



## 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. 2608/2015\*\* \* \*\*

<i>Communication submitted by:</i>	R.A.A. and Z. M. (represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Denmark
<i>Date of communication:</i>	8 May 2015 (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 8 May 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	28 October 2016
<i>Subject matter:</i>	Degrading and inhuman treatment; deportation to Bulgaria
<i>Procedural issue:</i>	Lack of substantiation
<i>Substantive issue:</i>	Torture, cruel, inhuman or degrading treatment or punishment
<i>Article of the Covenant:</i>	7
<i>Article of the Optional Protocol:</i>	2

\* Reissued for technical reasons on 17 March 2017.

\*\* Adopted by the Committee at its 118th session (17 October-4 November 2016).

\*\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmet Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.  
One joint opinion, signed by five members of the Committee, is appended to the present Views.



1.1 The authors are R.A.A., born on 1st December 1992, and Z.M., born on 20 June 1991, a couple who are nationals of the Syrian Arab Republic. The female author was five months pregnant when the communication was submitted.<sup>1</sup> The authors were scheduled to be transferred from Denmark to Bulgaria within the Dublin procedure on 11 May 2015. The authors claimed that their deportation to Bulgaria would put them and their unborn child at a risk of inhuman and degrading treatment in violation of article 7 of the Covenant. The authors were initially represented by the Danish Refugee Council and subsequently by Hannah Krog.

1.2 On 10 May 2015, 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 to refrain from deporting the authors to Bulgaria, while their case was under consideration by the Committee.

1.3 On 29 September 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 entered Bulgaria in June 2014. They claim that upon arrival they were stopped by the Bulgarian police and that the male author was subjected to physical abuse in the form of punches and blows with batons all over his body. The female author was pulled by the hair, beaten with batons and frisked without her clothes. On arrival at the police station, they were once again victims of abuse and were detained for five days. Their belongings were taken away and not returned. Once released, they were sent to a reception facility. The authors indicate that the conditions in the reception facility were very bad and that they rarely ate the food that was served, as they had repeatedly found worms and insects in it. The authors further indicate that, as a result of the unsanitary conditions at the reception facility, the female author got an infection in the lower abdomen, that she approached the doctor at the asylum centre, but was denied medical assistance and told that the system would collapse if all asylum seekers received treatment for their diseases.<sup>2</sup> She claims that she had to endure the pain until she arrived in Denmark, where she received medical treatment.

2.2 The authors also indicate that the male author suffers from a heart condition in the form of an enlarged heart muscle, making it more difficult for the heart to pump blood. They allege that he collapsed at the reception facility, but that he was only given painkillers. He then went to the local hospital, but was rejected because he did not have a residence permit at the time. When he went back with his permit, he was given an appointment that was postponed three times without a reason being given, so he relinquished his efforts. They further claim that the male author needs an echocardiography control every six months and requires to be hospitalized as early as possible to do a telemetry monitoring.<sup>3</sup> They state that given his health conditions and his predisposition to the disease, he may have to go through surgery to implant a defibrillator.

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<sup>1</sup> The baby was born in Denmark on 1 October 2015.

<sup>2</sup> No information is available as to the person who made such a comment.

<sup>3</sup> The authors provide a medical certificate stating that the male author has a DI422 hypertrophic cardiomyopathy, non-obstructive. It states that he was hospitalized on 26 and 27 February 2015 because of an epicrasis. The certificate further indicates that the author is very susceptible to DI422 hypertrophic cardiomyopathy, as his father and brother died of a cardiac arrest and two of his brothers have ICD pacemakers due to the same condition. The author will be called for a bike test and an echocardiography within six months, which will then be carried out every six months.

2.3 The authors further submit that one day, when they were on their way back to the reception facility, the male author was hit in the face and body by four or five unknown persons and that although he did not understand them, he assumed that the assault was racially motivated, as it was commonly known that racist groups were attacking migrants in the area. He claims that after the assault, he went to the police station to report the incident, but he was denied access to the police station and could not report it to the authorities. He indicates that owing to the language barrier, he was not aware of the procedures that were available, or the authorities that would have been competent to address his complaint. The authors further submit that the reception facility had to be locked down for three days, owing to the presence of xenophobic groups who wanted to attack the asylum seekers. A group of young men, who defied the curfew to provide food to the people inside the reception centre, were actually stabbed.

2.4 The authors submit that they were granted refugee status in Bulgaria in September 2014. They claim that they were not provided with a translation of the residence permits or any explanation as to the rights to which they were entitled. No explanation of the renewal procedure was given, but after insisting, they were informed that the permits were valid for five years. They were also informed that they could no longer stay at the reception centre and had to find their own accommodation. The authors indicate that they were not offered any assistance: their small allowance was cut, they struggled to find accommodation and they had no access to medical care or schooling.<sup>4</sup> The male author learned that the rent for an apartment was 400 leva. With no expectation of finding a job and given the widespread xenophobic tendencies in Bulgaria, he realized that he would not be able to pay the rent. They therefore lived on the street for two to three days, during which time they felt very unsafe, especially the female author. They contacted some friends who were still living in a reception facility and hid in their rooms until their departure for Denmark in December 2014. The authors further submit that they had to use some savings and received some financial help from their families in the Syrian Arab Republic owing to the lack of assistance from the Bulgarian authorities.

2.5 On 15 December 2014, the authors arrived in Denmark and applied for asylum the same day. On 22 January 2015, the Danish Immigration Service asked the Bulgarian authorities to agree to take the authors back, in compliance with the Dublin regulation. On 6 February 2015, the Bulgarian authorities informed the Danish Immigration Service that the authors had been granted refugee status in Bulgaria on 15 September 2014.

2.6 On 4 May 2015, the Danish Immigration Service rejected the authors' asylum applications, as they had been granted protection in Bulgaria. They were ordered to leave Denmark immediately. The Immigration Service considered that the authors' personal integrity and safety would be protected during their entrance into and stay in Bulgaria. It also considered that the authors had no issues with the Bulgarian authorities and had failed to file a complaint with the police, in relation to the punches and blows with batons suffered by the authors at the hands of the Bulgarian police upon their arrival, as well as the abuse they had suffered during their five days of detention at the police station. In addition, the Immigration Service indicated that although the authors' claims related to the poor living conditions in Bulgaria and the impossibility of finding a job were noted, "it must be regarded as certain" that they would find adequate socioeconomic conditions and that their personal integrity would be protected. It further noted the authors' claims related to the attack suffered by the male author by unknown persons, but considered that it was an isolated criminal incident and that the author could refer to the Bulgarian authorities for protection in the future. Regarding the male author's heart condition, it considered that he

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<sup>4</sup> The authors indicate that when applying for identity documents, they were given no guidance on possibilities for finding housing, work, education or financial support from the State.

would be able to obtain medical treatment in Bulgaria, given that he currently held a valid residence permit.

2.7 On 6 May 2015, the authors appealed the decision of the Immigration Service to the Refugee Appeals Board. On 9 July 2015, the Board upheld the decision of the Immigration Service, as it considered that refusing residence to an alien was permitted if the applicant had obtained protection in another country. The Board considered as a fact that the authors had been granted refugee status in Bulgaria. It further indicated that according to relevant legislation, certain conditions should be met in order to refuse a residence application:<sup>5</sup> (a) that the alien is protected against refoulement in the first country of asylum, (b) that it is possible for the alien to enter and stay lawfully therein, (c) that the personal integrity and safety of the alien is protected, but that it cannot be required that the alien has the same social living standards as the nationals of the first country of asylum, and (d) that the alien is treated in accordance with recognized basic human standards therein.<sup>6</sup>

2.8 The Refugee Appeals Board found that the authors could enter and stay lawfully in Bulgaria and that they would be protected against refoulement there, as they were granted international protection on 15 September 2014. It considered that there was no reason to assume that the authors would risk refoulement, as Bulgaria is a member of the European Union and should therefore comply with the relevant legislation on the matter.<sup>7</sup> Regarding the authors' allegations related to the racially motivated attacks that they could face in Bulgaria, the Board took note of a report by the Office of the United Nations High Commissioner for Refugees (UNHCR) indicating that the Government addresses and condemns such attacks and that in February 2014, following an attack on a mosque, the authorities arrested 120 people.<sup>8</sup> The Board concluded that the authors could apply to the Bulgarian authorities for protection, that their safety would be protected to the extent necessary and that, consequently, they would not be subject to torture or ill-treatment if returned. In addition, a majority of the members of the Board considered that the social and economic conditions for refugees granted residence in Bulgaria could not independently lead to the conclusion that the authors had to be accepted in the State party and not returned to Bulgaria. The Board made further reference to background material indicating that persons who have been granted refugee or protection status in Bulgaria enjoy the same rights as Bulgarian nationals, including access to all types of work and social benefits, including unemployment benefits, although in practice, it is hard to find a job owing to the language barrier and the high level of unemployment.<sup>9</sup> Additionally, the Board mentioned that persons with refugee status have access to health insurance in Bulgaria, although they must pay for it,<sup>10</sup> but are entitled to obtain the same social assistance as Bulgarians, including health care.<sup>11</sup> It therefore concluded that the authors would have sufficient

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<sup>5</sup> The Board quotes the explanatory notes on bill No. 72 of 14 November 2014 on section 29b of the Aliens Act.

<sup>6</sup> The Board quotes conclusion No. 58 of the Executive Committee of the Office of the United Nations High Commissioner for Refugees on the problem of refugees and asylum seekers who move in an irregular manner from a country in which they had already found protection (1989).

<sup>7</sup> The Board quotes the Charter of Fundamental Rights of the European Union.

<sup>8</sup> See "Bulgaria as a country of asylum. UNHCR observations on the current situation of asylum in Bulgaria" (January 2014, updated in April 2014).

<sup>9</sup> The Board cites a report of February 2014 by the Danish Refugee Council, which is an overview of the Bulgarian asylum system, reception facilities and other conditions of relevance to the matter of transfers under the Dublin regulation.

<sup>10</sup> The Board refers to a memorandum of the Danish Refugee Council on the conditions of asylum seekers and refugees in Bulgaria, which was drafted on the basis of meetings with non-governmental organizations, held on 26 and 27 August 2014, and published in November 2014.

<sup>11</sup> The Board refers to a report of the Bulgarian Council on Refugees and Migrants, "Monitoring report on the integration of beneficiaries of international protection in the Republic of Bulgaria in 2014".

socioeconomic status in Bulgaria and that the information provided by the authors with respect to the health problems of the male author could not lead to a different conclusion. In that connection, the Board noted that the author is a young man and considered that it could be assumed that he would obtain the necessary medical treatment for his heart condition in Bulgaria.

2.9 On 31 July 2015, the authors requested the Board to reopen their case, indicating that they had not applied for asylum in Bulgaria and that they would have to live on the streets with their child if returned to Bulgaria. On 31 August 2015, the Board rejected the request to reopen the case, as no substantial new information had been provided by the authors.

### The complaint

3.1 The authors allege that their deportation to Bulgaria will put them at risk of inhuman and degrading treatment, in violation of article 7 of the Covenant, as they would face homelessness, destitution, lack of access to health care and to personal safety. The authors further indicate that they must be regarded as extremely vulnerable, as they have a new baby, born on 1 October 2015, and the male author suffers from a serious heart condition. They allege that he needs permanent health care (echocardiography control every six months and urgent hospitalization to have a telemetry monitoring in case of need), and that he would therefore be at risk of death if no regular medical treatment was provided.

3.2 The authors also allege that there is no effective integration programme for refugees in Bulgaria and that refugees face serious poverty, homelessness and limited access to health care. They submit that the last integration programme was finalized in 2013 and that refugees are left in the void without sufficient support from the authorities for social inclusion and integration into society.<sup>12</sup> Furthermore, while according to domestic legislation, persons who have been granted refugee status have access to the labour market, health-care system, social services and assistance in finding housing, it is actually almost impossible for them to find work or a place to live. In addition, refugees must provide an address to get access to social services, which is almost impossible for them to obtain.<sup>13</sup> The authors further submit that they felt a difference in their situation before and after their residence permit were granted: before, they lived in poor conditions at the reception facility and were provided with a little pocket money. However, once the permit was issued, their situation deteriorated, as the payments were stopped and they had nowhere to live.<sup>14</sup> They refer to a report by UNHCR, according to which there is a gap between asylum seekers and recognized refugees, or persons who have been granted subsidiary protection, in terms of access to health care, because the update of their health-care status can take up to two months. Refugees also have to pay a monthly fee (approximately €8.7), which most families are not able to pay. In addition, medicines and psychosocial care are not covered.<sup>15</sup>

<sup>12</sup> The authors refer to Tsvelina Hristova and others, "Trapped in Europe's quagmire: the situation of asylum seekers and refugees in Bulgaria" (Bordermonitoring.eu, 2014) and to a document of the Danish Refugee Council, *Notat om forhold for asylansøgere og flygtninge i Bulgarien*, available from <https://flygtning.dk/media/1309372/nyhedsbrev-11.pdf>. The authors submit that according to this report, the previous Government adopted a strategy plan for 2014 and onwards, which currently lacks the follow-up of an action plan with allocated funds.

<sup>13</sup> The authors refer to Asylum Information Database, "National country report: Bulgaria" (April 2014) and UNHCR, "Where is my home? Homelessness and access to housing among asylum seekers, refugees and persons with international protection in Bulgaria" (2013), pp. 11-13.

<sup>14</sup> The authors cite Human Rights Watch, "Containment plan: Bulgaria's pushbacks and detention of Syrian and other asylum seekers and migrants" (April 2014), p. 5.

<sup>15</sup> The authors refer to "Bulgaria as a country of asylum. UNHCR observations on the current situation of asylum in Bulgaria", p. 12.

3.3 The authors further submit that owing to their experience of racially motivated attacks and xenophobia that is spreading in Bulgaria but is not being addressed by the authorities, they do not believe that the country is a safe place for a refugee family with a baby. In this connection, they argue that refugees with minor children are a particularly vulnerable group in Bulgaria and they indicate that according to background information, institutional racism, including racist interventions by high-level politicians, are widespread in Bulgaria.<sup>16</sup>

3.4 The authors state that the decision by the European Court of Human Rights in *Tarakhel v. Switzerland*<sup>17</sup> is relevant for the present case, as it refers to a country where no effective integration programme is in place and consequently, refugees and asylum seekers live in extremely harsh conditions. They add that in Bulgaria, refugees might find themselves in a more vulnerable position, as they do not have access to the reception facilities for asylum seekers. The authors note that in the *Tarakhel* case, 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 and that if such assurances were not made, Switzerland would be violating article 3 of the European Convention on Human Rights by transferring them there. The authors argue that in the light of that finding, the harsh conditions faced by refugees returning to Bulgaria would fall within the scope of article 3 of the European Convention on Human Rights and article 7 of the Covenant. They therefore reiterate that their deportation to Bulgaria would amount to a violation of article 7 of the Covenant. They further submit that the decision in the *Tarakhel* case indicates that individual guarantees, such as keeping returning children safe from destitution and harsh accommodation conditions, are necessary.

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

4.1 On 9 November 2015, the State party submitted its observations on the admissibility and merits of the communication. It first describes the structure, composition and functioning of the Refugee Appeals Board and the legislation applying to cases related to the Dublin regulation.<sup>18</sup>

4.2 Then, as to the admissibility and merits of the communication, the State party argues that the authors have failed to establish a prima facie case for the purpose of admissibility under article 7 of the Covenant. In particular, it has not been established that there are substantial grounds for believing that they will be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment in Bulgaria. The communication is therefore manifestly unfounded and should be declared inadmissible. In the alternative, the State party submits that the authors have not sufficiently established that article 7 will be violated in case of their return to Bulgaria. It follows from the Committee's jurisprudence that States parties are under an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where the necessary and foreseeable consequence of the deportation would be a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, whether in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The Committee has also

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<sup>16</sup> The authors refer to "Trapped in Europe's quagmire", p. 32.

<sup>17</sup> European Court of Human Rights, *Tarakhel v. Switzerland*, application No. 29217/12, judgment adopted on 4 November 2014.

<sup>18</sup> See communication No. 2379/2014, *Obah Hussein Ahmed v. Denmark*, Views adopted on 8 July 2016, paras. 4.1-4.3.

indicated that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>19</sup>

4.3 The State party observes that in their communication, the authors did not provide any essential new information regarding their circumstances beyond the information already relied upon in connection with their asylum proceedings and that the Refugee Appeals Board considered those circumstances in its decision of 9 July 2015. The Board considered it a fact that the authors had been granted refugee status in Bulgaria and found that they fell within section 29b of the Aliens Act. The State party further submits that the Board requires as an absolute minimum that the asylum seeker or refugee is protected against refoulement. It also must be possible for him/her to enter lawfully and to take up lawful residence in the country of first asylum, and his/her personal integrity and safety must be protected. That concept of protection also includes a certain social and economic element, since asylum seekers must be treated in accordance with basic human standards. However, it cannot be required that the relevant asylum seekers will have exactly the same social living standards as the country's own nationals. The core of the protection concept is that the persons must enjoy personal safety, both when they enter and when they stay in the country of first asylum. Moreover, the State party notes that Bulgaria is bound by the European Convention on Human Rights.

4.4 Furthermore, the State party submits that the Refugee Appeals Board took into account the authors' written statements about their stay and living conditions in Bulgaria, as well as the background material available in that regard. The State party maintains that the Committee cannot be an appellate body, which reassesses the factual circumstances advocated by the authors in their asylum application before the Danish authorities and it must give considerable weight to the findings of fact made by the Board, which is better placed to assess the factual circumstances of the authors' case. The State party further makes reference to the Committee's jurisprudence, according to which it is generally for the organs of States parties to examine the facts and evidence of a case, unless it can be established that such an assessment was arbitrary or amounted to a manifest error or denial of justice.<sup>20</sup>

4.5 The State party notes that on 25 June 2014, the Bulgarian authorities published a new integration programme, scheduled to be implemented as of 2015, which would cover a larger number of persons, including language training for a greater number of beneficiaries than the preceding programme.<sup>21</sup> It submits that the circumstance that the authors may not have access to such a programme cannot independently lead to a different assessment of Bulgaria as their first country of asylum. The State party further states that, according to background material submitted by the authors, refugees acquire the same rights as Bulgarian nationals, except the right to participate in elections and to hold certain positions which require Bulgarian nationality and that although the reception system in Bulgaria has proved incapable of processing the large number of asylum applications submitted since 2013, it appears that conditions in reception centres have improved.<sup>22</sup> The State party cites a Human Rights Watch report of 2013, in which it is stated that all centres have heat, the

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<sup>19</sup> The State party refers to communication No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

<sup>20</sup> The State party refers to communications No. 2426/2014, *N. v. Denmark*, decision of inadmissibility adopted on 23 July 2015, para. 6.6; No. 2272/2013, *P.T v. Denmark*, Views adopted on 1 April 2015, para. 7.3; No. 2393/2014, *K v. Denmark*, Views adopted on 16 July 2015, paras. 7.4 and 7.5; No. 2186/2012, *X and X v. Denmark*, Views adopted on 22 October 2014, para. 7.5; and No. 2329/2014, *Z v. Denmark*, Views adopted on 15 July 2015, para. 7.4.

<sup>21</sup> The State party refers to "Trapped in Europe's quagmire", pp. 24 and 25.

<sup>22</sup> The State party refers to "Containment plan: Bulgaria's pushbacks and detention of Syrian and other asylum seekers and migrants", pp. 2 and 72.

State Agency for Refugees provides two hot meals a day to residents and many residents are now being allowed to remain in the centres for longer periods after being granted refugee or humanitarian status, if they lack the means to support themselves.<sup>23</sup> In addition, it states that, according to a UNHCR report (also of 2013), although the quality of accommodation of asylum seekers and protection status holders after leaving the reception centres is directly dependent on their employment and income, their family status also counts, as families with children receive a more “positive attitude” from landlords. Additionally, according to the same report, no cases have been registered of families being forced to leave the reception centres without having been provided with accommodation, or at least with funds to rent lodgings.<sup>24</sup>

4.6 The State party further indicates that refugees have access to health care and free medical treatment if they are registered with a general practitioner.<sup>25</sup> It cites a report by the Bulgarian Council on Refugees and Migrants, according to which beneficiaries of international protection are entitled to the same social assistance and services as nationals, including the right to the health insurance of their choice.<sup>26</sup> With respect to the authors’ statement that they run the risk of racist attacks in Bulgaria, the State party reiterates that they can address themselves to the national authorities for protection, as the authorities have taken measures against such incidents, and refers once again to the attack against a mosque in February 2014, which resulted in the arrest of 120 people.

4.7 The State party further refers to the decision of the European Court of Human Rights in the case of *Samsam Mohammed Hussein and others v. the Netherlands and Italy*,<sup>27</sup> and states that it is applicable to the present communication. In that ruling, the Court stated that the assessment of a possible violation of article 3 of the European Convention on Human Rights must be rigorous and should analyse the conditions in the receiving country against the standard established by such provisions of the Convention. In particular, the Court indicated that in the absence of exceptionally compelling humanitarian grounds against removal, the fact that the applicant’s material and social living conditions would be significantly reduced if he or she were to be removed from the Contracting State is not sufficient in itself to give rise to a breach of article 3.<sup>28</sup> Furthermore, the State party considers that it cannot be inferred from the judgment of the Court in the case of *Tarakhel v. Switzerland* that individual guarantees must be obtained from the Bulgarian authorities in the case at hand, as the authors have already been granted refugee status in Bulgaria, while in *Tarakhel v. Switzerland* the authors’ application for asylum in Italy was still pending when the case was reviewed by the Court.

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

5.1 On 26 January 2016, the authors submitted their comments on the State party’s observations. The authors reiterate that they have adequately explained the reasons for which they fear that their forcible return to Bulgaria would result in a breach of article 7 of the Covenant and consider that their claims in this regard have been duly substantiated. They submit that it is uncontested that they were detained for five days upon arrival in

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<sup>23</sup> Ibid., p. 5.

<sup>24</sup> The State party refers to “Where is my home? Homelessness and access to housing among asylum seekers, refugees and persons with international protection in Bulgaria”, p. 6.

<sup>25</sup> The State party refers to “Bulgaria as a country of asylum. UNHCR observations on the current situation of asylum in Bulgaria”, p. 12 (although the report does not refer to this matter), and “Trapped in Europe’s quagmire”, p. 16.

<sup>26</sup> See “Monitoring report on the integration of beneficiaries of international protection in the Republic of Bulgaria in 2014”.

<sup>27</sup> Application No. 27725/10, 2 April 2013.

<sup>28</sup> Ibid., para. 71.



Bulgaria, that subsequently they were transferred to a reception centre where the conditions were appalling and that they stayed there until September 2014, when they were asked to leave, as they had been granted refugee status. They reiterate that they were not given any instructions as to where to go, or how to get accommodation or food and that they managed to sneak back into the reception centre and lived there in hiding until they left Bulgaria. They further reiterate that the male author did not receive medical assistance in Bulgaria, despite his serious heart disease.

5.2 The authors further submit that it is not correct that refugees in Bulgaria have access to housing, work or social benefits, including health care and education. They reiterate that several reports document that the living conditions in Bulgaria for beneficiaries of international protection are deplorable, as no functional integration programme is in place, and that persons holding valid protection status face several difficulties in finding basic shelter, access to sanitary facilities and food. They refer to a report by the Commissioner for Human Rights of the Council of Europe, in which he states that he is concerned that the system to support the integration of refugees and other beneficiaries of international protection in Bulgarian society still suffers from serious deficiencies, mainly connected with the insufficient funding of the system. As a result, refugees and other beneficiaries of international protection in Bulgaria face serious integration challenges, which threaten their enjoyment of social and economic rights, including a serious risk of becoming homeless, high levels of unemployment, no real access to education and problems in accessing health-care services. They are also vulnerable to hate crimes.<sup>29</sup> They also indicate that although it appears that persons granted refugee status are given the possibility to stay in the reception centres when they have no means of sustaining themselves, they can only stay for six months and that there are allegations of corruption by the staff of the reception centres, who are said to extort payment from the families for the right to stay.<sup>30</sup> The authors also quote a report by Amnesty International of 2015, according to which there is no integration plan for recognized refugees and other beneficiaries of international protection in Bulgaria,<sup>31</sup> and state that in August 2014, the Government of Bulgaria rejected a plan prepared by the State Agency for Refugees and the Ministry of Labour for the implementation of the national integration strategy, adopted early in 2014.<sup>32</sup> The authors further submit that the serious integration challenges faced by asylum seekers and refugees in Bulgaria is not a temporary situation and that those who have been granted refugee status are in a worse position, as they seem to be excluded from reception facilities owing to their initial stay therein and the fact that they have left them.

5.3 With regard to the State party's reference to the ruling of the European Court of Human Rights in the case of *Samsam Mohammed Hussein and others v. the Netherlands and Italy*, the authors submit that the issue at stake is not that refugees in Bulgaria significantly reduced material and social living conditions, but that the current living conditions there do not meet basic humanitarian standards, as required by conclusion No. 58 of the Executive Committee of UNHCR. They also indicate that based on their experience in Bulgaria, where they did not receive any assistance in finding accommodation after they were asked to leave the reception centre and were denied medical assistance, there is no basis for assuming that the Bulgarian authorities will prepare for the return of the family in accordance with basic humanitarian standards. Furthermore, they reiterate that the decision of the European Court of Human Rights in the case of

<sup>29</sup> See "Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Bulgaria from 9 to 11 February 2015", pp. 28-29.

<sup>30</sup> The authors further quote the report of the Commissioner, para. 128.

<sup>31</sup> See Amnesty International, *The State of the World's Human Rights 2014/2015*.

<sup>32</sup> The authors cite Pro Asyl, *Erniedrigt, misshandelt, schutzlos: Flüchtlinge in Bulgarien* (April 2015), available from [www.asyl-saar.de/dokumente/bulgarien/Bulgarienbroschuere.pdf](http://www.asyl-saar.de/dokumente/bulgarien/Bulgarienbroschuere.pdf).

*Tarakhel v. Switzerland* is applicable to their case, as the living conditions of beneficiaries of international protection in Bulgaria can be regarded as similar to the situation of asylum seekers in Italy, and that the premise outlined in the case of *Samsam Mohammed Hussein and others v. the Netherlands and Italy* is no longer sufficient, as individual guarantees, especially securing the return of children from destitution and harsh accommodation conditions are required by the Court. The authors argue that the Court's reasoning in the case of *Tarakhel v. Switzerland* regarding article 3 of the European Convention on Human Rights can be regarded as corresponding to article 7 of the Covenant.

5.4 The authors also refer to the Committee's Views on *Jasin et al. v. Denmark*,<sup>33</sup> in which it emphasized the need to give sufficient weight to the real and personal risk a person might face if removed. The authors submit that this requires an individualized assessment of the risk faced by the person, rather than reliance on general reports and on the assumption that having been granted subsidiary protection in the past, she or he would in principle be entitled to work and receive social benefits. They further claim that, regardless of Bulgarian legislation on the formal access to social benefits, health care and education, relevant background information indicates that refugees in Bulgaria risk facing homelessness and destitution, and that the Refugee Appeals Board has failed to give sufficient weight to the real personal risk they and their baby would face if removed there. Furthermore, the Board did not adequately take into account the information presented by the authors regarding their experience in Bulgaria, where they did not receive adequate assistance from the authorities, but instead relied on general information according to which, in theory, refugees have access to work, social aid and accommodation. They further submit that the Board did not take into account that they had to use some savings and received some financial help from their families in the Syrian Arab Republic owing to the lack of assistance from the Bulgarian authorities. In addition, the Board did not contact the Bulgarian authorities to ensure that they and their baby would be received under circumstances in which they could get the benefit of their rights. The authors finally submit that as newly recognized refugees, they need further support to get established in a country of asylum, as they do not possess cultural or social networks and that special attention must be given to the facts that they have a baby and that the male author suffers from severe medical conditions that require treatment, which was not taken into account by the authorities in Bulgaria.

### **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 another procedure of international investigation or settlement.

6.3 The Committee notes the authors' claim that they have exhausted all effective domestic remedies available to them. In the absence of any objection by the State party in that connection, the Committee considers that it is not precluded from examining the present communication under article 5 (2) (b) of the Optional Protocol.

6.4 The Committee notes the State party's challenge to the admissibility of the communication on the grounds that the authors' claim under article 7 of the Covenant is

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<sup>33</sup> Communication No. 2360/2014, Views adopted on 22 July 2015.

unsubstantiated. The Committee however considers that the inadmissibility argument adduced by the State party is intimately linked to the merits of the case. Accordingly, the Committee declares the communication admissible, insofar as it raises issues under article 7 of the Covenant, and proceeds with its consideration of the merits.

*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 under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the authors' claim that deporting them and their baby to Bulgaria, based on the Dublin regulation principle of first country of asylum, would expose them to a risk of irreparable harm, in violation of article 7 of the Covenant. The authors base their arguments, inter alia, on the actual treatment they received after they were granted residence permits in Bulgaria and on the general conditions of reception for asylum seekers and refugees entering Bulgaria, as found in various reports.<sup>34</sup> The Committee notes the authors' argument that they would face a precarious socioeconomic situation, given the lack of access to financial help or social assistance and to integration programmes for refugees and asylum seekers, as demonstrated by their experience as asylum seekers and after they received refugee status and residence permits in September 2014. The Committee further notes the authors' submission that since they benefited from the reception system when they first arrived in Bulgaria and as they were granted refugee status, they would have no access to social housing or temporary shelters. It also notes the authors' submission that the male author would not have access to adequate medical treatment for his heart disease<sup>35</sup> and that they would not be able to find accommodation and a job, and therefore they would face homelessness and be forced to live with their baby on the streets.

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 (para. 12), 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. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.<sup>36</sup> 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 a risk exists,<sup>37</sup> unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>38</sup>

<sup>34</sup> See "Trapped in Europe's quagmire", p. 22; "Where is my home? homelessness and access to housing among asylum seekers, refugees and persons with international protection in Bulgaria", p. 13; and Asylum Information Database, "National country report: Bulgaria", pp. 10-13.

<sup>35</sup> See "Trapped in Europe's quagmire", p. 16. On the same matter, UNHCR has stated that it is concerned about the gap with regard to access to health care for beneficiaries of international protection once they have been granted such protection. It has urged the Bulgarian authorities to ensure continued access to health care for beneficiaries of international protection. See "Bulgaria as a country of asylum. UNHCR observations on the current situation of asylum in Bulgaria", p. 13.

<sup>36</sup> See *X v. Denmark*, para. 9.2, and communications 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>37</sup> See communication No. 1957/2010, *Z.H. v. Australia*, Views adopted on 21 March 2013, para. 9.3.

<sup>38</sup> *Ibid.* and see, inter alia, communication No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

7.4 The Committee notes that according to the authors, they were detained for five days upon their arrival in Bulgaria, during which time they were abused by the police, and that they were then transferred to a reception centre, where they lived between June and September 2014, whence they were asked to leave when they were granted refugee status, without being provided with alternative accommodation. Subsequently, they lived on the streets for two to three days, but managed to go back to the reception centre and live in hiding there until they left Bulgaria, thanks to some contacts they had among the asylum seekers. The Committee also notes the authors' submissions that the male author was denied medical treatment, despite the fact that he has a serious heart condition, as he was given painkillers after collapsing in the reception centre; that he was rejected at the hospital because he did not have a residence permit and that once he received such permit, his appointments were cancelled three times without any reason being provided. The Committee further notes the authors' allegations that the male author suffered an apparently racially motivated attack, that he did not receive any protection from the authorities and that he was not allowed to file a complaint to the police, as he was refused entrance to the police station. The Committee further notes the authors' claim that out of fear for their safety and that they would be unable to provide for their child, access adequate medical treatment or find a humanitarian solution to their situation, they left Bulgaria and went to Denmark, where they requested asylum in December 2014. The authors, refugees, one of them suffering from serious heart disease which requires medical treatment, and with a baby, 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 a functional integration programme for refugees in Bulgaria and the serious difficulties they face in gaining access to housing, work or social benefits, including health care and education. The Committee further notes the background material, according to which there may be a lack of available places in the reception facilities for asylum seekers and returnees under the Dublin regulation and which are often in poor sanitary conditions. It further notes that returnees like the authors, who have already been granted a form of protection and benefited from reception facilities in Bulgaria, are not entitled to accommodation in the asylum camps beyond the six-month period after protection status has been granted; and that although beneficiaries of protection are entitled to work and social rights in Bulgaria, its social system is in general insufficient to meet the authors' needs.

7.6 The Committee notes the finding of the Refugee Appeals Board that Bulgaria should be considered the country of first asylum in the present case and the position of the State party that the country of first asylum is obliged to provide asylum seekers with basic human rights, although it is not required to provide them with the same social and living standards as nationals of the country. The Committee further notes the reference made by the State party to a decision of the European Court of Human Rights, according to which the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed from the Contracting State is not sufficient in itself to give rise to a breach of article 3 of the European Convention on Human Rights.<sup>39</sup>

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 Bulgaria, 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 Bulgaria, the residence permits would protect them, in particular as regards access to the medical treatments that the male author

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<sup>39</sup> See *Samsam Mohammed Hussein and others v. the Netherlands and Italy*.

needs, and from the hardship and destitution which they have already experienced in Bulgaria, and which would now also affect their baby.<sup>40</sup>

7.8 The Committee recalls that States parties should give sufficient weight to the real and personal risk a person might face if deported<sup>41</sup> and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the authors and their child would face in Bulgaria, rather than rely on general reports and on the assumption that as the authors had benefited from subsidiary protection in the past, they would, in principle, be entitled to the same level of protection today. The Committee considers that the State party failed to take into due consideration that the authors were mistreated by Bulgarian officers upon arrival; that the male author was the victim of an apparently racially motivated attack and was unable to file a complaint to the police, as he was not allowed access to the police station; and that he was denied medical care for his heart disease. The Committee also notes that the authors have a 1-year-old baby and considers that those circumstances put them in a particularly vulnerable situation that was not sufficiently taken into account by the Refugee Appeals Board, and that their deportation to Bulgaria would be a source of retraumatization for them. The Committee further notes that in the absence of any assistance from the national authorities when they were in Bulgaria, the authors were not able to provide for themselves, notwithstanding their entitlement to subsidiary and refugee protection. The Committee further notes that the State party failed to seek proper assurances from the Bulgarian authorities to ensure that the authors and their baby would be received in conditions compatible with their status as refugees and with the guarantees under article 7 of the Covenant, by requesting that Bulgaria undertake (a) to receive the authors and their child in conditions adapted to the baby's age and the family's vulnerable status, enabling them to remain in Bulgaria;<sup>42</sup> (b) to issue a residence permit to the authors' baby; and (c) to take the necessary measures to ensure that the male author receives the medical treatment that he needs.

7.9 Consequently, the Committee considers that, in these particular circumstances, the removal of the authors and their child to Bulgaria, without proper assurances, would amount to a 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 child to Bulgaria 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 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 proceed to a review of the authors' claim, taking into account the State party's obligations under the Covenant, the Committee's present Views and the need to obtain assurances from Bulgaria, as set out in paragraph 7.8 above. The State party is also requested to refrain from expelling the authors and their baby to Bulgaria while their request for asylum is being reconsidered.<sup>43</sup>

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

<sup>40</sup> See *Jasin v. Denmark*, para. 8.8, and *Obah Hussein Ahmed v. Denmark*, para. 13.7; and communication No. 2409/2014, *Abubakar Ali et al. v. Denmark*, Views adopted on 29 March 2016, para. 7.7.

<sup>41</sup> See for example, communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, paras. 11.2 and 11.4, and *Abubakar Ali et al. v. Denmark*, para. 7.8.

<sup>42</sup> See *Jasin v. Denmark*, para. 8.9, and *Abubakar Ali et al. v. Denmark*, para. 7.8.

<sup>43</sup> See, for example, *Abubakar Ali et al. v. Denmark*, para. 9, and *Obah Hussein Ahmed v. Denmark*, para. 15.

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 and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views and to have them widely disseminated in the official language of the State party.

## Annex

### **Joint opinion of Committee members Yuval Shany, Yuji Iwasawa, Photini Pazartzis, Anja Seibert-Fohr and Konstantin Vardzelashvili (dissenting)**

1. We regret that we are unable to join the majority on the Committee in finding that, in deciding to deport the authors to Bulgaria, Denmark would, if it implemented the decision, violate its obligations under article 7 of the Covenant.

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.”<sup>44</sup> 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.<sup>b</sup>

3. With the possible exception of those individuals who face special hardships due to their particular situation of vulnerability,<sup>c</sup> which renders their plight exceptionally harsh and irreparable in nature, non-availability of social assistance or delays in access to medical services do not constitute in themselves grounds for non-refoulement. A contrary interpretation, recognizing all individuals facing problems in accessing social services as potential victims of article 7 of the Covenant, has little 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*,<sup>d</sup> the facts in that case were significantly different from the facts of the present case and do not warrant the same legal conclusion. In *Jasin v. Denmark*, the author, as a single mother of three small children whose residence permit had 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. Under these exceptional circumstances, we were of the view that, without specific assurances, Italy could not be considered a “safe country” of removal for the author and her children.

5. In the present case, it is not disputed that, as recognized refugees, the authors are entitled to receive social assistance in Bulgaria on similar terms to those available to Bulgarian nationals. They may also lawfully work to support themselves and their one child, and while it has been shown that one of the authors suffers from a heart condition, it has not been shown that this actually limits his ability to work or that his condition cannot be adequately treated in Bulgaria.<sup>e</sup>

<sup>44</sup> General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

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

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

<sup>d</sup> *Ibid.*

<sup>e</sup> The evidence on file suggests that one of the authors suffers from non-obstructive hypertrophic cardiomyopathy and should be subject to routine monitoring of his heart condition under effort conditions.

6. While the authors allege that they were victims of two violent incidents (the first upon their arrival in Bulgaria and the second, on an unspecified date and under unclear circumstances when they were en route to the reception centre), they have not adequately explained why they have not complained of these incidents to the Bulgarian authorities (other than referring, in connection with the second incident, to “language barriers” that made them unaware of the existing complaint procedures) (para. 2.3). In any event, there are no grounds in the case file to suggest that the authors would be exposed to a personalized risk of being subject to future attacks upon their return to Bulgaria.<sup>f</sup>

7. In sum, we consider that although deportation to Bulgaria may put the authors in a more difficult situation than the one confronting them in Denmark, we do not have before us information suggesting that the authors’ future prospects if returned to Bulgaria disclose a real risk of harm severe enough to fall within the scope of article 7.

8. Under these circumstances, we cannot conclude that the decision of the Danish authorities to deport the authors to Bulgaria would entail a violation of article 7 of the Covenant by Denmark.

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<sup>f</sup> See, for example, communications No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.2, and No. 2366/2014, *X v. Canada*, Views adopted on 5 November 2015, para. 9.3.