United Nations CCPR/C/120/D/2470/2014

International Covenant on Civil and Political Rights

Advance unedited version

Distr.: General
22 September 2017

Original: English

Human Rights Committee

Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning **Communication No. 2470/2014**[*,**]

Communication submitted by:	H[redacted] S[redacted] H[redacted] (represented by counsel, Stinne Østergaard Poulsen, from the Danish Refugee Council)
Alleged victim:	The author and her minor son
State party:	Denmark
Date of communication:	27 October 2014 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 27 October 2014 (not issued in document form)
Date of adoption of Views:	28 July 2017
Subject matter:	Deportation from Denmark to Italy
Procedural issues:	Failure to sufficiently substantiate allegations;
Substantive issues:	Inhuman and degrading treatment;
Articles of the Covenant:	7
Articles of the Optional Protocol:	2

[*] Adopted by the Committee at its 120th session (3 – 28 July 2017).

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

1.1 The author of the communication is Ms. H[redacted] S[redacted] H[redacted], a Somali national born on [redacted] 1989. She brings the complaint on behalf of herself and her minor child, S.A.A., born on [redacted] May 2012 in Sweden. The author claims that by forcibly deporting her and her child to Italy, Denmark would violate their rights under article 7 of the International Covenant on Civil and Political Rights. The Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976. The author is represented by counsel.

1.2 On 27 October 2014, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the author and her minor son to Italy while their case is under consideration by the Committee. On 28 October 2014, the Refugee Appeals Board (RAB) suspended the authors' departure from the State party until further notice, in compliance with the Committee's request.

1.3 On 28 January and 7 December 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request to lift the interim measures in the case.

The facts as submitted by the author

2.1 The author is originally from Q[redacted] in Lower Shabelle, Somalia, belongs to the Madhiban clan, and professes Muslim faith. She has no schooling and she used to work as a henna painter of hands and feet in Somalia. Her town was mainly dominated by the Gare and Jidle clans, and controlled by al-Shabaab. After divorce from her first husband, she became acquainted with her current spouse, whom she married in February 2011. When her current spouse's family learned about the second marriage in May 2011 they reacted violently since they did not accept that her current husband, who belonged to the Hawaadle clan, married someone from a different clan. In addition, her former husband informed al-Shabaab that in fact he and the author had not even divorced and that she had sexual intercourse with another man. On [redacted] July 2011, al-Shabaad contacted the author's father and informed him that the author had sexual intercourse with another man and that she had to be stoned. The same day her father helped her to leave Q[redacted] On [redacted] July 2011, al-Shabaad killed the father. Her current husband was sentenced to death and the author does not know his whereabouts. She fled Somalia because of her fear of al-Shabaab's persecution.

2.2 In August 2011, the author arrived in Italy by boat. She was registered on [redacted] August 2011 and was placed in reception facilities. According to the author, the living conditions were poor, she slept under a shed roof on a mattress without sheets and had only one meal per day. Aside from the initial registration she does not remember being interviewed by Italian police and was not aware whether she had a residence permit to live in Italy (see 2.6 below). At some point, she became pregnant and started bleeding and feeling sick. The author claims that although the summary of the interview with the police, as reflected in the Danish Refugee Appeals Board (RAB)'s decision of [redacted] January 2014, indicates that she was hospitalized, this was not the case. She was informed that she could not go to a hospital or see a doctor. She was then attended by a nurse, who confirmed that her foetus was alive, but did not receive any particular care. Sometimes she did not eat as she was too weak to stand in queue for the daily meal.

2.3 In March 2012, the author felt better, but still faced difficulties in getting food and access to basic sanitarian facilities. As she found out that access to housing in Italy was very difficult and feared to give birth without access to medical assistance, she travelled to Sweden, where she gave birth to her son on [redacted] May 2012. The author claims that her minor son has not been registered in Italy and does not have an Italian residence permit.

2.4 When the author learned that the Swedish authorities planned to send her back to Italy, she decided to move to Denmark where she and her son arrived on [redacted] August 2012, without valid travel documents. On [redacted] August 2012, she applied for asylum before the Danish Immigration Service (DIS). The author claimed that if returned to Somalia she would be persecuted by al-Shabaad; that her father was killed by this group; and that her current husband was sentenced to death. In addition, during the proceedings she argued that

if returned to Italy she would experience again harsh living conditions and would not be able to provide her son with basic needs. She expected to face homelessness and destitution, being fully dependent on the chances of receiving food from churches.

2.5 According to the registration report of [redacted] August 2012 prepared by the National Aliens Centre of the Danish National Police, the author declared that on her arrival in Italy, she had been hospitalised due to her pregnancy; that she had not asked or applied for asylum in Italy , nor had she received a residence permit or any other documents from the authorities; and that in March 2012, she travelled to Sweden with a fake Italian passport because the living conditions in Italy were not adequate for a pregnant woman. She referred to the bad quality of food, lack of access to water and the fact that she had been left on her own and unable to support herself.

2.6 On [redacted] March 2013, the DIS requested Italy for information under article 21 of the Dublin Regulation. On [redacted] June 2013, the Italian authorities informed the DIS that the author had been granted residence in the form of subsidiary protection in Italy until [redacted] December 2014.

2.7 On [redacted] November 2013, the author was interviewed by the DIS. According to the interview report, the author stated that she was not sure that she had been granted residence in Italy; that she was given many documents and did not know whether they had included a residence permit; that she had been ill and had been treated at hospital; that she had not been hospitalized, but that a nurse had visited her at home in a countryside house where she lived at that time; and that she left Italy right after she had recovered. During the interview the author was informed that on [redacted] June 2013, the Italian authorities had stated that she had been granted subsidiary protection and a residence permit valid until [redacted] December 2014. She was also informed that according to the judgment of the European Court of Human Rights (ECtHR) in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, a person granted subsidiary protection in Italy would be provided with a renewable residence permit with a validity of three years; and that such permit entitled its holder, *inter alia*, to a travel document for aliens, to work, to family reunification and to social assistance, health care, social housing and education under Italian domestic law.[1] The author provided no comment regarding this information. On the same day, DIS determined that the author was in need of subsidiary protection due to her situation in Somalia, but that she should be deported to Italy as her fist country of asylum. The author appealed the decision before the Refugee Appeals Board (RAB).

2.8 At the hearing before the RAB the author stated that she had lived a tough life in Italy since she was given no food, was undernourished, fainted often and almost had a miscarriage. However, no one brought her to a hospital. She had complained about these living conditions, without success. Therefore, if returned to Italy her life would be at risk.

2.9 On [redacted] January 2014, the RAB considered that the author fell within the section 7 (2) of the Aliens Act as a result of the persecution by al-Shabaab,[2] and that consequently, the question was if Italy could serve as her first country of asylum, in accordance with Section 7(3) of the Aliens Act.[3] The RAB referred to the judgment of the ECtHR in *Samsam Mohammed Hussein and others v. the Netherlands and Italy*[4] and found that it could not be accepted as fact that the author would have starved to death if she had stayed in Italy; that, the author would be protected against *refoulement* on her return to Italy –where she had been granted temporary residence until the end of 2014; and that the financial and social conditions offered to her would be adequate for Italy to serve as her country of first asylum,

[1] The RAB's decision of [redacted] January 2014 refers to the ECtHR's judgment of 2 April 2013, application No. 27725/10, Samsam Mohammed Hussein and Others v. the Netherlands and Italy, paras. 37-39.

[2] Section 7(2) establishes: "Upon application, a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin (…)."

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

[4] See note 7 above, para 38.

with reference to section 7(3) of the Aliens Act. Accordingly, the RAB ordered the author to leave Denmark with her child within 15 days.

2.10 The author asserts that she has exhausted domestic remedies in Denmark as the Refugee Appeals Board decision is final and cannot be appealed to the Danish Courts.

The complaint

3.1 The author submits that by forcibly returning her and her son to Italy, the State party would violate their rights under article 7 of the Covenant.[5] Due to shortcomings concerning the reception conditions for asylum seekers and refugees with temporary residence permit in Italy, she and in particular her minor son would be at risk of inhuman and degrading treatment. They will be in destitution with no access to housing, food or health assistance. In this connection, she refers to the experience that she went through in Italy prior to her departure and points out that despite her pregnancy, she was not able to find sufficient medical assistance, adequate housing or any durable humanitarian solution. If deported she would no longer be eligible for housing in the reception centres. Under these circumstances her deportation would be contrary to the best interest of her child.

3.2 On the principle of first country of asylum, the author refers to UNHCR ExCom Conclusion No. 58 (1989) according to which this principle should only be applied if the applicants upon return to the first country of asylum 'are permitted to remain there and be treated in accordance with recognized basic human standards until a durable solution is found for them'.

3.3 The Italian reception system for asylum seekers and beneficiaries of international protection is insufficient and does not comply with basic human standards and international obligations of protection. According to reports, hundreds of migrants, including asylum seekers, live in abandoned buildings in Rome and have limited access to public services.[6] Due to the lack of reception facilities and housing many asylum seekers and refugees in Italy live on the streets and only occasionally received food or shelter from churches and NGOs. Returnees, who have already been granted international protection and benefitted from the reception system when they first arrived in Italy, are not entitled to accommodation in reception centres anymore.[7] The 2013 Jesuit Refugee Service report states that the real problem concerns those who are sent back to Italy and who were already granted some kind of protection. As they may have already stayed in at least one of the accommodation options available upon initial arrival, if they left the centre voluntarily before the established time, they are no longer entitled to accommodation in the public reception centres for asylum seekers (CARAs).[8] Most people occupying abandoned buildings in Rome fall in this category. The findings show that the lack of places to stay is a big problem especially for returnees who are, in most cases, holders of international or humanitarian protection.

State party's observations on admissibility and merits

4.1 On 27 April 2015, the State party provided observations on the admissibility and merits of the communication. The State party considers that the author has failed to establish a prima facie case for the admissibility of her allegations under article 7 of the Covenant. There are no substantial grounds for believing that she and her child risk being

[5] The author refers to the ECtHR, *M.S.S. v. Belgium and Greece*, application No. 30696/09, judgement adopted on 15 December 2010; and *Mohammad Hussein and Others v. the Netherlands and Italy*, application No. 27725/10, decision adopted on 2 April 2013.

[6] The author refers to the US Department of State's 2012 Country Reports on Human Rights Practices-Italy, 19 April 2013.

[7] The author refers to Swiss Refugee Council (OSAR), *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees*, October 2013 Asylum Information Database (AIDA), *Country report: Italy*, May 2013, OSAR, European Network for technical cooperation of the application of the Dublin II Regulation.

[8] Jesuit Refugee Service, *Protection Interrupted – The Dublin Regulation's Impact on Asylum Seekers' Protection*, June 2013, p. 152 and 161.

subjected to torture, or to cruel, inhuman or degrading treatment if returned to Italy, and therefore the communication is manifestly ill-founded and should be declared inadmissible. Should the Committee be of the view that the author's allegations are admissible; the State party maintains that article 7 of the Covenant would not be violated in case of return of the author and her minor son to Italy.

4.2 The State party describes the structure, composition and functioning of RAB, as well as the legislation applying to cases related to the Dublin Regulation.[9]

4.3 The author did not produce any essential new information about her case before the Committee beyond that already relied upon in connection with her asylum proceedings. The State party considers that the information provided was already thoroughly reviewed by the RAB in its decision of [redacted] January 2014. The RAB found that the author fell under section 7(2) of the Danish Aliens Act (protection status). However, since she had previously been granted subsidiary protection in Italy, she could return and stay there lawfully with her child. Italy is considered the "first country of asylum", which justifies the refusal, of the Danish authorities to grant them asylum, in accordance with section 7 (3) of the Aliens Act.

4.4 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. 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.

4.5 The State party refers to the decision of inadmissibility of the ECtHR in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* on 2 April 2013 concerning the treatment of asylum-seekers, persons granted subsidiary protection in Italy, and returnees in accordance with Dublin II Regulation.[10] Taking into account reports of governmental and non-governmental organizations, the ECtHR considered that "while the general situation and living conditions in Italy of asylum seekers, accepted refugees and aliens who have been granted a residence permit for international protection or humanitarian purposes may disclose some shortcomings, it has not been shown to disclose a systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group of people, as was the case in *M.S.S. v. Belgium and Greece*."[11] The Court noted that a person granted subsidiary protection in Italy would be provided with a three-year renewable residence permit that allowed the holder to work, obtain a travel document for aliens, family reunification and benefit from the general schemes for social assistance, health care, social housing and education. Likewise, an alien is able, also after the expiry of a residence permit, to apply for renewal of the residence permit upon re-entry. The Court found the applicant's allegations manifestly ill-founded and inadmissible and that the applicant could be returned to Italy. With regard to the present case, the State party considers that, although the author has relied on the ECtHR's findings in *M.S.S. v. Belgium and Greece* (2011), the Court's decision in the *Mohammed Hussein* case (2013) is more recent and specifically addresses the conditions in Italy. Hence, the State party maintains that, as the Court noted, a person granted subsidiary protection in Italy would be provided with a three-year renewable residence permit that allowed the holder to work, obtain a travel document for aliens, family reunification and benefit from the general schemes for social assistance, health care, social housing and education.

4.6 The State party further refers to the 2013 AIDA country report on Italy quoted by the author according to which some asylum seekers who did not have access to asylum

[9] See Communication 2379/2014, *Obah Hussein Ahmed v. Denmark*, Views adopted on 8 July 2016, paras. 4.1-4.3.

[10] See *Mohammed Hussein and Others v. the Netherlands and Italy*, para.38-39, and 47-48.

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

centres were obliged to live in "self-organized settlements", which are often overcrowded. The State party submits that the report was updated in December 2013 and that the country report indicates that those were the reception conditions in Italy for asylum-seekers and not for aliens who, like the author, had already been issued residence permits. Likewise, the author has mainly referred to reports and other background material concerning reception conditions in Italy that are relevant only to asylum-seekers, including Dublin Regulation returnees to Italy, and not to persons who have already been granted subsidiary protection in Italy. Further, as compared with the ECtHR's judgment in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* there is no new information on the general conditions in Italy of persons who have been granted residence permit.

4.7 The State party refers to another decision of the ECtHR, *Tarakhel v. Switzerland*,[12] in which the Court found that the return of an Afghan family from Switzerland to Italy would constitute a breach of article 3 of the European Convention on Human Rights (prohibition of inhuman or degrading treatment), if the Swiss authorities were to send the asylum seekers back to Italy under the Dublin Regulation without having first obtained individual guarantees from the Italian authorities that the applicants would be taken in charge in a manner adapted to the age of their children and that the family would be kept together. The State party considers that *Tarakhel v. Switzerland* does not deviate from the Court's jurisprudence regarding individuals and families with residence permits for Italy,[13] as it concerns a case of asylum seekers. It submits that States parties cannot be expected to obtain individual guarantees from the Italian authorities before returning individuals or families in need of protection who have already been granted residence in Italy.

Author's comments on the State party's observations

5.1 On 15 January 2016, the author submitted her comments on the State party's observations and reiterated her previous allegations of violation of article 7 of the Covenant. She asserts that the living conditions in Italy for asylum seekers and beneficiaries of international (subsidiary) protection are similar, since there is no effective integration scheme in place. Asylum seekers and recipients of subsidiary protection thus often face the same severe difficulties in Italy finding basic shelter, access to sanitary facilities, and food.[14] The fact that the reports cited in her original communication focus mainly on reception facilities for asylum seekers does not make the information regarding the living conditions for beneficiaries of international protection less valid.

5.2 The author further disputes the interpretation of the jurisprudence of the ECtHR referred to by the State party. The author contends that the passages highlighted by the State party in the *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* case, describe formal relevant Italian legislation provided by the Italian authorities.[15] However, this information on the conditions of reception of asylum seekers and refugees does not correspond to the findings of UNHCR and NGOs.[16]

5.3 Contrary to the State party's interpretation, the ECtHR's case law more relevant for the present case is *Tarakhel v. Switzerland*, taking into account that, as stated above, the living conditions and difficulties in finding shelter, health assistance and food are similar for asylum seekers and persons who have already been granted protection. In *Tarakhel v. Switzerland*, the ECtHR stated that the presumption that a State participating in the Dublin system will respect the fundamental rights in the European Convention on Human Rights is not irrebuttable. The ECtHR further found that, in the current situation in Italy, "the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or

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

[13] As established in *Mohammed Hussein and Others v. the Netherlands and Italy*.

[14] The author refers to her original communication and the various sources cited therein. See notes 14 and 15.

[15] *Samsam Mohammed Hussein* decision paras. 38-39.

[16] The author refers to the *Samsam Mohammed Hussein* decision, paras. 77-78.

violent conditions, cannot be dismissed as unfounded."[17] The ECtHR required Switzerland to obtain assurances from its Italian counterparts that the applicants (a family) would be received in facilities and conditions adapted to the age of the children; if such assurances were not made, Switzerland would be violating article 3 of the European Convention by transferring them to Italy. The judgment in the *Tarakhel v. Switzerland* case seems to indicate that the assumption premise laid out in the judgment in the *Samsam Mohammed Hussein v. the Netherlands and Italy* case can no longer be regarded as sufficient. On the contrary, individual guarantees especially securing returning children from destitution and harsh accommodation conditions, are required according to the ECtHR. The author argues that in the light of this finding, the harsh conditions faced by recipients of subsidiary protection returning to Italy would fall within the scope of article 3 of the European Convention on Human Rights and article 7 of the Covenant. Accordingly, she reiterates that her and her child's deportation to Italy would constitute a violation of article 7 of the Covenant.[18]

5.4 The author finally points out that returning families who have already been granted international protection might even face greater difficulties in finding shelter, access to sanitarian facilities and food than returning asylum seekers, as the latter enjoy a minimum of protection within the Dublin Regulation system and, if fortunate, have access to EU-supported reception facilities. Returning families with international protection, however, do not have access to reception facilities, and thus face the risk of homelessness immediately upon return, with little prospect of improving their situation due to the malfunctions of the Italian integration scheme for beneficiaries of international protection. In this connection, she refers to the Committee's Views in the case of *Jasin et al.* v. *Denmark*,[19] stressing that it is very similar to her case.

Further submissions from the parties

6.1 On 5 October 2016 the State party reiterated its observations on admissibility and merits. The State party noted that according to a consultation response received from the Italian authorities in the summer of 2015, an alien granted residence in Italy with refugee or protection status may apply for renewal of his or her residence permit on his or her return to Italy, even if the residence permit has expired. The Italian authorities also informed the Danish authorities that, on his or her return to Italy, such alien must contact the police station that issued the residence permit, which will subsequently forward the request to the proper authority, and ask for verification of whether the conditions for renewal are met. The Italian authorities further stated that an alien whose residence permit has expired may lawfully enter Italy for the purpose of having his or her residence permit renewed. Against this background, the State party finds that it can be considered a fact that the author whose residence permit for protection status in Italy has expired, is entitled to enter Italy and apply for renewal of her residence permit.

6.2 The author's allegations about her alleged past experience in Italy are inconsistent with the background information on Italy available to the RAB and the information provided by the author to the Danish National Police and the DIS. According to *Asylum Information Database – Country* Report: *Italy*, published in December 2015 as part of the AIDA project (p. 83-ff), refugees and aliens granted subsidiary protection, as in the author's case, have the same right to medical treatment as Italian nationals. It further appears that asylum seekers and beneficiaries of international protection benefit from free of charge health services on the basis of a self-declaration of destitution. It also appears that the right to medical assistance is acquired at the moment of the registration of the asylum request and that this right remains applicable even in the process of the renewal of the permit of stay. In addition, it appears from the interview report by the Danish National

[17] *Tarakhel v. Switzerland, para. 115.*

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

[19] Communication No. 2360/2014, Views adopted on 22 July 2015, paras 8.8-10.

Police on 16 August 2012 that the author stated that '[s]he had been hospitalised in Italy'. According to the report of the asylum interview with the author conducted by the DIS on 18 November 2013, she provided the following information: 'At that time, the applicant had been ill and had been treated at the hospital [...]. The applicant stated that she had in fact not been hospitalised, but that a nurse had visited her at home in a countryside house that she had lived in at that time. She had also been treated there. The applicant had left Italy right after she had recovered.'

6.3 Unlike the communication of *Jasin et al.* v. *Denmark*, in the case at hand neither the author nor her son suffers from any diseases requiring medical treatment; and no exceptional circumstances exist. The State party's authorities adequately took into account the information provided by the author on her own experience. In the case of *A.A.I. and A.H.A. v. Denmark* the Committee found the communication inadmissible, as the authors' previous experiences in Italy did not substantiate their claim that, if returned to Italy, they would be at a real risk of cruel, inhuman or degrading treatment. Most recently, the ECtHR stated in a case concerning the deportation of a single mother and her two minor children to Italy, that "the applicant has not demonstrated that her future prospects, if returned to Italy with her children, whether looked at from a material, physical or psychological perspective, disclose a sufficiently real and imminent risk of hardship that is severe enough to fall within the scope of Article 3."[20]

7. On 7 October 2016, the author reiterated her previous allegations and argued that she as single mother with a minor child will find herself in a similar vulnerable position as the authors and their children in communications *Jasin et al.* v. *Denmark* and *Abdilafir Abubakar Ali et al. v. Denmark*.

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 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.

8.3 The Committee notes the author's claim that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 The Committee notes the State party's challenge to the admissibility of the communication on the ground that the author's claim under article 7 of the Covenant is unsubstantiated. The Committee however considers that the author has sufficiently substantiated her claims for the purposes of admissibility. Accordingly, the Committee declares the communication admissible insofar as it raises issues under article 7 of the Covenant, and proceeds to its consideration on the merits.

Consideration of merits

9.1 The Human Rights 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, paragraph 1, of the Optional Protocol.

9.2 The Committee notes the author's claim that deporting her and her minor child to Italy, based on the Dublin Regulation principle of "first country of asylum", would expose them to a risk of irreparable harm, in violation of article 7 of the Covenant. The author bases her arguments on, *inter alia*, the actual treatment she received in Italy; on her

[20] EctHR, application No. 15636/16, *N.A. and others v. Denmark, judgment of* 28 June 2016, para. 32.

particular vulnerability as single mother with a small child; on the general conditions of reception for asylum seekers in Italy, and the failures of the Italian integration scheme for beneficiaries of international protection, as described in various reports.

9.3 The Committee recalls its general comment No. 31,[21] in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant which prohibits cruel, inhuman or degrading treatment. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.[22] The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists,[23] unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.[24]

9.4 The Committee notes that the author has not challenged the information provided by the Italian authorities to the DIS that she was granted subsidiary protection in Italy with a residence permit which expired on [redacted] December 2014. The Committee further notes the author's allegation that although she was pregnant and had health problems at the time she lived in Italy she was not given any special care and had difficulties getting food and access to basic sanitarian facilities.

9.5 The Committee notes the various reports submitted by the author highlighting the lack of available places in the reception facilities in Italy for asylum seekers and returnees under the Dublin Regulations. The Committee notes in particular the author's submission that returnees, like herself, who had already been granted a form of protection and benefited from the reception facilities when they were in Italy, are no longer entitled to accommodation in the CARAs.[25] The Committee also notes that the author further submits that returnees also face severe difficulties in Italy finding access to sanitary facilities and food.

9.6 The Committee notes the finding of the RAB that Italy should be considered the "first country of asylum" in the present case and the position of the State party that the first country of asylum is obliged to provide asylum seekers with basic human standards, although it is not required that such persons have the same social and living standards as nationals of the country (see para. 4.4 above). It notes that the State party also referred to a decision of the European Court of Human Rights which stated that, although the situation in Italy had shortcomings, it had not disclosed a systemic failure to provide support or facilities catering for asylum seekers (see para. 4.5 above).

9.7 The Committee recalls that States parties should, when reviewing challenges to decisions to remove individuals from their territory, give sufficient weight to the real and personal risk such individuals might face if deported.[26] In particular, the evaluation of whether or not 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

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

[22] See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6; and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

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

[24] See communications No. 2681/2015, *Y.A.A. and F.H.M. v. Denmark*, Views adopted on 10 March 2017, para. 7.3; and No. 2512/2014, Rezaifar v. Denmark, Views adopted on 10 March 2017, para. 8.3.

[25] See AIDA, *Country report: Italy*, January 2015, p. 54-55, available at www.asylumineurope.org/sites/default/files/report-download/aida_italy_thirdupdate_final_0.pdf.

[26] See for example, communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, paras. 11.2 and 11.4; Communication No.2409/2014, *Abdilafir Abubakar Ali et al v. Denmark*, Views of 29 March 2016, para 7.8.

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, which may transform a general situation which is tolerable for most removed individuals to intolerable for some individuals. They should also include, in 'Dublin II Procedure' cases, indications of the past experience of the removed individuals in the 'country of first asylum', which may underscore the special risks they are likely to be facing and may thus render their return to the 'country of first asylum' a particularly traumatic experience for them.[27]

9.8 The Committee notes the information provided to the State party by Italian authorities according to which an alien who has been granted residence in Italy as a recognised refugee or has been granted protection status may submit a request for renewal of his or her residence permit upon re-entry into Italy if the residence permit has expired after the alien entered Denmark.

9.9 However, the Committee considers that the State party did not fully examine the author's claims, based on her personal circumstances, that despite being granted residence in Italy, she would face unbearable living conditions there.

9.10 The Committee recalls that States parties should give sufficient weight to the real and personal risk a person might face if deported[28] and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author and her child would face in Italy, rather than rely on general reports and on the assumption that, as the author had benefited from subsidiary protection in the past, she would, in principle, be entitled to the same level of subsidiary protection today. The Committee notes that the author was able to stay in reception facilities in the past. However, according to author's uncontested allegations, she faced poor living conditions, even during her pregnancy, since she slept under a shed roof on a matress without sheets and with only one meal per day; she has no education; and although she acknowledged that she received many documents from the Italian authorities, she was not aware that she had a residence permit to live in Italy. The Committee also notes the author's allegations that due to the difficulties in getting access to sufficient food and medical care in Italy, she was undernourished, fainted often and almost had a miscarriage. The information before the Committee shows that persons in a situation similar to that of the author often end up living on the streets or in precarious and unsafe conditions unsuitable, in particular, for small children. However, the RAB's decision failed to assess the author's personal past experience in Italy and the foreseeable consequences of forcibly returning her. Against this background, the Committee considers that the State party failed to give due consideration to the special vulnerability of the author, a single mother with no education, with a 5-year-old-child, and with no previous integration within the Italian society. Notwithstanding her formal entitlement to subsidiary protection in Italy, there is no indication that in practice the author would actually be able to find accommodation and provide for herself and her child, in the absence of assistance from the Italian authorities. The State party has also failed to seek effective assurances from the Italian authorities that the author and her child would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7 of the Covenant. In particular, the State party failed to request Italy to undertake (a) to renew the author's residence permit, and to issue permits to her child; and (b) to receive the author and her child in conditions adapted to the child's age and the family's vulnerable status, which would enable them to remain in Italy.[29]

[27] See communication No. 2681/2015, *Y.A.A. and F.H.M. v. Denmark*, Views adopted on 10 March 2017, para. 7.7.

[28] See for example, communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, paras.11.2 and 11.4; Communication No.2409/2014, *Abdilafir Abubakar Ali et al v. Denmark*, Views of 29 March 2016, para.7.8.

[29] See communication No. 2360/2014, *Warda Osman Jasin v. Denmark*, Views adopted on 22 July 2015, para 8.9; Communication No.2409/2014, *Abdilafir Abubakar Ali et al v. Denmark*, Views of 29

9.11 Consequently, the Committee considers that the removal of the author and her child to Italy in her particular circumstances, and without the aforementioned assurances, would amount to a violation of article 7 of the Covenant.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the deportation of the author and her child to Italy without effective assurances would violate their rights under article 7 of the International Covenant on Civil and Political Rights.

11. 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 author's claim, taking into account the State party's obligations under the Covenant, the Committee's present Views, and the need to obtain effective assurances from Italy, as set out in paragraph 9.10 above. The State party is also requested to refrain from expelling the author and her child to Italy while their request for asylum is being reconsidered.

12. Bearing in mind that, by becoming a State 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them translated into the official language of the State party and widely distributed.

March 2016, para. 7.8, and No. 2379/2014, *Obah Hussein Ahmed* v. *Denmark*, Views adopted on 7 July 2016, par. 13.8.

Annex

Individual opinion of Committee Members Mr. Yuval Shany, Mr. Christofer Heynes and Ms. Photini Pazartzis (dissenting)

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

2. In paragraph 9.3 of the Views, the Committee recalls that: "it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice". Despite this, the majority of the Committee rejected the factual conclusion of the DIS and RAB that the authors failed to establish grounds for asylum because she would be protected in Italy against *refoulement*, and because "the financial and social conditions offered to her would be adequate for Italy to serve as her country of first asylum" (para. 2.7, 2.9). The majority considered that the State party failed to "fully examine the author's claims, based on her personal circumstances, that despite being granted residence in Italy, she would face unbearable living conditions there" (para. 9.9.)

3. We disagree with the analysis offered by the majority, as it has not been shown to us that any of the facts alleged by the author was not taken into account by the Danish authorities. Furthermore, the conclusion reached by the Danish authorities represents, in our view, a reasonable application of the legal standards introduced by the Covenant.

4. According to the well-established case law of the Committee, States parties are obliged not to deport persons from their territory "where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed."[30] Not every exposure to personal hardship in the country of removal would, however, fall within the scope of the removing State's *non-refoulement* obligations.[31]

5. With the possible exceptions of those individuals who face special hardship due to their particular situation of vulnerability[32] which renders their plight exceptionally harsh and irreparable in nature, poor living conditions and difficulties in accessing available social services do not constitute in themselves grounds for *non-refoulement*. A contrary interpretation, recognizing all individuals facing poverty and limited social assistance as potential victims of article 7 of the Covenant, has little support in the case-law of the Committee or in State practice, and would extend the protections of article 7 and the *non-refoulement* principle (which are absolute in nature) to a breaking point.

6. Although we support the Views adopted by the Committee in *Jasin v Denmark*,[33] the facts in that case were significantly different from the facts of the present case, and do not warrant the same legal conclusion. In *Jasin*, the author was in a particularly vulnerable situation, which made it nearly impossible for her to confront the exceptional hardships expected were she to be deported to Italy: a single mother of three small children, having to contend with her own health problems, who has lost her immigration status in Italy, and whom the Italian welfare system has demonstrably failed to assist. Under these exceptional circumstances, the Committee was of the view that, without specific assurances of social assistance, Italy cannot be considered a 'safe country' of removal for the author and her children (raising, as a result, the possibility of *de facto refoulement* from Italy to her country of origin).

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[30] General Comment 31 (2004), para. 12

[31] *Cf. Vuolanne v. Finland*, Comm. No. 265/87, Views adopted on 7 April 1989.

[32] *Jasin v. Denmark*, Comm. No. 2360/2014, Views adopted on 22 July 2015.

[33] *Ibid*

7. In the present case, it is not disputed that the author, who has one child, enjoys subsidiary protection and is entitled to receive social assistance in Italy. She does not have any health issues, and may also lawfully work to support herself and her son. The facts of the present case also suggest that unlike in the case of *Jasin*, there has been no demonstrable failure by the Italian authorities to attend to the social or medical needs of the author: she received a housing solution and had access to medical care (see para. 2.2).

8. Although we consider that deportation to Italy may put the author in a more difficult situation than the one confronting her and her son in Denmark, we do not have before us information suggesting that their plight is different in nature than that of many other asylum seekers who have arrived in Europe in recent years. Nor are we in a position to hold on the basis on the information before us that the difficulties to which the author will be exposed upon deportation are to be expected to reach the exceptional level of harshness and irreparability that would result in a violation of article 7. The author's lack of education does not change this conclusion, as there is no reason to believe that she was unable to obtain assistance in Italy in the past because of this reason, or that access to social services in Italy requires asylum seekers to possess a certain level of education.

9. Under these circumstances, we cannot conclude that the decision of the Danish authorities to deport the authors to Italy was arbitrary or amounted to a manifest error or denial of justice that would entail a violation of article 7 of the Covenant by Denmark. Thus, although we regret the decision of the Danish authorities not to seek individual assurances from Italy prior to the deportation of the author, we do not consider such a failure to violate article 7 of the Covenant.