



**International Covenant on
Civil and Political Rights**

Advance unedited version

Distr.: General

30 November 2017

Original: English

**Views adopted by the Committee under article 5 (4) of the
Optional Protocol, concerning communication No 2770/2016****

<i>Submitted by:</i>	O Y K A (represented by counsel)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Denmark
<i>Date of communication:</i>	27 May 2016 (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 Views:</i>	7 November 2017
<i>Subject matter:</i>	Deportation to Greece of an unaccompanied minor
<i>Procedural issues:</i>	Lack of substantiation
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment or punishment; refoulement; rights of the child
<i>Articles of the Covenant:</i>	7 and 24
<i>Articles of the Optional Protocol:</i>	2

** Adopted by the Committee at its 121st session (16 October to 10 November 2017).

*** The following members of the Committee participated in the examination of the present communication: Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelic, Bamariam Koita, Marcia V. J. Kran, Mauro Politi, Jose Manuel Santos Pais, Yuval Shany, and Margo Waterval

1.1 The author of the communication is O Y K A a Syrian national. He claims that he was born on [REDACTED] 2000,¹ and that his deportation to Greece by Denmark would constitute a violation of articles 7 and 24 of the International Covenant on Civil and Political Rights (Covenant). He is represented by counsel, Cecilia Vejby Andersen, Danish Refugee Council.

1.2 On 30 May 2016, pursuant to rule 92 of the Committee's rules of procedure, the Special Rapporteur on New Communications and Interim measures on behalf of the Committee, requested the State party to refrain from deporting the author to Greece, while his case was under consideration by the Committee. On 1 June 2016, the Refugee Appeals Board (RAB) suspended the time limit for the author's departure from Denmark in accordance with the Committee's request.

Factual background

2.1 The author is from Damascus, Syria. He submits that he fled Syria in March 2015 because of the war, and that he entered Greece in April of the same year as an unaccompanied minor. Upon arrival on the Greek island of Chios, the author was apprehended by the local authorities and placed in a closed facility, where his fingerprints were taken because of his illegal entry. After a few days in Chios, he was allowed to travel to Athens, where he stayed in a hostel for four months, covering the costs himself. When he ran out of funds, he became homeless and lived on the streets for about two months. He indicates that he spent most of the nights in a large park, where he met a Syrian refugee who advised him to file a request for asylum in Greece in order to require accommodation from the Greek authorities. He did so on an unspecified date.

2.2 The author indicates that he filed his asylum request, but that his attempts to get the support of the Greek authorities to find an accommodation failed. Local authorities were extremely aggressive when contacted, and the author felt rejected. During these months, the author witnessed other people being exposed to violence and robberies. He spent many nights awake in order to avoid attacks. In June 2015, the author passed his asylum interview with the Greek authorities. He got refugee status, but never received notice of that decision, which he was informed of later on by the Danish authorities.²

2.3 Due to the very difficult living conditions in Greece and the lack of prospects of improvement, the author left Greece on [REDACTED] July 2015, and travelled to Denmark, where he arrived in August 2015, and lodged an application for asylum. Once in Denmark, he was informed by the Danish authorities that he had been granted asylum in Greece on [REDACTED] July 2015. The author also claims that due to the stress caused by the personal situation he has had to face, he is emotionally vulnerable, and he has inflicted harm upon himself while in Denmark.³

2.4 On [REDACTED] March 2016, the Danish Immigration Service (DIS) rejected the author's request for asylum, on the grounds that Greece was his first country of asylum under section 29(b) of the Danish Alien Act. The DIS indicated that given that he had been granted refugee status in Greece, the author could legally enter the country and settle there. The DIS further indicated that the fact that the author was not aware that he had been issued a residence permit in Greece did not change anything in terms of the outcome of his asylum claim. The author appealed this decision to the Refugee Appeals Board (RAB), while considering that such

¹ See paras. 2.5 and 4.4.

² See para. 2.3

³ The author does not provide further information in this regard.

appeal is not an effective remedy, as it does not have suspensive effect,⁴ and it does not provide an opportunity to submit and substantiate new information.

2.5 On [redacted] May 2016, the author informed his counsel that his correct birth date was [redacted] 2000. To substantiate this information, he provided Syrian identity documents, indicating that his brother sent the documents to him electronically.⁵ On [redacted] May 2016, the author submitted an official request to the DIS indicating his real age, and providing a copy of the documents that he had received from his brother. The author submits that he had initially provided false information concerning his age to the Greek authorities because he had been advised that, as isolated migrant minors were systematically detained in Greece, he should identify himself as an adult. Additionally, as he was not sure whether the legal adult age in Greece was 18 or 21, he opted for stating that he was 21 years old. Consequently, he was registered by the Greek authorities as an adult with the false date of birth of [redacted]-1995. The author further submits that he provided the same false information to the Danish authorities for the same reasons and because he had already been registered in Greece as being born on [redacted] 1995.

2.6 On an unspecified date, the author's counsel submitted supplementary information to the RAB in support of the author's age claim. He informed that he had been in contact with the author's asylum center staff, who observed that the author's friends were all around 15-16 years old. They further considered that, taking into account the author's general demeanor and physical appearance, it came to no surprise to them when the author revealed that he was 16 years old. The author's counsel also informed that the author's closest friend had told her a month before the communication was submitted to the Committee that he was aware of the author's correct age, and that the author was afraid of telling the truth about his age as he feared that such information could have a negative impact on his asylum application.

2.7 On [redacted] May 2016, the RAB rejected the author's appeal of the DIS's decision. It reiterated that under section 29(b) of the Danish Alien Act, as the author had been granted refugee status in Greece for three years on [redacted] June 2015, together with a residence card and travel documents, his first country of asylum was Greece. It further indicated that according to internal legislation,⁶ the requirements for the first country of asylum were that the asylum seeker is protected against *refoulement* and that he or she could stay lawfully there. In addition, the asylum seeker's personal integrity and safety should be protected. Nonetheless, the RAB stated that it was not a requirement that the asylum seeker had the exact same social living standards as the nationals of that country, under the condition that he or she was treated in accordance with recognized basic human standards.⁷ The RAB considered that the author could enter and stay lawfully in Greece and that he would be protected against *refoulement* there, as he had obtained international protection. In addition, as a member of the European Union (EU), Greece is obliged to respect article 19(2) of the EU Charter of Fundamental Rights,⁸ as well as the Geneva Refugee Convention. The RAB further considered that although the general socio-economic conditions for persons granted refugee status in Greece were difficult, it could not be concluded that Greece could not be a country of first asylum.

⁴ The DIS decision indicates that the author cannot stay in Denmark while a possible appeal against its decision is reviewed by the RAB.

⁵ The author has provided a copy of such documents to the Committee.

⁶ Comments in Bill No. 73 of 14 November 2014 on Section 29b of the Aliens Act.

⁷ The RAB referred to ExCom Conclusion No. 58 (1989). See <http://www.unhcr.org/excom/exconc/3ac68c4380/problem-refugees-asylum-seekers-move-irregular-manner-country-already-found.html>

⁸ Article 19(2) states: "No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment".

Regarding the author's claim that he was an unaccompanied minor, the RAB indicated to the author that it fell outside its powers to change the information initially included in his application as to his age, but that he could ask the DIS to revise this issue. Such decision could be appealed to the Ministry of Immigration, Integration and Housing. Regarding the author's claim that he is suffering emotional distress, the RAB indicated that he has not requested any treatment for this condition and that according to the report on his interview conducted on 13 March 2016, he was in good physical health. In addition, the RAB considered that it could be assumed that the author would get all the psychological or medical treatments he could need in Greece. Finally, the RAB considered that the fact that the author had a girlfriend and a family network in Denmark could not lead to a different assessment⁹, and rejected the author's asylum application.

2.8 Regarding the author's motion that he was a minor when he arrived to the State party, the DIS decided on 12 May 2016 not to change the registration of the author's age in so far as 1995 was the date registered based on the information that the author himself had provided to both the Greek and the Danish authorities. On 12 July 2016, the author filed an administrative complaint against this decision, alleging that he should have been given the benefit of the doubt regarding his real age. On 12 September 2016, the Ministry of Immigration, Integration and Housing rejected the administrative complaint, maintaining 1995 of 1995 as the author's birth date. The Ministry recalled that according to the author's interviews conducted by the Danish immigration authorities on 12 September 2015 and 13 March 2016, he indicated that his date of birth was 1995, that he had been issued an ID card when he was 14 years old, that he had been called for military service in 2013 when he was 18 years old, and that he had a younger brother living in Germany. The Ministry also recalled that in the family book provided by the author, following his request to change his age, he was listed as a second child born on 2000, while the third child appeared as born in 1999. The Ministry noted that the second child –the author- had a later date of birth than the third child. When asked about this contradiction, the author indicated that he did not know the reason of this inconsistency. In addition, the Ministry noted that in the past, the author had referred to his older brother as his younger brother. When the author was questioned about the ID he presented when he applied for asylum in Denmark according to which he was born on 1995, he replied that it had been issued for the purpose of obtaining a job and renting a home. In this respect, the Ministry noted that if the author was indeed born in 2000, he would only have been 10 years old when the ID card was issued.

2.9 The Ministry further indicated that according to background information available on Syrian identity documents, after four years of civil war, the identity system in Syria is no longer functioning: controls have weakened and documents are increasingly being issued under false pretenses or without the approval of the central administration.¹⁰ In this regard, the Ministry considered that taking into account that the family book and the registration certificate produced by the author on 12 May 2016, had been issued within the past five years, it could not be considered as an objective element of evidence. Regarding the author's claim that the benefit of the doubt should be applied to his case, the Ministry emphasized that the author consistently maintained throughout most of his asylum proceedings that he was born on 1995, and that he only mentioned that he was a minor after his asylum application was rejected. The author indicates that no remedy is available against this decision.

2.10 The author indicates that he has exhausted the domestic remedies as the decisions by the RAB cannot be appealed.¹¹

⁹ The author does not provide any details on this matter.

¹⁰ The Ministry referred to a report by Landinfo of 11 November 2015, Syria: Identity documents and passports.

¹¹ See section 56(8) of the Aliens Act.

The complaint

3.1 The author alleges that his deportation to Greece would violate his rights under articles 7 and 24 of the Covenant, due to a risk of homelessness and detention in Greece. He contends that there are substantial grounds to believe that his deportation would therefore constitute a real risk of irreparable harm amounting to inhuman and degrading treatment under article 7 of the Covenant.

3.2 In support of his claim that homelessness may constitute inhuman and degrading treatment, the author cites a decision by the European Court of Human Rights (ECHR), *M.S.S v. Belgium*,¹² according to which the state of extreme poverty of an individual living in a park in Athens for months without access to food or sanitation, amounted to degrading treatment under the European Convention on Human Rights. He further submits that, although he has been granted refugee status, he remains vulnerable to such treatment. On this point, he refers to the Committee's Views in *Jasin et al. v. Denmark* in which the Committee found that returning a single mother with no shelter and means of subsistence to Italy after the grant of subsidiary protection, violated article 7.¹³

3.3 With regard to the risk of detention, the author submits that unaccompanied minors are detained in Greece, often for months, due to a lack of space at reception facilities.¹⁴ In this regard, he refers to the concern expressed by the Office of the UN High Commissioner for Human Rights (OHCHR) in May 2016 about unaccompanied minors, who are being placed in "protective custody" in Greece due to a lack of adequate spaces, such as children shelters.¹⁵ The author also states that, according to media reports, as of 20 April 2016, 545 unaccompanied minors were in detention in Greece awaiting placement in specialised centres.¹⁶ On the basis of this information, the author submits that the high risk of prolonged detention upon his arrival in Greece amounts to a high risk of inhuman and degrading treatment, in violation of his rights under the Covenant.

3.4 As regards article 24 of the Covenant, the author submits that the concept of a child's best interests is a fundamental right, and considers that all proceedings should be guided by this principle. The author refers to the Committee on the Rights of the Child's General Comment N. 14 on the right of the child to have his or her best interests taken as a primary consideration, according to which the elements that could be included in this assessment should be balanced in light of each situation. Some of these elements are the child's own views, his or her situation of vulnerability, and the child's right to health, among others. He submits that given his minor age, that he is a Syrian national who has already endured hardship during his trip to Europe, he is particularly vulnerable. He adds that deporting him to Greece would be against his best interest as a child, as he would be at risk of being homeless without any assistance from local authorities. The author further argues that access to accommodation in Greece is very limited, as refugees are obliged to compete with Greek nationals with limited economic resources, and that refugees face a discriminatory treatment.

¹² ECHR, application No. 30696/09, *M.S.S. v Belgium and Greece*, judgment adopted on 21 January 2011, paras. 235 and 264.

¹³ Communication No. 2360/2014, *Jasin et al. v. Denmark*, Views adopted on 22 July 2015.

¹⁴ The author indicates that according to a report by the EU Fundamental Rights Agency, overcrowding has prevented the transfer of unaccompanied minors into accommodation. EU Fundamental Rights Agency, *Monthly data collection on the current migration situation in the EU*, Monthly report 1-30 April 2016). Available from <http://fra.europa.eu/en/theme/asylum-migration-borders/overviews/march-2016>

¹⁵ OHCHR, *Migrant children face grim human rights conditions in Greece*, May 2016, available from <http://www.ohchr.org/EN/NewsEvents/Pages/MigrantchildreninGreece.aspx>

¹⁶ Associated Press, *Council of Europe: Detention of Lone Minors is Unacceptable*, 26 May 2016, available from <http://www.usnews.com/news/world/articles/2016-05-26/council-of-europe-detention-of-lone-minors-unacceptable>.

3.5 The author further submits that he has reasonable fears for his safety in Greece and that he has grown attached to his contact person in the State party, who is a key caregiver and adult presence in his life. He also indicates that he has no adult guardian who may take care of him in Greece, and that if left to live on the streets, he would risk being subjected to xenophobic violence and other inhuman treatments. The author indicates that the State party's authorities have not assessed his best interests, and that they have therefore failed to make the best interests of a child a primary consideration as required by article 24 of the Covenant.

State party's observations

4.1 On 9 November 2016, the State party submitted its observations on the admissibility and the merits of the communication. It provides a description of relevant domestic legislation and submits that the complainant's asylum request was considered in accordance with it, in particular the Aliens Act, which reflects the same principles as those established in article 3 of the European Convention on Human Rights. The State party, therefore, considers that its authorities comply with its international obligations regarding asylum applications. The State party also describes the structure, composition and functioning of the RAB, as well as the legislation applying to cases related to the Dublin Regulation.¹⁷

4.2 As to the admissibility and merits of the communication, the State party argues that the author has 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 he will be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment in Greece. The communication is therefore manifestly unfounded and should be declared inadmissible. In the alternative, the State party submits that the author has not sufficiently established that article 7 will be violated in case of his return to Greece. 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 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.¹⁸ With regard to the author's claim under article 24, the State party submits that it is incompatible *ratione materiae* with the Covenant, and therefore inadmissible under article 3 of the Optional Protocol, as article 24 cannot be applied extraterritorially.¹⁹

4.3 The State party further indicates that when applying the principle of country of first asylum, the RAB requires, at a minimum, that the asylum seeker is protected against *refoulement* and that he or she is able to legally enter and take up lawful residence in the first country of asylum. According to the State party, such protection includes certain social and economic elements, as asylum seekers must be treated in accordance with basic human standards and their personal integrity must be protected. The core element of such protection is that the person(s) must enjoy personal safety, both upon entering and while staying in the country of first asylum. However, the State party considers that it is not possible to require that asylum seekers have the exact same social and living standards as nationals of the country.

¹⁷ See Communication 2379/2014, Ms Obah Hussein Ahmed v. Denmark, Views adopted on 8 July 2016, paras. 4.1-4.3

¹⁸ The State party refers to the communication No. 2007/2010, *J.J.M. v Denmark*, Views adopted on 26 March 2014, para. 9.2.

¹⁹ The State party refers to Communication No. 2378/2014, *A.S.M. and R.A.H. v Denmark*, views adopted on 7 July 2016, para. 7.5.

4.4 Regarding the author's claim that he entered the State party as unaccompanied minor, the State party submits that the author entered its territory in possession of an ID card issued in Syria, from which it appears that he was born on [REDACTED] 1995. It further refers to the RAB's findings of [REDACTED] May 2016, according to which the Greek authorities granted him refugee status from [REDACTED] June 2015 to [REDACTED] June 2018, and that a residence card was issued for him on [REDACTED] July 2015, as well as travel documents. The State party indicates that the DIS carries out an investigation to establish the identity, nationality and travel route of every asylum seeker, and that for that purpose, it conducts an interview with him or her, with his or her consent, in order to review the correctness of provided data, if deemed necessary, for example through an age assessment test, a language assessment test, or a DNA test. In addition, before deciding whether to revise the asylum seeker's age, nationality, etc., a consultation with the asylum seeker is held. The State party indicates that the DIS interviewed the author on several occasions: (a) on [REDACTED] September 2015, he maintained that his date of birth was [REDACTED] 1995, that he had been issued his ID card when he was 14 years old, and that he had been called up for military service in 2013, when he was 18 years old; (b) on [REDACTED] March 2016, the author was interviewed again and he informed that he had a younger brother in Germany; (c) on [REDACTED] May 2016, following the author's brief to the RAB, informing that his real date of birth was [REDACTED] [REDACTED] 2000, a consultation interview was held between the DIS and the author, in which he informed that he was advised not to communicate his real age to immigration authorities. During this interview, he presented a family book in which he appeared to be the second child of the family, as well as a birth certificate showing that he was born on [REDACTED] 2000.²⁰ The State party recalls that the RAB found that it was outside its powers to assess or revise the author's age, and that this was a question for the DIS, appealable to the Danish Ministry of Immigration, Integration and Housing; (d) on [REDACTED] September 2016, this Ministry rejected the author's request to modify his registered date of birth. The State party relies on the age decision made by the Ministry in its entirety, and considers that it should be accepted as a fact that the author is an adult.

4.5 Regarding the risk that the author would face if deported to Greece, the State party notes that the author was granted refugee status in Greece on [REDACTED] June 2015 and that his residence permit is valid until [REDACTED] June 2018. It further submits that in accordance with the Committee's jurisprudence, conditions in Greece are not of such nature that it would be contrary to article 7 of the Covenant to deport the author there. In this regard, the State party refers to Communication No. 2523/2015²¹ which concerned a young Syrian male who, like the author, had been granted residence in Greece. The Committee concluded that the author's claims under article 7 of the Covenant regarding the living conditions in Greece had not been sufficiently substantiated, and declared the case inadmissible under article 2 of the Optional Protocol.²² Furthermore, the State party differentiates the present case from Communication No. 2360/2014,²³ in which the Committee considered that Denmark would violate article 7 of the Covenant by removing the author to Italy. The State party notes that, in that case, the author was a single mother who required medication for asthma, who had three minor children, and whose residence permit for Italy had expired. These facts cannot be compared to the situation of the author, who is a grown, single man who has not requested medical treatment and who has a valid residence permit in Greece. Therefore, no "exceptional circumstances" exist in the present case. Furthermore, the State party notes that the author has paid for a hostel in Greece for a period of time and that he had sufficient resources to

²⁰ See para. 2.8

²¹ Communication 2523/2015, *X v. Denmark*, views adopted on 1 April 2015, para. 4.4.

²² The State party also refers to ECHR, Application No.27725/10, *Samsam Mohammed Hussein and others v. the Netherlands and Italy*, judgment adopted on 2 April 2013, in which the Court considered that 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 was not sufficient to give rise to a breach of article 3 of the European Convention on Human Rights.

²³ Communication 2360/2014, *Warda Osman Jasim et al. v. Denmark*, Views adopted on 22 July 2015.

travel to Denmark. The State party submits that taking into account all these factors, there is no basis to consider that the author is particularly vulnerable.

4.6 Moreover, the State party indicates that as the author has refugee status in Greece which entitles him to a work permit of the same duration as his residence, and that, therefore, he will be able support himself there.²⁴ It further considers that it must be assumed that the author will also receive the necessary medical treatment in Greece, if he requests it. With regards to the author's fear of racially motivated attacks, the State party notes that it appears from general background information that although racially motivated attacks occur in Greece, there are special police units which prevent and resolve such incidents, and that legislation aimed at appropriately punishing such attacks has been recently adopted.²⁵ The State party also indicates that although it appears that Greek police are sometimes involved in acts of racial discriminations, the author never reported that he has had conflicts with the Greek authorities. In addition, during his asylum proceedings, the author has also stated that he had never experienced any conflicts with political, religious or criminal groups, nor had he experienced conflicts with private persons during his stay in Greece. Accordingly, it cannot be accepted as a fact that he has been or could be subjected to racist attacks if deported to Greece. Moreover, it must be assumed that the author can obtain protection from the Greek authorities in case he is attacked. The State party also indicates that the fact that the author had considered that the attitude of the Greek authorities was very aggressive cannot lead to a different assessment.

4.7 Concerning the author's reference to the jurisprudence of the European Court of Human Rights,²⁶ the State party considers that it does not apply to the present case, as the cases he referred to concerned asylum-seekers, whose situation cannot be compared to that of individuals with valid residence permits in Greece.²⁷ In addition, the author's allegations with regard to reception conditions in Greece are relevant for individuals falling beneath the Dublin Regulation, but not for those who, like him, hold valid residence permits.

4.8 Finally, the State party recalls that important weight should be given to findings made by domestic authorities, and that it is generally for State organs to assess the facts and evidence of each case, unless it can be established that such assessment was arbitrary or amounted to a denial of justice.²⁸ The author has failed to explain whether there were any irregularities in the decision-making process.²⁹ The State party also notes that, in his communication to the Committee, the author has failed to provide new, specific details about his situation. This reflects that he merely disagrees with domestic decisions, and that he is trying to use the Committee as an appellate body.

²⁴ The State party refers to Greece's Presidential Decree No. 189 of 1998 on Conditions and Procedures for the Grant of Work Permit or Any Other Assistance for Occupational Rehabilitation to Refugees Recognized by the State, to Asylum Seekers and to temporary Residents on Humanitarian Grounds.

²⁵ The State party refers to US Department of State, *Country Reports on Human Rights Practices for 2014*, 25 June 2015; US Department of State, *Country Reports on Human Rights Practices for 2015*, 13 April 2016; both available from <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm>.

²⁶ ECHR, Application No. 30696/09, *M.S.S. v Belgium and Greece*, judgement adopted on 21 January 2011, and ECHR, Application No. 16643/09, *Sharifi and others v Italy and Greece*, judgement adopted on 21 October 2014.

²⁷ The State party refers to Communication 2523/2105, *X v. Denmark*, Views adopted on 1 April 2015.

²⁸ The State party refers to Communication 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.3; Communication 2393/2104, *K v. Denmark*, Views adopted on 16 July 2015, paras. 7.4 and 7.6; Communication 2426/2014, *N. v. Denmark*, Views adopted on 23 July 2015, para. 6.6

²⁹ The State party refers to Communication 2186/2012, *Mr. X and Ms. X v. Denmark*, Views adopted on 22 October 2014, para. 7.5 and Communication 2329/2014, *Z v. Denmark*, Views adopted on 15 July 2015, para. 7.4.

Author's comments on the State party's observations

5.1 On 15 February 2017, the author submitted his comments on the State party's observations. Regarding the observations on the admissibility of the communication, with respect to article 7 of the Covenant, he submits that according to Rule 96(b) of the Committee's Rules of Procedure, the author does not need to prove his case, but to provide sufficient evidence in substantiation of his allegations, in other words, to constitute a *prima facie* case. He considers that he has done so, as he has provided evidence on his real age and of the risk of ill-treatment if forcibly returned to Greece. Regarding the evidence provided on his real age, the author refers to his family book, which has been substantiated by statements from his network family in Denmark, as well as by the team coordinator and social worker from the asylum centre in Denmark.

5.2 Regarding his allegations under article 24 of the Covenant, the author indicates that they are admissible, as the omission of the Danish authorities to make an assessment of his best interest as a child amounts to a violation of such provision, whether it applies extraterritorially or not. In this regard, the author indicates that the inhuman and/or degrading treatment he might suffer if deported to Greece, is not decisive. In addition, the author recalls that article 2 of the Covenant contains an obligation not to remove a person to a State where there is a risk of irreparable harm,³⁰ and indicates that an irreparable harm may arise under provisions of the Covenant other than articles 6 and 7. In this regard, the author refers to the communication 2081/2011, *D.T. vs Canada*, in which the Committee held that a deportation by Canada of a child to Nigeria was a violation of his rights under article 24(1) of the Covenant.³¹ He also quotes communication 2291/2013, *A and B v. Denmark*, in which the Committee considered that article 18 could not be dissociated from the author's allegations under articles 6 and 7.³² Furthermore the author refers to General Comment No. 35, in which the Committee stated that returning an individual to a country where there are substantial grounds for believing that the individual faces a real risk of a severe violation of liberty or security of person, such as prolonged arbitrary detention, may amount to inhuman treatment prohibited by article 7 of the Covenant.³³

5.3 With respect to the merits of the communication, the author reiterates that there are substantial grounds to believe that there is a real risk of ill-treatment if he is returned to Greece, in violation of article 7 of the Covenant. The author refers to article 3 of the European Convention on Human Rights which mirrors article 7 of the Covenant. He indicates that according to the jurisprudence of the European Court of Human Rights, in the assessment made by the Court in order to determine the minimum level of severity amounting to ill-treatment, circumstances such as the age and state of health of the applicant need to be taken into account.³⁴ The author therefore argues that when interpreting article 7 in conjunction with article 24 of the Covenant, which stipulates that children must be the object of measures of protection, such level of minimum severity must be assessed taking into account the special circumstances of the applicant, who in this case, is a Syrian minor who has already endured hardship in his home country and in Greece, who has also developed self-destructive behaviour and has no caregiver in Greece. The author thus concludes that there is a real risk of ill-treatment in violation of article 7 of the Covenant, if he is returned to Greece. The author further emphasises that according to the background information on the situation of

³⁰ The author refers to the Committee's General Comment 31, The Nature of the General Legal Obligation Imposed to States Parties to the Covenant, 26 May 2004, para. 12.

³¹ Communication No.2081/2011, *D.T. v. Canada*, Views adopted on 15 Jul 2016, para. 8. The author also refers to an Individual Opinion by Sarah Cleveland and Sir Nigel Rodley regarding Communication 2378/2014, *A.S.M. and R.A.H v. Denmark*, Views adopted on 7 July 2016, para. 6

³² Communication No.2291/2013, *A. and B. v. Denmark*, Views adopted on 13 Jul 2016, para. 7.4

³³ General Comment 35 on article 9 (Liberty and security of the person), para. 57

³⁴ ECHR, Application No. 29217/12, *Tarakhel v. Switzerland*, judgement adopted on 4 November 2014, para 118

refugees in Greece, refugees do not receive assistance by the Greek authorities, they risk labour and sexual exploitation, and they are the object of an extensive use of detention amounting to inhuman and degrading treatment due to the bad detention conditions, all of which demonstrates the deeply problematic situation refugees are obliged to endure in Greece.

5.4 The author further argues that he has provided the State party with evidence of his real age, including documental and testimonial evidence,³⁵ in accordance with the principle of the burden of the proof, as established by UNHCR.³⁶ According to this principle, the refugee must establish the veracity of his allegations and the accuracy of the facts on which his claims are based.³⁷ He also submits that he has provided a plausible explanation concerning his inaccurate information to the Greek and Danish authorities regarding his age.

5.5 Furthermore, the author indicates that in light of the explanation and evidence that he produced, he should be afforded the benefit of the doubt, as no current method of age assessment is able to determine a specific age with certainty.³⁸ Therefore, when there are doubts regarding the age of asylum seeker, like in the author's case, according the principle of the benefit of the doubt, he must be treated as a child. In addition, the author indicates that having fulfilled the burden of proof principle by producing evidence confirming that he is a child, the burden of proof becomes shared between him and the State party. The author refers to two decisions by the European Court of Human Rights, according to which once the burden of proof is discharged, the applicant and the authorities have a shared burden to ascertain and evaluate all relevant facts.³⁹ Thus, if the State party had reasons to question the author's age, a medical age assessment test should have been undertaken.⁴⁰ The author recalls that neither the Greek authorities, nor the Danish authorities have conducted an age assessment test.

5.6 The author further states that his state of health, vulnerability and age are elements that must be evaluated when assessing if Greece would meet the conditions to serve as a first country of asylum. He further sustains that those elements suggest that there is a real risk of ill-treatment in violation of article 7 of the Covenant, if he is deported to Greece. Therefore, he indicates that it is essential for the State party to establish his correct age, as minors are more vulnerable to suffer an irreparable harm when circumstances as those of the instant case are present, and reiterates that if he is deported to Greece, his rights under articles 7 and 24 of the Covenant would be violated.

³⁵ The author refers to the Syrian family book and the statements by staff members of his asylum centre in Denmark and by his family network.

³⁶ The author refers to UNHCR Note on the Burden of Proof in Refugee Claims, 16 December 1998. Available from <http://www.refworld.org/docid/3ae6b3338.html>

³⁷ The author refers to article 4(3) (a) of the European Union Council's Resolution on unaccompanied minors who are national of third countries (97/C 221/03), 26 June 1997. Available from [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y0719\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y0719(02)&from=EN)

³⁸ The author refers to Gregor Noll, *Junk Science? Four Arguments against the Radiological Age Assessment of Unaccompanied Minors Seeking Asylum*, 28 *International Journal of Refugee Law* 234, p.250. Available from <https://academic.oup.com/ijrl/article/28/2/234/2223300/Junk-Science-Four-Arguments-against-the>

³⁹ ECHR, Application No.59166/12, *J.K. and others v. Sweden*, judgement adopted on 23 August 2016, para.52; The author also refers to Application No.41827/07, *R.C. v. Sweden*, judgement adopted on 9 March 2010, para 53.

⁴⁰ The author refers to article 4(3) (a) of the European Union Council's Resolution on unaccompanied minors who are national of third countries (97/C 221/03), 26 June 1997. According to European Law if evidence of the real age is not available or serious doubts persist, an age assessment test may be carried out in an objective manner.

Further submissions by the State party

6.1 On 17 May 2017, the State party provided further observations. It reiterates that the author has not provided any new information on his initial grounds for asylum. It also reiterates that the author has failed to establish a *prima facie* case for the purpose of admissibility under article 7 of the Covenant, and that this part of the communication is manifestly ill-founded. With regards to the author's claims under article 24, the State party reiterates that they are incompatible *ratione materiae* with the Covenant, and therefore inadmissible under article 3 of the Optional Protocol.⁴¹

6.2 With respect to the author's age, the State party recalls the RAB's decision of 19 May 2016, according to which the author did not submit that he was a minor until the rejection of his asylum claim by the DIS. The State party also points out that on 19 September 2016, the RAB's decision was upheld by the Danish Ministry of Immigration, Integration and Housing, as there was no basis for changing the date registered as the author's date of birth. Therefore, the State party reiterates that there are not substantial grounds for believing that the deportation of the author to Greece would amount to a violation of article 7 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

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

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

7.4 The Committee notes the State party's challenge to the admissibility of the communication on the grounds that the author's claim under article 7 of the Covenant is unsubstantiated. However, the Committee considers that, for the purpose of admissibility, the author has adequately explained the reasons for which he fears that his forcible removal to Greece would result in a risk of treatment in violation of article 7 of the Covenant given his alleged age and associated vulnerability. The Committee therefore declares admissible this part of the communication, as it appears to raise issues under article 7 of the Covenant.

7.5 The Committee takes note of the author's allegation that the State party has violated his rights under article 24 of the Covenant, as the Danish authorities did not take the necessary measures to protect him because they did not take any action to determine his real age. The Committee also notes the State party's argument that article 24 of the Covenant lacks extraterritorial application. The Committee however considers that the author's claims under article 24 refer to events that are indissociable from his claims under article 7. It also considers that part of the author's claims under article 24 pertain to events that occurred in Denmark. Accordingly, the Committee declares the communication admissible, insofar as it raises issues under articles 7 and 24 of the Covenant read jointly and separately, and proceeds with its consideration of the merits.

⁴¹ The State party refers again to Communication No. 2378/2014, *A.S.M. and R.A.H. v Denmark*, views adopted on 7 July 2016, para. 7.5.

7.6 The Committee declares the communication admissible insofar as it appears to raise issues under articles 7 and 24 of the Covenant read jointly and separately, and proceeds to their consideration on the merits.

Consideration of the merits

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

8.2 The Committee notes the author's claim that deporting him to Greece, based on the Dublin regulation principle of first country of asylum, would expose him to a risk of irreparable harm, in violation of article 7 of the Covenant, and would violate his rights under article 24, taking into account that he is a minor. The author bases his arguments, inter alia, on the conditions he endured while he stayed in Greece, as well as on the general conditions of reception for asylum seekers and refugees entering Greece, in particular unaccompanied minors.⁴²

8.3 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.⁴³ 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,⁴⁴ unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.⁴⁵

8.4 The Committee notes that according to the author, he fled Syria in March 2015 and that he entered Greece in April of the same year. The Committee notes the author's allegations that upon arrival on the Greek island of Chios, he was apprehended by the local authorities and placed in a closed facility, where his fingerprints were taken on the basis of his illegal entry, and that after a few days, he was allowed to travel to Athens, where he stayed in a hostel for four months, covering the costs himself. The Committee further notes the author's claim that when he ran out of funds, he became homeless and lived on the streets for about two months, spending most of the nights in a large park. The Committee also notes the author's allegation that, as per the advices given by a Syrian refugee, he filed a request for asylum in order to require accommodation from the Greek authorities, but that despite his attempts to contact the Greek authorities for help in finding an accommodation, he was not provided with any type of assistance. The Committee also notes the author's submission that local authorities were extremely aggressive when contacted, which gave him a feeling of rejection. The Committee further notes the author's allegations that he did not feel safe in Greece and that he witnessed other refugees being exposed to violence and robberies, in

⁴² See EU Fundamental Rights Agency, *Monthly data collection on the current migration situation in the EU*, Monthly report 1-30 April 2016; OHCHR, *Migrant children face grim human rights conditions in Greece*, May 2016, . Associated Press, *Council of Europe: Detention of Lone Minors is Unacceptable*, 26 May 2016.

⁴³ 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.

⁴⁴ See communication No. 1957/2010, *Z.H. v. Australia*, Views adopted on 21 March 2013, para. 9.3.

⁴⁵ *Ibid.* and see, inter alia, communication No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

particular in the park where he was staying, which forced him to stay awake for many nights. The Committee also notes the author's claim that he left Greece and went to Denmark out of fear for his safety, and for not being able to provide for himself. The Committee notes that the author requested asylum in Denmark, in August 2015.

8.5 The Committee also takes note of the various reports referred to by the author, highlighting the lack of available places in the reception facilities in Greece for asylum seekers and refugees under the Dublin Regulations. The Committee notes in particular the author's submission that refugees like himself who had already been issued with a residence card and travel documents in Greece are not provided with accommodation by the local authorities. In this regard, the Committee notes the author's reference to a decision by the European Court of Human Rights, *M.S.S v. Belgium*,⁴⁶ according to which the state of extreme poverty of an individual living in a park in Athens for months without access to food or sanitation, amounted to degrading treatment under the European Convention on Human Rights.

8.6 The Committee further notes the author's allegation that he is a minor and that he lied about his age because he had been advised that, as isolated migrant minors were systematically detained in Greece, he should identify himself as an adult. The Committee also notes the author's allegation that, as he was not sure whether the legal adult age in Greece was 18 or 21, he opted for stating that he was 21 years old; and that consequently, he had been registered by the Greek authorities as an adult with the false date of birth of ██████ 1995. The Committee notes the author's claim that he has provided false information to the State party's authorities because of the same reasons. The Committee further notes that, in order to support this claim that he is a minor, the author provided the Danish authorities with a birth certificate and a family book indicating that his real date of birth is ██████ 2000. He also provided statements from the staff members of the asylum center in Denmark indicating that, taking into account his behavior and interaction with other persons staying at the center, they were not surprised when they learned that the author was a minor. Moreover, the Committee notes the author's claim that unaccompanied minors are being placed in "protective custody" in Greece due to a lack of adequate spaces, such as children shelters, and that he would risk detention under inhuman and degrading prison conditions upon his arrival in case of being deported to Greece. The Committee also notes the author's claim that he is a minor and a refugee, currently suffering from psychological problems due to the stress resulting from his past experience in Syria and in Greece, and throughout his asylum proceedings in the State party, and that he now finds himself in a situation of great vulnerability.

8.7 The Committee also notes the RAB's finding that Greece should be considered the first country of asylum in the present case and also notes the position of the State party that the first country of asylum is obliged to provide asylum seekers and refugees with basic human standards, although it is not required that such persons have the same social and living standards as nationals of the country. In this regard, the State party refers 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 – Denmark – is not sufficient in itself to give rise to a breach of article 3 of the European Convention of Human Rights.⁴⁷

8.8 The Committee further notes the State party's authorities finding that the author is not a minor, as ██████ 1995 was the first birth age he had provided and that it was the date

⁴⁶ ECHR, application No. 30696/09, *M.S.S. v. Belgium and Greece*, judgment adopted on 21 January 2011, paras. 235 and 264.

⁴⁷ ECHR, *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, application 27725/10, 2 April 2013. See also para. 4.5

registered, based on the information provided by the author himself, to both the Greek and the Danish authorities. The Committee also notes the State party's argument that the author maintained that he was an adult throughout the asylum proceedings, and that it was only after his asylum request was rejected by the DIS, that he submitted a motion to change his age. The Committee further notes the State party's statement that the family book the author had submitted to the Danish authorities to support his claim contains contradictory information and that, as the identity system in Syria is no longer functioning, the family book and the birth certificate that the author submitted, could not be considered as an objective element of evidence.

8.9 The Committee notes that according to available background material, although conditions for refugees and asylum seekers in Greece have improved, as new legislation has been adopted and measures have been taken in order to improve the functioning of the asylum system, the situation is still challenging. In particular, the Committee notes recent reports according to which the treatment currently given in Greece to certain categories of persons, in particular vulnerable applicants, including unaccompanied minors, is inadequate.⁴⁸ In this connection, the Committee refers to the 2017 UNHCR Recommendations for Greece, according to which the national capacity for accommodating unaccompanied and separated children is still far from meeting the needs, and that "children are exposed to on-going protection risks, including sexual exploitation and abuse, due to insufficient security, sub-standard and overcrowded reception sites, lack of specific services and non-sufficient access to formal or non-formal education, and lengthy asylum procedures for reuniting families, which also severely impacts their psychosocial well-being".⁴⁹ The Committee further notes that available background material also indicates that unaccompanied refugee and migrant children continue to be held in detention centres in Greece,⁵⁰ sometimes with adults.⁵¹

8.10 The Committee further notes that the State party does not contest that after leaving the hostel where he stayed when he arrived in Athens, the author lived on the streets for at least two months and that he did not receive any assistance from the Greek authorities, even though he had contacted them requesting support to find some accommodation.

8.11 The Committee recalls that States parties should give sufficient weight to the real and personal risk a person might face if deported.⁵² In particular, the evaluation of whether or not

⁴⁸ European Commission's Recommendation of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013. Available from https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20161208/recommendation_on_the_resumption_of_transfers_to_greece_en.pdf. See also ECHR, Application no. 47287/15, *Ilias and Ahmed v. Hungary*, Decision of 14 March 2017. In addition, according to the EU Fundamental Rights Agency (FRA), on 17 March 2017, there were 891 children on the waiting list to be referred to the National Centre for Social Solidarity for accommodation, and although specialized reception facilities are available for only 1,272, some 2,000 unaccompanied children are staying in Greece. Available from <http://fra.europa.eu/en/theme/asylum-migration-borders/overviews/april-2017>

⁴⁹ UNHCR Recommendations for Greece in 2017, February 2017. Available from <http://www.unhcr.org/58d8e8e64.pdf>

⁵⁰ Council of Europe: Detention of lone minors unacceptable, statement issued by Council of Europe's Secretary General on 26 May 2016. Available from <https://www.usnews.com/news/world/articles/2016-05-26/council-of-europe-detention-of-lone-minors-unacceptable>

⁵¹ UNHCR Recommendations for Greece in 2017, February 2017.

⁵² See, for example, communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, paras. 11.2 and 11.4; and communication No. 2512/2014, *Abdilaftir Abubakar Ali et al v. Denmark*, Views adopted on 10 March 2017, para. 7.8.

the removed individuals are likely to be exposed to conditions constituting cruel, inhuman or degrading treatment in violation of article 7 of the Covenant must be based not only on assessment of the general conditions in the receiving country, but also on the individual circumstances of the persons in question. These circumstances include vulnerability-increasing factors relating to such persons, such as their age, which may transform a general situation which is tolerable for most removed individuals to intolerable for some individuals.⁵³ The Committee considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author would face in Greece in view of its obligation to afford children special measures of protection pursuant to article 24 of the Covenant. Such special measure should have included, in the circumstances of the case, the taking of reasonable measures to ascertain whether or not the author is a minor. In this regard, the Committee notes that the main argument of the State party to not review the author's age was based on the decision to rely on the information initially provided by him, notwithstanding the author's explanation as to the reasons why he lied when he filed his asylum request and despite the possible link between his status of minor and his poor exercise of discretion to lie about his age. In particular, the Committee notes that following the author's motion for changing his age, the State party did not take any measures aimed at establishing his age, such as medical or psychological assessment, or such as interviews to the staff members of the asylum centre who provided their written testimony to support the author's claim as to his age. Moreover, State party's authorities did not undertake any act to verify the documents provided by the author to support his claim.

8.12 The Committee considers that in deciding the author's asylum request, the authorities of the State party relied on the inconsistencies of the family book and the author's initial statements that he was an adult. However, in the particular circumstances of the case under review, such inconsistencies did not exempt the State party from taking other reasonable measures to remove doubts concerning the author's age and his right to obtain the special measures of protection that would be available for a minor, including (a) taking all reasonable measures available to assess his age, before taking a decision as to the possibility to remove him to Greece; and (b) taking into account available background information according to which the conditions of reception of migrant minors in Greece may result in circumstances incompatible with article 7 of the Covenant. Consequently, the Committee considers that, in these particular circumstances, the removal of the author to Greece would amount to a violation of articles 7 and 24 of the Covenant, read alone and in conjunction with each other.

9. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the deportation of the author to Greece, without taking any measures to ensure a reasonable assertion of the author's age, would violate his rights under articles 7 and 24, read alone and in conjunction with each other.

10. In accordance with article 2 (1) of the Covenant which establishes that States Parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the claim of the author, taking into account the State party's obligations under the Covenant, and the Committee's present Views. The State party is also requested to refrain from expelling the author to Greece while his request for asylum is being reconsidered.⁵⁴

⁵³ See Communication 2681/2015, *Y.A.A. v. Denmark*, Decision adopted on 10 March 2017, para. 7.7

⁵⁴ See for example Communication No.2409/2014, *Abdilaqir Abubakar Ali et al v. Denmark*, Views of 29 March 2016, para.9, and Communication 2379/2014, *Ms Obah Hussein Ahmed v. Denmark*, Views adopted on 8 July 2016, para. 15.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, 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 its official language.
