or had protection status could apply for the renewal of the residence permit upon re-entry into Italy and after the expiry of the residence permit. The Italian authorities indicated that, upon re-entry into Italy, the alien must present himself or herself at the issuing police immigration department and submit a request for renewal and, subsequently, the request would be forwarded to the competent authority for verification that the conditions for renewal had been met. In February 2016, the Italian authorities confirmed that the current law provided that an alien who had been granted residence in Italy as a recognized refugee or had been granted protection status may submit a request for renewal of his or her residence permit upon re-entry into Italy if, as in the case at hand, the residence permit had expired after the alien had entered Denmark. Accordingly, the authors will be able to enter Italy and to submit a request for renewal of their residence permits upon re-entry into Italy, even though their residence permits have expired. The State party maintains that no further obligation can be imposed on it to ensure the authors’ entry into and basis of residence in Italy.

6.2 The State party noted that, in contrast with communication No. 2360/2014, *Warda Osman Jasin et al. v. Denmark*, Views adopted on 22 July 2015, which concerned the deportation of a single mother with three minor children to Italy, the case at hand concerns the deportation of a family with three minor children. The fact that, by leaving Italy, the authors have placed themselves in a situation in which their residence permits have expired does not mean that they should be considered asylum seekers today.

6.3 In addition, the case at hand differs markedly from *Naima Mohammed Hassan and others v. the Netherlands and Italy* (application No. 40524/10), for which the European Court of Human Rights rendered its decision on 27 August 2013. In that case, the Italian authorities had dismissed the applicant’s application for international protection, noting that the applicant had left for an unknown destination, a fact which had been confirmed by the local police headquarters. In the present case, the authors were in fact issued residence permits for Italy before leaving the country.

6.4 With regard to the authors’ reference to the judgment of the European Court of Human Rights in *Tarakhel v. Switzerland*, the State party submits that that judgment, which concerned a family with the status of asylum seekers in Italy, does not deviate from the

<sup>12</sup> See European Court of Human Rights, *Tarakhel v. Switzerland* (application No. 29217/12), judgment adopted on 4 November 2014, paras. 155 and 120-122.



findings in previous case law on individuals and families with residence permits for Italy, as expressed in, inter alia, the decision of the same Court in *Samsam Mohammed Hussein and others v. the Netherlands and Italy*. Accordingly, the State party maintains that it cannot be inferred from the judgment in *Tarakhel v. Switzerland* that member States are required to obtain individual guarantees from the Italian authorities before deporting to Italy individuals or families in need of protection who had already been granted residence in Italy.

6.5 The authors' allegations that, as recognized refugees, the family would be offered poorer conditions than asylum seekers in Italy do not accord with their previous statements on their stay in Italy. In that regard, the State party notes that, inter alia, in the interview with the Danish Immigration Service and at the hearings before the Refugee Appeals Board, the authors stated that A.S.M. had lived in a refugee camp for seven months; R.A.H. had been hospitalized in Italy for a long period of time because she had felt unwell during her pregnancy; they had received financial support for housing for six months and 600 euros when the financial support for housing had been discontinued; A.S.M. had received six months of voluntary education; they had been issued health insurance cards, had access to medical care and had been registered with a family physician; they had been given shelter by the Caritas organization in both Rome and Perugia; A.S.M. had contacted the employment centre with a view to finding a job and had been informed that there was a job, but it involved being taken to and from the workplace by bus and it was poorly paid; before giving birth to her son, R.A.H. had been examined at the hospital in Perugia; she had given birth in a hospital; the baby had been examined after the delivery; and R.A.H. and the children had been permitted to stay with Caritas for two months after their son's birth.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

7.3 The Committee notes that the State party has not objected to the admissibility of the communication under article 5 (2) (b) of the Optional Protocol. It observes that the authors filed an application for asylum in Denmark, which was ultimately rejected by the Refugee Appeals Board on 3 April 2014. Accordingly, the Committee considers that domestic remedies have been exhausted.

7.4 The Committee notes the State party's argument that the authors' claims with respect to article 7 should be held inadmissible owing to insufficient substantiation. However, the Committee considers that, for the purpose of admissibility, the authors have adequately explained the reasons for which they fear that their forcible return to Italy would result in a risk of treatment incompatible with article 7 of the Covenant.

7.5 The Committee notes the authors' allegations that, if deported to Italy with their children, they would suffer treatment in violation of articles 17 and 24 of the Covenant. In that connection, the Committee notes that the State party has argued that those claims are inadmissible *ratione loci* and *ratione materiae*. The Committee recalls that article 2 of the Covenant imposes an obligation upon States parties not to deport 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, in the country to which removal is to be effected.<sup>13</sup> Accordingly, to the extent that the authors' allegations of violations of articles 17 and 24 rely on violations that they and their children

<sup>13</sup> 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.

will allegedly suffer after their return to Italy, the Committee considers that the authors' claims are incompatible *ratione materiae* with the provisions of the Covenant and declares them inadmissible under article 3 of the Optional Protocol.

7.6 In the light of the foregoing, the Committee considers that the communication is admissible insofar as it appears to raise issues under article 7 of the Covenant and proceeds with its consideration of the merits.

#### *Consideration of the merits*

8.1 The Committee has considered the present communication in the light of all the information submitted by the parties, as required under article 5 (1) of the Optional Protocol.

8.2 The Committee notes the authors' claim that deporting them and their three minor children to Italy, on the basis of the principle of country of first asylum as set out in the Dublin Regulation, would expose them to treatment contrary to article 7 of the Covenant. The authors base their arguments on, inter alia, the socioeconomic situation they would face and the lack of access to social assistance in Italy, as demonstrated by their experience after they had been granted a residence permit in October 2009, as well as on the general conditions of reception for asylum seekers and refugees in Italy. They submit that, since they already benefited from the reception system when they first arrived in Italy, they would have no access to social housing or temporary shelters; they would not be able to find accommodation or a job; and they would therefore face homelessness again and be forced to live with their minor children on the street.

8.3 The Committee recalls its general comment No. 31, 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,<sup>14</sup> such as that contemplated by article 7 of the Covenant. The Committee has indicated in its jurisprudence 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>15</sup> The Committee also recalls its jurisprudence determining 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,<sup>16</sup> unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>17</sup>

8.4 The Committee observes that it is not disputed that, in October 2009, Italy granted A.S.M. and R.A.H. asylum and subsidiary protection; that they received residence permits; and that they received financial support and social assistance in the form of housing until June 2010. The authors allege that they subsequently received no help or assistance from the Italian authorities and that they lived in homelessness and destitution. Against this background, they submit that, if returned to Italy, they would have no social assistance from the authorities, since they already benefited from the reception system when they first arrived in Italy; that they would not be able to find accommodation or a job; and that they would therefore face homelessness again and be forced to live with their minor children on the street. In support of their claims, the authors rely on reports on the general situation of asylum seekers and refugees in Italy that indicate, among other things, that the six-month duration of the provision of social housing and accommodation is insufficient to enable people to provide for themselves beyond that period; that it is extremely difficult for people who have been granted protection status and are returned to Italy to find accommodation or a job; that, although beneficiaries of protection have the same status as native Italians concerning social rights, the social system is in general insufficient; and that an increasing

<sup>14</sup> Ibid.

<sup>15</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.

<sup>16</sup> See communication No. 1957/2010, *Z.H. v. Australia*, Views adopted on 21 March 2013, para. 9.3.

<sup>17</sup> See, inter alia, *Z.H. v. Australia* and communication No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

number of beneficiaries of international protection end up homeless or squatting in abandoned buildings.<sup>18</sup>

8.5 The Committee notes the State party's consultations with the Italian authorities in the third quarter of 2015 and in February 2016, and the confirmation that an alien who had been granted residence in Italy as a recognized refugee or had been granted protection status may submit a request for renewal of his or her residence permit upon re-entry into Italy if the residence permit had expired after the alien entered Denmark.

8.6 The Committee notes that the material before it, as well as information in the public domain, indicates that: there is a lack of available places in the reception facilities for asylum seekers and returnees under the Dublin Regulation; returnees like the authors, who have already been granted a form of protection and benefited from the reception facilities when they were in Italy, are not entitled to accommodation through the government reception centres for asylum seekers;<sup>19</sup> and, although beneficiaries of protection are entitled to work and to social rights in Italy, its social system is, in general, insufficient to assist all persons in need, in particular in the country's current socioeconomic situation.<sup>20</sup> That situation and the difficulties confronting the authors notwithstanding, the Committee considers that the mere fact that the authors, who are a couple, may encounter that situation does not by itself mean that they would necessarily be in a special situation of vulnerability, and in a situation significantly different to many other families, so as to conclude that their return to Italy would constitute a violation of the State party's obligations under article 7 of the Covenant. In the present case, the Committee notes that during their stay in Italy, the authors were given health insurance cards when they were granted asylum and had access to medical treatment, including for the birth of their first two children. Although the authors claim that they had limited access to medical services, they have failed to identify before the Committee the specific circumstances in which they or their children were denied medical services when they needed them. A.S.M. was able to obtain some work in Italy in the past and has not convincingly explained why he would be unable to work again or to seek the Italian authorities' protection in the case of abuse from an employer. In the light of the foregoing, the Committee considers that, although the authors disagree with the decision of the State party's authorities to return them to Italy, they have failed to explain why that decision is manifestly unreasonable or arbitrary in nature. Furthermore, the authors have not pointed out any procedural irregularities in the procedures of the Danish Immigration Service or the Refugee Appeals Board. Accordingly, the Committee cannot conclude that the removal of the authors and their children to Italy by the State party would constitute a violation of article 7 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the removal of the authors and their children to Italy would not violate their rights under article 7 of the Covenant. The Committee is confident, however, that the State party will duly inform the Italian authorities of the return of the authors and their children, in order for the authors and their children to be taken charge of, upon arrival, in a manner adapted to the age of the children, and that the family will be kept together.

<sup>18</sup> *UNHCR Recommendations* and Swiss Refugee Council, "Reception conditions in Italy".

<sup>19</sup> Jesuit Refugee Service, *Protection Interrupted*.

<sup>20</sup> Swiss Refugee Council, "Reception conditions in Italy", pp. 21, 24, 35, 39, 41, 51 and 56.

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

1. I am regrettably unable to agree with the Committee's Views in the case *A.S.M. and R.A.H. v. Denmark*, the subject of communication No. 2378/2014. The Committee concluded that "the removal of the authors and their children to Italy would not violate their rights under article 7 of the Covenant". In my view, there is in this case a risk of a violation of article 7 if the authors are expelled to Italy.

2. As in the *Jasin* case (communication No. 2360/2014), expelling the authors and their three minor children to Italy would expose them to a considerable risk of irreparable harm. It is true that the authors were granted financial assistance and social accommodation by the Italian authorities, that they obtained from the commune of Palagiano a flat for six months under the "Koine" project, that they lived in various centres for asylum seekers for three months and that they were issued sickness insurance cards and were allowed access to medical care.

3. On the other hand, however, this family faced deplorable living conditions in Italy, as described in paragraphs 2.5 to 2.8 of the Views. The family, and especially the husband, lived in the street; the husband was unable to attend his wife when she gave birth, and he was unable to find a job or could take on only underpaid or unpaid illegal work.

4. Since they came to Denmark, the family has grown with the arrival of a third child, which can only aggravate the family's situation and its degree of vulnerability in the event of expulsion. As I had occasion to comment in the case *A.A.I and A.H.A. v. Denmark* (communication No. 2402/2014), this situation of aggravated vulnerability, added to the demonstrable inadequacy of the living conditions of asylum seekers and refugees in Italy, reveal for the authors a real risk of being subjected to treatment which is contrary to article 7 of the Covenant. The presence of children, the suffering due to uprooting and the degree of vulnerability of the family in the country of first asylum constitute decisive factors for the evaluation of risk. The Committee has not taken these factors sufficiently into account.

## Annex II

### Joint opinion of Committee members Sarah Cleveland and Sir Nigel Rodley (concurring)

1. We write separately from the Committee to comment on the Committee's determination of inadmissibility with respect to the authors' claims under articles 17 and 24.
2. In paragraph 7.5, the Committee concludes that the authors' claims that Italy would violate their rights and those of their children under articles 17 and 24 are inadmissible under article 3 of the Optional Protocol, on the grounds of incompatibility *ratione materiae* with the Covenant. That determination is correct, given that Italy is not a party to the present communication.
3. We write, however, to note what the determination of inadmissibility does not address. It does not address a situation in which the author alleges that the deporting State would itself violate articles 17 and 24, as a result of harms inflicted on the individual or the family as a result of the deportation. The Committee routinely addresses such claims on the merits.<sup>1</sup>
4. The Committee also does not address a situation in which the authors assert that the State party, in this case, Denmark, is deporting them to a situation in which there are substantial grounds for believing that they would face a real risk of irreparable harm from violations under articles 17 and 24, such as the harms contemplated by articles 6 and 7 of the Covenant.
5. As the Committee noted in its general comment No. 31, the article 2 obligation to respect and ensure Covenant rights imposes an obligation on States parties not to deport or otherwise transfer 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>2</sup>
6. Articles 6 and 7 address the right to life and the prohibition of torture and cruel, inhuman or degrading treatment or punishment. The Committee has never comprehensively addressed to what extent irreparable harm resulting from the violation of Covenant rights other than articles 6 and 7 may give rise to the non-refoulement obligation addressed by general comment No. 31. However, the Committee has not foreclosed the possibility of recognizing such non-refoulement obligations, however, nor has it taken the position that non-refoulement claims based on other articles are *per se* incompatible *ratione materiae* with the Covenant. To the contrary, the Committee previously has accepted as adequately substantiated and admissible claims under article 18, that an individual would face a real risk of irreparable harm as a result of violations of the right to freedom of religion in the receiving country.<sup>3</sup> In other cases, the Committee has concluded that allegations under articles 18 and 19 "cannot be dissociated from" claims under article 7 for purposes of admissibility.<sup>4</sup> However, the Committee generally has not addressed such claims on the

<sup>1</sup> See, for example, communications No. 2081/2011, *D.T. and A.A. v. Canada*, Views adopted in July 2016, paras. 7.2-7.11; and No. 1959/2010, *Warsame v. Canada*, Views adopted on 21 July 2011, para. 8.10.

<sup>2</sup> 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 (emphasis added).

<sup>3</sup> See, for example, communication No. 2291/2013, *A. and B. v. Denmark*, Views adopted in June 2016, paras. 7.4 and 8.7, finding an article 18 claim adequately substantiated for the purposes of admissibility and resolving it on the merits in connection with the determination under articles 6 and 7.

<sup>4</sup> See communications No. 2329/2014, *Z. v. Denmark*, Views adopted on 15 July 2015, paras. 6.4 and 7.4, addressing articles 18 and 19; and No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, paras. 8.4 and 9.4, addressing article 18; see also the individual opinion of Gerald L. Neuman.

merits separately from parallel claims under articles 6 and 7. The Committee similarly has recognized non-refoulement claims under article 9 as potentially admissible.<sup>5</sup>

7. We therefore do not read paragraph 7.5 as foreclosing the possibility that an author may validly advance a claim that he or she would face a real risk of irreparable harm for violations under articles 17 and 24 or of other Covenant rights. Certainly, at least where such a claim would involve harms that might also constitute irreparable harm regarding the right to life under article 6 or torture or cruel, inhuman or degrading treatment or punishment under article 7, such a claim should, if adequately substantiated, be admissible and subject to resolution on the merits, in conjunction with a violation of one or both of those articles.

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<sup>5</sup> See communication No. 2443/2014, *S.Z. v. Denmark*, Views adopted in June 2016, para. 8.4, declaring the author's claim under article 9 regarding risk of arbitrary detention post-deportation as inadmissible for lack of sufficient substantiation; see also the Committee's general comment No. 35 (2014) on liberty and security of person, para. 57, which reads as follows: "Returning an individual to a country where there are substantial grounds for believing that the individual faces a real risk of a severe violation of liberty or security of person such as prolonged arbitrary detention may amount to inhuman treatment prohibited by article 7 of the Covenant."

**Annex III**

[Original: Spanish]

**Individual opinion (concurring) of Committee member  
Fabián Salvioli**

I support the joint opinion of Sarah Cleveland and Sir Nigel Rodley in the case *A.S.M. and R.A.H. v. Denmark*, whose reasoning provides the best legal approach to the question considered by the Committee under the Covenant and its Optional Protocol.

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