



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2338/2014*, **

<i>Communication submitted by:</i>	M.J.K. (represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	28 January 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 29 January 2014 (not issued in document form)
<i>Date of adoption of decision:</i>	28 March 2017
<i>Subject matters:</i>	Torture, cruel, inhuman or degrading treatment or punishment; deportation to Afghanistan; freedom of religion and equality before the law
<i>Procedural issue:</i>	None
<i>Substantive issues:</i>	Torture; cruel, inhuman or degrading treatment or punishment
<i>Articles of the Covenant:</i>	6, 7, 14, 18 and 26
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is M.J.K., an Afghan national born on 21 March 1986. He claims that his deportation to Afghanistan by Denmark would constitute a violation of articles 6, 7, 14, 18 and 26 of the Covenant. He is represented by counsel, Niels-Erik Hansen.

1.2 On 29 January 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 to refrain from deporting the author to Afghanistan while his case was under consideration by the Committee.

* Adopted by the Committee at its 119th session (6 March-29 March 2017).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.



1.3 On 1 October 2014, the Committee, acting through its Special Rapporteur on new communications and interim measures, accepted the State party's request to lift the interim measures.

Factual background

2.1 The author was born a Sunni Muslim and belongs to the Tajik minority of Mazar-e-Sharif in Afghanistan. He has not been a member of political or religious organizations in Afghanistan, nor has he otherwise been politically active. Before leaving his country, he lived with his mother and brother and owned a shop in a market in Mazar-e-Sharif along with his associate, M. The author indicates that he and his spouse, P., met as neighbours, and that their relationship began in 2007. However, he learned that she had been promised to a powerful man, A.K., who was a police commissioner and a friend of the Governor of Mazar-e-Sharif.¹ Therefore, the author requested his mother to ask P.'s family for authorization for him to marry P., to prevent her from marrying A.K. P.'s family refused twice, because P. was a Shia Muslim and the author was a Sunni Muslim, and because she was promised to A.K. The author and P. therefore had sexual intercourse in order to force P.'s family to allow them to get married.² A few days or weeks later, A.K. attacked the author and threatened to kill him if he proposed to P. again.³

2.2 In March 2008, approximately, the author and P. decided to leave Afghanistan. The author travelled to Kabul, where P. met him a few days later. Then they travelled to the Islamic Republic of Iran. Once there, the author tried to contact his brother, but the latter's phone was not working, so he contacted M., who told the author that his brother had been arrested and subjected to violence by A.K. A month later, the author called his associate and learned that his brother had been released under the promise that he would find the author. The associate did not know where the author's brother was. The author was also informed that P.'s father had gone to the shop to look for him, threatening to kill him, and that he left at the shop an arrest warrant against the author, accusing him of raping and kidnapping P. Subsequently, the author and P. travelled to Turkey. Once there, the author called M., who informed him that the author's mother and brother had fled Afghanistan to the Islamic Republic of Iran, fearing further violent actions from A.K. In around September 2008, the author and P. went to Greece, where they were married by a Mullah.⁴ They stayed in Greece for about three years. Given the bad living conditions in Greece, P. travelled to Italy with the understanding that she would go first, and that the author would join her once he had enough money to pay the smugglers. Four months later, as he had not received any news from his wife and did not know where she was, the author travelled to Denmark, where he entered illegally on 16 December 2011.

2.3 The author applied for asylum after entering Denmark. In his asylum application, he stated that he feared that, if returned to Afghanistan, he would be executed or sentenced to life imprisonment for the rape and kidnapping of his spouse, P. He also feared being killed or being subjected to violence by his spouse's family, causing him irreparable harm, as he had left Afghanistan with his spouse despite her family having refused his marriage proposals.⁵ His request was rejected by the Danish Immigration Service on 23 March 2012.⁶ He appealed the decision to the Refugee Appeals Board, which on 31 January 2013 upheld the decision of the Danish Immigration Service. The Board considered that the author had been incoherent and inconsistent during the asylum proceedings. The Board referred, for instance, to inconsistencies in the author's statements regarding when he had learned that P. had been promised to A.K., when he had been attacked by A.K., and when he had sexual intercourse with P. while in Afghanistan. The Board thus did not consider any of those statements as facts. It also refused to take into consideration the arrest warrant submitted by the author,⁷ as he had also contradicted himself regarding the way he had obtained the

¹ See para. 2.3 below.

² See para. 2.3 below.

³ See para. 2.3 below.

⁴ The author has not provided the date of the wedding.

⁵ The author does not bring these allegations before the Committee.

⁶ The author has not provided the Committee with a copy of the decision.

⁷ The author has not provided the Committee with a copy of the document.

document from M. The author's statement that he was not well during his first interview with the Danish authorities did not change the Board's assessment and he was ordered to leave Denmark within seven days of the Board's decision.

2.4 On 1 October 2013, the author requested the Refugee Appeals Board to reopen his case. He indicated that he had converted to Christianity and that he had been baptized on 15 September 2013,⁸ after having studied the religion since February 2012. He claimed that if returned to Afghanistan, he would be prosecuted for his beliefs because he had helped preach the Christian message in Denmark. As an example of such activities, the author referred to his participation in an event near the Round Tower in Copenhagen, photos of which had been posted on the Internet and were available on YouTube together with a description of their content in Farsi. On 30 October 2013, the Board rejected the author's request.⁹ The Board found no basis for reopening the asylum proceedings. It reiterated the arguments made in its decision dated 31 January 2013, considered that the new asylum grounds presented by the author did not justify any modification to the Board's previous assessment of the asylum application, as there was no information indicating that the author had participated in church activities before or after his baptism, and pointed out that the author had not explained why he had decided to convert to Christianity immediately prior to his removal to Afghanistan.¹⁰ It also indicated that the author had failed to demonstrate that the photos of the event in the Round Tower in Copenhagen had come to the attention of the Afghan authorities. In addition, it considered that the author's presence in such photos was very limited, as he was just standing in the background. The Board further indicated that the photos had been viewed a limited number of times on YouTube.

2.5 On 9 December 2013, the author's new counsel succeeded in having his asylum case reopened. Along with a baptism certificate issued by St. Luke's Church, the counsel submitted a statement made by a minister at the international Presbyterian Iranian church, dated 10 November 2013, indicating that the author had regularly attended church services and Bible studies three months before his baptism. The author's counsel further submitted another certificate dated 26 November 2013, in which the minister at the detention centre where the author was held¹¹ indicated that he had attended the mass held there every Thursday, starting in October 2013. The minister at the detention centre also indicated that the author had been subjected to "massive harassment" by the Muslim detainees due to his conversion to Christianity. The author's counsel further stated that at the time of his baptism, the author was unaware that he would later be detained for the purpose of removing him to Afghanistan. A statement by a friend of the author in Denmark, dated February 2012, was also submitted. It indicated that the author and his friend had discussed Christianity on several occasions, as from the beginning of 2012. Finally, the author stated that he feared being called up for his compulsory military service upon his return to Afghanistan.

2.6 On 16 January 2014, the Refugee Appeals Board rejected the author's asylum claim once again. It considered that his fear of being forced to perform his military service did not make him eligible for refugee status. It also considered that despite the baptism certificate and the ministers' certificates submitted, the author had failed to substantiate that his conversion was genuine. The Board also took into account that the author had never shown any interest in religion previously,¹² and that although he was an articulate man, he failed to provide the Board with a reasonable explanation of his reasons for being baptised into Christianity. In addition, the author did not inform the Danish authorities about his interest in this religion until the time of his forcible return was approaching. Against this background and taking into account the author's credibility issues during his initial asylum

⁸ The author submitted to the Board a baptism certificate issued by St. Luke's Church. He did not submit a copy of the certificate to the Committee.

⁹ The State party has provided a translation of the decision.

¹⁰ See para. 4.5 below.

¹¹ The author was arrested and detained in order to be expelled. However, he does not provide any further information on the circumstances of the arrest or on the detention period.

¹² In his statement to the Board dated 8 January 2014, the author indicated that he had been born in a Muslim family, but that he was not religious.

proceedings,¹³ the Board concluded that the author had failed to meet the conditions for being granted a residence permit under section 7 (1) and (2) of the Aliens Act.

2.7 The author further argues that no legal review of the Board's decision is available and that all domestic remedies have therefore been exhausted.

The complaint

3.1 The author claims that his deportation would violate his rights under articles 6 and 7 of the Covenant, as his deportation to Afghanistan would put him at risk of being persecuted, tortured and even killed, because his conversion to Christianity is considered as a breach of a fundamental rule of Islam, and apostasy is a crime and punishable by death.

3.2 The author refers to guidelines of the Office of the United Nations High Commissioner for Refugees (UNHCR) of 6 August 2013,¹⁴ according to which the following groups are in need of international protection in Afghanistan: individuals associated with or perceived as supportive of the Government and the international community; men and boys of fighting age; individuals perceived as contravening the Taliban interpretation of Islamic principles, norms and values; and members of minority ethnic groups. He explains that due to his travel to Europe, if removed, he would certainly be perceived as contravening the Islamic rules and being supportive of the Government and/or the international community, and that this perception would be enhanced by his conversion to Christianity. He further claims that, given his age, he would also be at risk of being forced to fight either for the Government or for the Taliban, and alleges that sexual assaults of young men are commonly reported in Afghanistan.¹⁵ In addition, he claims that he has no family ties in Afghanistan and that he is a Tajik from Mazar-e-Sharif, and that if returned, he would be persecuted because he belongs to a minority ethnic group.¹⁶

3.3 In addition, the author claims that the rejection by the Refugee Appeals Board of his asylum application and of a witness ready to testify to support the authenticity of his conversion to Christianity was in contravention of the State party's obligations under articles 6, 7 and 18 of the Covenant.¹⁷ Regarding article 18 of the Covenant, the author further alleges that by rejecting his claim, the Board violated his right to change religion.

3.4 The author also submits that, as an asylum seeker, he was not able to appeal the decision of the Refugee Appeals Board dated 16 January 2014, while any other person in Denmark can appeal the decisions of administrative bodies such as the Board. He considers that this situation amounts to a violation of article 26 of the Covenant, discriminating against asylum seekers in Denmark.

3.5 The author further submits that his conversion to Christianity constitutes a new ground for asylum and that it should have been reconsidered by the Danish Immigration Service, and not only decided by the Refugee Appeals Board, which had already refused to reopen the author's case based on such new ground in its decision of 30 October 2013. Therefore, he considers that his right to have a fair hearing has been violated, in breach of article 14 of the Covenant.

State party's observations on admissibility and the merits

4.1 On 29 July 2014, the State party submitted its observations on the admissibility and merits of the communication. It considers that the communication is not substantiated because the author has not demonstrated that any breach of the Covenant would result from his possible deportation to Afghanistan.

¹³ See para. 2.3 above.

¹⁴ UNHCR eligibility guidelines for assessing the international protection needs of asylum seekers from Afghanistan (6 August 2013). Available at www.refworld.org/pdfid/51ffdca34.pdf.

¹⁵ The author does not provide further details on this matter.

¹⁶ The author does not provide further details on this matter.

¹⁷ The author does not provide further details on this matter. See para. 2.5 above and para. 4.7 below.

4.2 The State party describes the structure, composition and functioning of the Refugee Appeals Board¹⁸ and the legislation applying to asylum proceedings.¹⁹ It indicates that the Board analyses whether an asylum applicant may fear being subjected to specific and individual persecution or to a risk in case of return to his or her country of origin, taking into account any information on persecution prior to the asylum seeker's departure from his or her country of origin (sect. 7 (1) of the Aliens Act). In addition, the State party indicates that a residence permit may be issued to an alien who risks being subjected to the death penalty or to torture or ill-treatment if returned to his or her country of origin. The State party also indicates that the Board considers the conditions for issuing a residence permit fulfilled if there are specific and individual factors rendering it probable that the asylum seeker will be exposed to a real risk of death or of being subjected to torture or ill-treatment in case of return (sect. 7 (2) of the Aliens Act).

4.3 Regarding the admissibility of the communication, the State party indicates that the author has failed to establish a prima facie case for admissibility purposes regarding the alleged violation of articles 6 and 7 of the Covenant, as he has not substantiated that he would face any risk or danger to his life or any risk of being subjected to torture or ill-treatment if deported to Afghanistan; therefore his allegations under these provisions should be considered ill-founded. With respect to the author's allegations under article 14 of the Covenant, the State party submits that according to the Committee's case law, article 14 (1) does not apply to proceedings relating to the expulsion of aliens from a State party and that the relevant provision of the Covenant is article 13. Therefore, it indicates that this claim should be declared inadmissible *ratione materiae*.

4.4 Concerning the author's claim that article 18 of the Covenant has been violated, the State party indicates that he has not explained how this provision has been breached in his case, and considers that he has failed to establish a prima facie case for admissibility purposes in that regard. With respect to article 26 of the Covenant, the State party submits that the author has been treated equally to any person applying for asylum within the State party, whatever their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Since the author has not elaborated on this part of the complaint, he has failed to establish a prima facie case for admissibility purposes regarding this provision of the Covenant.

4.5 On the merits of the communication, the State party submits that the author has failed to establish that his return to Afghanistan would constitute a violation of articles 6, 7, 18 and 26 of the Covenant. Regarding articles 6 and 7, the State party indicates that its obligations under such provisions are reflected in section 7 (2) of the Aliens Act, which establishes that a permit will be issued to an alien if he or she risks being subjected to the death penalty or to torture or ill-treatment in his or her country of origin. The State party recalls that according to the decision of the Refugee Appeals Board dated 31 January 2013, the author made incoherent and inconsistent statements regarding his asylum grounds, in particular his relationship with his spouse and the circumstances that motivated his departure from Afghanistan. The Board found that he had failed to establish that he would face any risk to his life or of being subjected to torture if returned to Afghanistan and therefore rejected his asylum claim. The State party further indicates that the author's interest in Christianity or religion was not mentioned during his interview with the Danish Immigration Service, nor was it mentioned during the first hearing before the Board, held on 31 January 2013. The State party also notes that the author only requested the reopening of his case the day before he was going to be detained to be deported, and that only then did he mention that he had converted to Christianity and provide a baptism certificate. The State party further submits that this behaviour contradicts the author's statement that he had been interested in Christianity since the beginning of 2012.²⁰ The State party also indicates that the ministers' statements confirming the author's church activities were issued only

¹⁸ See communication 2379/2014, *Obah Hussein Ahmed v. Denmark*, Views adopted on 7 July 2016, paras. 4.1-4.3.

¹⁹ The State party refers to sections 7 (1) and (2) and 31 (1) and (2) of the Aliens Act.

²⁰ See para. 2.5 above.

after he was notified on 30 October 2013 that his request to reopen his asylum case had been rejected.²¹

4.6 The State party indicates that the Refugee Appeals Board made a comprehensive and thorough examination of the evidence submitted by the author. It considers that he is trying to use the Committee as an appellate body to have the factual circumstances of his asylum application reassessed. The State party submits that the Committee must give considerable weight to the Board's findings, as the Board is better placed to assess the facts in the author's case. The State party recalls that the Board considered that, upon an overall assessment, there was no basis for assuming that the author's conversion to Christianity was genuine. The State party further indicates that the assessment complied with UNHCR guidelines,²² as it took into account the author's statement on his religious beliefs and the other circumstances of the case,²³ including the fact that the Board had previously considered that the author lacked credibility.

4.7 The State party submits that Refugee Appeals Board's decisions of 31 January 2013, 30 October 2013 and 16 January 2014 were taken after a thorough review of the author's claims, the evidence he submitted, and in accordance with domestic legislation. Regarding the author's allegation that a key testimony confirming that his conversion was genuine had been unfairly rejected by the Board, the State party considers that there was no basis to allow the author's friend to testify before the Board, as he had provided a written statement that was duly taken into account by the Board in the review of the author's case.

4.8 The State party further indicates that the Board has included all the relevant information in its decisions and submits that the author has not provided any additional submissions to the Committee rendering it probable that his rights under articles 6 and 7 of the Covenant may be violated. Regarding the author's submission to the Committee that he fears being forced to perform his military service, the State party indicates that the military service in Afghanistan is not compulsory, as the Afghan army is made up of volunteers.²⁴ Furthermore, concerning the author's allegation that he fears being forcibly recruited by the Taliban, the State party submits that according to the available background information, in particular a report from the Danish Immigration Service, there is no evidence on the Taliban forcibly recruiting young men, as most people join the Taliban voluntarily.²⁵ The State party also indicates that the author's statement that he is a young man of Tajik origin from Mazar-e-Sharif cannot justify asylum by itself. Therefore, it considers that there is no basis on which to dispute the Refugee Appeals Board's assessment on these matters.

²¹ See paras. 2.4-2.5 above.

²² UNHCR, "Guidelines on international protection: religion-based refugee claims under article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees" (2004). Available at www.refworld.org/docid/4090f9794.html.

²³ The State party refers to paragraph 34 of the UNHCR guidelines on international protection, which establish the following:

Where individuals convert after their departure from the country of origin, this may have the effect of creating a *sur place* claim. In such situations, particular credibility concerns tend to arise and a rigorous and in depth examination of the circumstances and genuineness of the conversion will be necessary. Issues which the decision-maker will need to assess include the nature of and connection between any religious convictions held in the country of origin and those now held, any disaffection with the religion held in the country of origin, for instance, because of its position on gender issues or sexual orientation, how the claimant came to know about the new religion in the country of asylum, his or her experience of this religion, his or her mental state and the existence of corroborating evidence regarding involvement in and membership of the new religion.

²⁴ The State party refers to a country of origin information report on Afghanistan published by the United Kingdom of Great Britain and Northern Ireland Border Agency, Home Office (15 February 2013), p. 117. Available at www.justice.gov/sites/default/files/eoir/legacy/2013/11/26/afghanistan_reissue.pdf.

²⁵ Danish Immigration Service, "Country of origin information for use in the asylum determination process" (May 2012), p. 26. Available at [www.nyidanmark.dk/NR/rdonlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf](http://www.nyidanmark.dk/NR/rdonlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrappportenAFGHANISTAN2012Final.pdf).

4.9 Regarding the author's claim that he belongs to several of the vulnerable groups identified in the UNHCR guidelines of 6 August 2013 as facing danger if returned to Afghanistan,²⁶ the State party submits that the same UNHCR document also shows that the author would not be at risk if returned. For instance, regarding persons perceived as supportive of the international community, UNHCR states that those who are particularly targeted are local leaders, religious leaders and women in the public sphere.²⁷ Concerning men and boys of fighting age, it indicates that there is a risk for those boys and men in areas where the Government does not exercise control and in the areas affected by the conflict between pro-governmental forces and non-governmental forces.²⁸ The State party further indicates that, according to the same UNHCR guidelines, in those areas persons perceived as contravening the Taliban's interpretation of Islamic values can be attacked, and that the Taliban target musicians, film-makers, people playing sports and persons who have attended events perceived as violating Islamic principles, norms and values.²⁹ Finally, regarding the author's allegation that individuals of an ethnic minority would face a risk if returned to Afghanistan, the State party submits that the guidelines indicate that ethnic minority groups targeted include Kuchis, Hazaras and members of the Jat ethnic group.³⁰ Taking into account that the author is a Tajik from Mazar-e-Sharif, where 60 per cent of the population is of Tajik origin,³¹ that he is a young man without health problems, that he has stated in the asylum proceedings that he has never been politically active, that he has never been arrested in Afghanistan, and that he is not a high-profile person, the State party considers that there is no basis on which to revise the assessment made by the Refugee Appeals Board, especially because available background material does not allow it to assume that returnees who are removed to Afghanistan are at risk of having their rights under articles 6 and 7 of the Covenant violated for the sole reason of having lived for several years in the Western world. Thus, the State party relies entirely on the assessment made by the Board in its decisions of 31 January 2013, 30 October 2013 and 16 January 2014.

4.10 Regarding the author's allegation that his rights under article 18 of the Covenant would be violated if returned to Afghanistan, the State party reiterates the arguments developed in connection with the other allegations, referring to the finding referred to by the Refugee Appeals Board in its decision of 16 January 2014 that the author's conversion to Christianity was not genuine.³²

4.11 Concerning the allegation that articles 14 and 26 were violated because the author's friend was not allowed to testify at the author's hearing before the Refugee Appeals Board on 16 January 2014, the State party indicates that according to section 54 (1) of the Aliens Act, the Board decides on the examination of witnesses, and that it would not generally permit the production of witnesses in order to substantiate the asylum seekers' general credibility. It further reiterates that the Board took into account the written statement of the author's friend. As for the claim that the Board should have transmitted the case to the Danish Immigration Service instead of deciding itself, the State party submits that when new information comes to light, the Board, being the authority deciding the appeal, makes an assessment as to whether the new information may result in a different decision. This is in accordance with internal legislation and practice and does not contravene the two-instance principle. The decision of 30 October 2013 rejecting the request to reopen the case was based on the information submitted by the author at the time, which did not include any evidence of his church-related activities before and after his baptism. When the Board received such information, it reopened the case, and conducted a hearing on 16 January

²⁶ See para. 3.2 above.

²⁷ UNHCR, eligibility guidelines, pp. 36-37.

²⁸ *Ibid.*, pp. 40-41.

²⁹ *Ibid.* pp. 47-48.

³⁰ *Ibid.*, pp. 67-68.

³¹ The State party refers to a report by the Congressional Research Service, entitled "Afghanistan: post-Taliban governance, security and US policy" (4 April 2012), p. 87. Available at www.parstimes.com/library/afghanistan_crs_a2012.pdf.

³² See paras. 4.5-4.6 above.

2014 before a panel comprised of members who were different from those who took the decision of 30 October 2013.

Author's comments on the State party's observations

5.1 On 12 September 2014, the author submitted his comments on the State party's observations. The author indicates that the State party has two kinds of strategies in relation to the communications submitted to the Committee regarding asylum proceedings in which the Refugee Appeals Board has rejected the asylum claim: it requests the Committee to suspend the case within six months of the presentation of the communication, or it provides its observations on the admissibility and the merits of the communication to the Committee after the six months have passed. In the first scenario, the Refugee Appeals Board generally allows the reopening of the asylum seeker's case and he or she is granted asylum.³³ In the second, the State party argues that there have been no flaws in the proceedings before the Board and requests the Committee to declare the communication inadmissible. The author further submits that as a recent development, the State party requests not only that the Committee declare that the communication is inadmissible or that there has not been any violation of the Covenant, but also that the interim measures issued by the Committee be lifted. The author considers that these requests have become "standard", independent of the circumstances of the case.

5.2 The author considers that there is no reason to lift the interim measures granted in his case, since in its observations of 29 July 2014 the State party did not provide any new information that would justify such a decision. On the contrary, as reflected in the translation of the decision of the Refugee Appeals Board of 16 January 2014 provided by the State party, the majority of the members of the Board found that the author's conversion to Christianity was not genuine, which in the author's view demonstrates that five members of the Board — the minority — did not agree and found the author's conversion genuine. In this context, the Board's rejection of the testimony of his friend acquires even more importance, as his testimony could have made a difference in favour of the author.³⁴ He further submits that the State party does not challenge that his friend's testimony was rejected, but does not provide any legal basis for such rejection.

5.3 The author also provides a new statement by a priest, dated 11 September 2014, confirming that the author had been part of the fellowship in the church of apostles in Copenhagen since the end of 2013. The statement also indicates that the author had been participating in weekly Bible teaching in English and Farsi for about 10 months and that he has taken part in a Farsi-language summer camp on the Bible, held from 27 to 31 July 2014.³⁵

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim 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 to the Covenant.

6.2 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.

6.3 The Committee takes note of the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in

³³ The author refers to the Committee's decision, adopted on 2 November 2015, to discontinue communication No. 2320/2013, *A.E. v. Denmark*.

³⁴ The author refers to another case in which the asylum seeker was allowed to bring three witnesses to testify before the Board about his conversion to Christianity and where, as a result, the Board granted asylum. The author indicates that this was in relation to *A.E. v. Denmark*.

³⁵ The author has not provided any comments on the State party's observations on the admissibility and merits of the communication.

this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee recalls paragraph 12 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.³⁶ The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party,³⁷ and that it is generally for organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.³⁸

6.5 In the present case, the Committee notes the State party's argument that the author made incoherent and inconsistent statements during asylum proceedings, that the Refugee Appeals Board made a comprehensive and thorough examination of the evidence submitted by him, that he is trying to use the Committee as an appellate body to have the factual circumstances of his asylum application reassessed, and that he has failed to establish a *prima facie* case for admissibility purposes regarding the alleged violation of articles 6, 7 and 18 of the Covenant.

6.6 The Committee observes that the author has not identified any irregularities in the decision-making process, nor any risk factor that the State party's authorities failed to take properly into account. It considers that while the author disagrees with the factual conclusions of the State party's authorities, he has not shown that they were clearly arbitrary or manifestly erroneous or amounted to a denial of justice.

6.7 The Committee observes that the author's original request for asylum on the grounds of his fear of persecution by the Afghan authorities and by private individuals — his spouse's family and A.K. — based on the allegations of the rape and kidnapping of his wife was rejected by the Danish Immigration Service and the Refugee Appeals Board because he had failed to establish that he would face any risk to his life or of being subjected to torture if returned to Afghanistan. The Committee notes that on 1 October 2013, the author requested the Board to reopen his case on the grounds that he converted to Christianity, and that the Board rejected this request on 30 October 2013 because he did not adequately explain why he had decided to convert to Christianity immediately prior to his removal to Afghanistan. The Committee also notes that on 9 December 2013, the Board decided to reopen the author's case, giving him the opportunity to substantiate his new allegations and submit evidence in their support. It further notes that on 16 January 2014, the Board dismissed the author's new allegations because it considered that his conversion to Christianity was not genuine, as he had not mentioned his interest in any religion until his original asylum claim was rejected on 31 January 2013. In addition, the Board considered that the author had failed to provide a reasonable explanation as to why he had decided to get baptised. The Committee observes that the author's claims mainly rely on his activities in a Christian church, which only started after his original asylum claim had been rejected. In the light of the above, the Committee considers that the author's claims under articles 6, 7 and 18 of the Covenant have been insufficiently substantiated for the purposes of admissibility, and concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.8 The Committee further notes the author's claims under articles 26 of the Covenant that the decision of the Refugee Appeals Board and its procedure constitute discrimination

³⁶ See, for example, communication No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

³⁷ See, for example, communications No. 2344/2014, *E.P. and F.P. v. Denmark*, decision of inadmissibility adopted on 2 November 2015, para. 8.4, and No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

³⁸ See, for example, *E.P. and F.P. v. Denmark*, para. 8.4.

against asylum seekers, since all other decisions by administrative bodies can be appealed before courts pursuant to the State party's law. It also notes the State party's statement that the author has been treated equally to any person applying for asylum before its authorities, whatever their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Committee observes that the author has not provided any further arguments on this part of the complaint, and therefore considers that he has failed to sufficiently substantiate his claims under article 26 and declares this part of the communication inadmissible under article 2 of the Optional Protocol.³⁹

6.9 The Committee further notes the author's claims that the decisions of the Refugee Appeals Board are the only decisions that are final without possibility of appeal before the national courts; that the Board lacks impartiality and independence and that therefore the request to reopen the case should have been decided by the Danish Immigration Service and not by the Board, taking into account that the latter had already rejected a request submitted by the author to reopen the case on the grounds of his conversion to Christianity. The Committee also notes the author's submission that the Board refused to receive the testimony of his friend without providing any legal reasoning, and that the State party has thus violated the author's rights under article 14 of the Covenant. In that regard, the Committee refers to its jurisprudence that proceedings relating to aliens' expulsion do not fall within the ambit of a determination of "rights and obligations in a suit at law" within the meaning of article 14 (1) but are governed by article 13 of the Covenant.⁴⁰ Furthermore, the latter provision offers to asylum seekers some of the protection afforded under article 14 of the Covenant, but not the right of appeal to judicial courts.⁴¹ The Committee therefore concludes that this claim is inadmissible *ratione materiae* under article 3 of the Optional Protocol. The Committee also considers that even if the author had invoked article 13 of the Covenant, his claims on this issue are insufficiently substantiated.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.

³⁹ See, for example, communication No. 2115/2011, *I.A.K. v. Denmark*, decision of inadmissibility adopted on 3 November 2016, para. 9.7.

⁴⁰ See, for example, communication No. 2291/2013, *A and B v. Denmark*, Views adopted on 13 July 2016, para. 7.3; *X v. Denmark*, para. 8.5.

⁴¹ See communication No. 2288/2013, *Omo-Amenaghawon v. Denmark*, Views adopted on 23 July 2015, para. 6.4; general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 17 and 62.