



International Covenant on Civil and Political Rights

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Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2625/2015^{*},^{**}

<i>Submitted by:</i>	S.Z. (represented by counsel)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Denmark
<i>Date of communication:</i>	25 June 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure transmitted to the State party on 29 January 2014 (not issued in document form)
<i>Date of adoption of Decision:</i>	28 July 2016
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Procedural issues:</i>	Lack of substantiation
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment or punishment; refoulement; fair trial, equality before the law
<i>Articles of the Covenant:</i>	6, 7, 13 and 26
<i>Articles of the Optional Protocol:</i>	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 Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Christof Heyns, Yuji Iwasawa, Bamarian Koita, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Jose Manuel Santos Pais, and Margo Waterval.

1.1 The author of the communication is S. Z, an Afghan national born on [REDACTED] 1995.¹ He claims that his deportation to Afghanistan by Denmark would constitute a violation of articles 6, 7, 13 and 26 of the International Covenant on Civil and Political Rights (Covenant). He is represented by counsel, Mr. Niels-Erik Hansen.

1.2 On 26 June 2015, pursuant to rule 92 of the Committee's rules of procedure, the Committee requested the State party to refrain from deporting the author to Afghanistan, while his case was under consideration by the Committee. On 20 July 2015, the Danish authorities suspended the time limit for the author's departure from the State party until further notice, in accordance with the Committee's request.

Factual background

2.1 The author is an ethnic Tadjik from Kabul. He was born on [REDACTED] 1995.² He went to school for seven years and then worked in a garage located in an area of the city different from the area where he was living. Every day, he used to take a "passengers car" – shared taxi- to go to work. He claims that one day in 2014,³ he was abducted by armed men on his way back from work in the [REDACTED] area. A "passengers car" stopped and asked him where he was going, and as the driver was going in the same direction as the author, he got into the car. The driver asked him to seat at the back, as other people would get into the car further. Around 10 minutes later, three people got into the car and threatened him with a gun and a knife, beat him, and told him that they would kill him if he screamed. He was also told that if he escaped, he would be found no matter where he went. Then the author was taken to a house in the Province of Parwan,⁴ where the three armed people plus another two who joined them, locked the author up in a room in the basement and took pictures of him. None of the armed people talked to the author and he could not understand what they said to each other, as they spoke Pashto.⁵

2.2 The author claims that he spent five days detained in the room and that he managed to escape through a section of the window which was covered with plastic.⁶ He further claims that while he was in the house, he saw some weapons, material to make bombs and vests. The author believes that the Taliban abducted him to oblige him to become a suicide bomber, as it is known that they abduct young boys to make them suicide bombers⁷. He also claims that during his "detention" he was beaten and kicked several times, and that if he tried to speak, he was hit with a fist and the palm of hands.⁸ After he escaped, the author managed to get to his parents' house, where he hid for about two days. He was then sent to stay with his grandparents in the city of [REDACTED] for about four days. As he was afraid of the Taliban, the author met an agent who helped him to travel to Europe.

2.3 The author's parents informed him that around six months after his departure from Afghanistan, armed people came to his house asking for him. They stated that the author

¹ See para. 2.4.

² See para. 2.4

³ The author does not indicate a precise date.]

⁴ The author claims that he knows that he was taken to Parwan Province, as he used to go there with his friends and he knew it well

⁵ The author speaks Dari. However in his hearing with the RAB, he indicated that he understands a little Pashto and that he heard that the persons who abducted him were planning suicide bombings.

⁶ The author explains that the section covered by plastic was about half of the window and that he used a barrel to reach the window.

⁷ The author does not provide further information or documentation to support this affirmation.

⁸ In his interview with the DIS held on [REDACTED] June 2014, the author indicated that he had not been beaten, kicked or anything else, but that he had been threatened with violence, if he tried to escape.

“owed something to them” and threatened the author’s father to kill him if he did not tell them where he was. After this incident, the author’s parents have had to move, and they now live in another area of the country. The author claims that he has not heard from his family since they informed him about the incident.

2.4 On ● June 2014, the author arrived to Denmark. He applied for asylum and indicated that he was not sure of his age, but that he was born in 1377 according to the Afghan calendar,⁹ and that he therefore was approximately 16 years old. The Danish Immigration Service (DIS) interviewed him on ● June 2014 and he reiterated that statement. On ● July 2014, the University of Copenhagen’s Section of Forensic Pathology prepared a report on the author’s age which indicated that, based on a clinical examination, a dental examination, and an X-ray examination of his left hand, the author “most likely is 19 years old or older”. The report added that “although small, a certain possibility exists that he may be as young as 17 years old”.¹⁰ On ● August 2014, the DIS determined that the author’s date of birth was ● 1995 and that he was therefore not a minor.¹¹

2.5 The DIS rejected the author’s asylum request on ● December 2014. The author appealed this decision to the Refugee Appeals Board (RAB). On ● April 2015, the RAB rejected the author’s appeal. It found that the author lacked credibility and that his evasive and inconsistent statements on essential points demonstrated that he had not reflected his own experience. For example, the author gave contradictory statements in relation to the way he escaped the house in which he was supposedly detained, as he firstly said that he turned a handle of a window to escape, and subsequently indicated that he passed through a window’s hole covered with plastic;¹² he also contradicted himself regarding the violence he had been subjected to, as he firstly indicated that he had not been subjected to any violence and subsequently, he stated that he had been beaten and kicked by his captors;¹³ and he provided contradictory information regarding the length of his trip to Parwan.¹⁴ The RAB therefore did not consider the author’s statements as facts. It further considered that the general situation in Afghanistan cannot justify granting refugee status to the author.

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

The complaint

3.1 The author alleges that his deportation to Afghanistan would put his life at risk, and that he would also face inhuman and degrading treatment, in violation of articles 6 and 7 of the Covenant. The author states that he fears that if he is returned to Afghanistan, the Taliban would kill him, as he escaped from them. He also indicates that he fears that the Taliban may be able to find him wherever he stays in Afghanistan, as they have pictures of him.

3.2 The author further submits that he fears suicide bombers in Afghanistan, as well as the general situation there, as human rights are not protected, the police is corrupted and works together with the Taliban. He refers to a press article in which the Afghan Minister of Refugees and Repatriation urged several Western governments to stop deportations to Afghanistan, in particular of women and children.¹⁵ The Minister indicated that although

⁹ The 1377 year of the Afghan calendar is 1998.

¹⁰ The State party has provided a translation of some extracts of the report.

¹¹ The State party has provided a translation of this decision.

¹² See footnote 9.

¹³ See footnote 11.

¹⁴ See footnote 7.

¹⁵ The author has provided a copy of the press article which reports on an interview given by the

the situation has improved after 2011, and some agreements with Western governments were put in place in order to deport nationals to Afghanistan, the situation has changed, and currently, it is very dangerous to return to several provinces of the country. Therefore, he opposes to deportations and has sent letters to the governments asking them to revise the deportation agreements which were in place.¹⁶ The author claims that given that the government itself advises against sending nationals back to Afghanistan, he should not be deported: the situation there has become too dangerous, including in Kabul.¹⁷

3.3 The author also refers to the UNHCR Eligibility Guidelines for assessing the international protection needs of asylum-seekers from Afghanistan¹⁸ according to which the following groups are in need of international protection: individuals associated and perceived as supportive of the government and the international community, men and boys of fighting age, individuals perceived as contravening the Taliban interpretation of Islamic principles, norms and values, and members of ethnic minority groups. He explains that due to his travel to Europe, if removed, he would certainly be perceived as contravening the Islamic rules and supportive of the Government and/or the international community. He further claims that given his age, he would also be at risk of being forced to fight either for the Government or for the Taliban, and alleges that sexual assaults of young men are commonly reported in Afghanistan.¹⁹ In addition, he claims that he is a Tajik and that if returned there, he would be persecuted because he belongs to a minority ethnic group.

3.4 The author further claims that the fact that the RAB has had to reopen several cases of asylum-seekers whose asylum requests had been rejected as a result of the proceedings before the Committee, demonstrates that the Board often commits mistakes. He quotes several cases registered by the Committee which were reopened by the Board and in which, after a review of the case, refugee status has been granted. In particular, he refers to communications submitted by Afghan nationals which have been discontinued by the Committee because the authors have been granted refugee status, following the Board's review of their cases.²⁰

3.5 The author also submits that, as an asylum seeker, he was not able to appeal the decision of the RAB dated 1 April 2015, while any other person in Denmark can appeal the decisions of administrative bodies. He considers that this situation amounts to a violation of articles 13 and 26 of the Covenant.

State Party's observations

4.1 On 22 December 2015, the State Party submitted its observations on the admissibility and merits of the communication. It submits that the communication is not substantiated, as the author has not demonstrated any possible breach of the Covenant, if deported to Afghanistan.

Ministry of Foreign Affairs of Afghanistan to a Norwegian journalist. Available at <https://kabulblogs.wordpress.com/2015/02/21/afghan-minister-for-refugees-and-repatriation-stop-deportation-to-afghanistan/>

¹⁶ The author indicates that in March 2015, the Afghan government has requested the State party to revise the tripartite Memorandum of Understanding between them and UNHCR, but that the Danish authorities have not followed up on that request.

¹⁷ The author states that several attacks have been perpetrated recently by the Taliban in the capital. However he does not provide further details.

¹⁸ United Nations High Commissioner for Refugees, Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 6 August 2013. Available at <http://www.refworld.org/pdfid/51ffdca34.pdf>.

¹⁹ The author does not provide further details on this matter.

²⁰ The author refers to communications 2320/2013, 2150/2012 and 2286/2013..

4.2 The State party describes the structure, composition and functioning of the RAB,²¹ as well as the legislation applying to asylum proceedings.²² It indicates that the RAB analyses if an asylum applicant may fear to be subjected to specific and individual persecution or to a risk in case of return to his/her country of origin, taking into account any information on persecution prior to the asylum seeker's departure from his/her country of origin (Section 7(1) of the Aliens Act). In addition, the State party indicates that a residence permit may be issued to an alien who risks death penalty or being subjected to torture or ill treatment if returned to his/her country of origin. The State party also indicates that the RAB considers the conditions for issuing a residence permit fulfilled, if there are specific and individual factors rendering it probable that the asylum seeker will be exposed to a real risk of death or being subjected to torture or ill treatment in case of return (Section 7(2) of the Aliens Act).

4.3 Regarding the admissibility of the communication, the State party indicates that the author has failed to establish a *prima facie* case for admissibility purposes regarding the alleged violation of articles 6 and 7 of the Covenant, as he has not substantiated that he would face any risk or danger if deported to Afghanistan. The State party indicates that its obligations under articles 6 and 7 of the Covenant are reflected in sections 7(1) and 7(2) of the Aliens Act, according to which a residence permit will be issued to an alien, if he or she risks the death penalty or being subjected to torture or ill-treatment in case of return to his or her country of origin. The State party therefore considers that it has complied with its international obligations.

4.4 Regarding the author's allegations that the impossibility for him to appeal the RAB's decision to a court amounts to a violation of article 13, the State party refers to the Committee's jurisprudence under which article 13 offers some of the guarantees afforded by article 14(1) of the Covenant, but not the right to appeal²³ or the right to a court hearing.²⁴ Therefore, the State party considers that the author has failed to establish a *prima facie* case for the purpose of admissibility under article 13 of the Covenant and that this section of his communication should be declared inadmissible. As for the author's allegations under article 26 of the Covenant, the State party refers to the author's statement that the impossibility of appealing the RAB's decision violates his rights under article 26, as other persons in Denmark, besides asylum seekers, have the possibility to appeal the decisions of administrative bodies like the Board to a court. The State party concludes that the author has failed to establish a *prima facie* case for the purposes of admissibility under article 26 of the Covenant and considers that this claim should be declared inadmissible for lack of substantiation.

4.5 Regarding the merits of the communication, the State party submits that the author has failed to establish that his return to Afghanistan would constitute a violation of articles 6, 7, 13 and 26 of the Covenant. Regarding articles 6 and 7, the State party indicates that the author has not provided any new information to the Committee that has not been already reviewed by the RAB. The State party recalls the author's claim that he would be at risk of a breach of articles 6 and 7 of the Covenant if returned to Afghanistan because he was kidnapped by the Taliban in order to force him to become a suicide bomber, and that if he is returned there, the Taliban will find him and kill him, or subject him to torture or ill-treatment because he escaped from them. In this regard, the State party points out that the author made several inconsistent statements during his asylum proceedings. Firstly, the

²¹ See Communication 2379/2014, Ms Obah Hussein Ahmed v. Denmark, Views adopted on 8 July 2016, paras. 4.1-4.3.

²² The State party refers to sections 7 (1), 7 (2), 31 (1) and 31 (2) of the Aliens Act.

²³ The State party refers to Communication 2186/2012, Mr. X and Ms. X, Views adopted on 22 October 2014, para. 6.3.

²⁴ The State party refers to Communication 58/1979, Maroufidou vs. Sweden, Views adopted on 9 April 1981. In this case, the Committee did not dispute that a mere administrative review of a decision expelling an alien from Sweden did not amount to a violation of article 13 of the Covenant.

State party refers to the inconsistencies as to the way the author escaped from his place of detention through the window.²⁵ Secondly, it indicates that, while in his interview with the DIS held on ● June 2014 and in the hearing before the RAB he stated that he had been beaten by his captors, in the interview with the DIS held on ● December 2014, the author stated that he had not been beaten or kicked, and that he had just been threatened with violence if he tried to escape.²⁶ Thirdly, the author made inconsistent statements regarding the length of his trip to Parwan: in his interview with the DIS held on ● June 2014, he affirmed that the trip had taken about one hour or two; then in the interview with the DIS held on ● December 2014, he indicated that it took around 30 minutes; and in his hearing before the RAB, he indicated that the drive with the kidnappers had taken around 20 minutes.²⁷

4.6 In addition, the State party points out that during the asylum proceedings, it was difficult for the author to estimate the timing of various incidents, including for how long he had been kidnapped, how long he had stayed with his parents and grandparents, and when his family had been asked by the Taliban about his whereabouts. The State party further indicates that many of the statements made by the author seem unlikely, for example, that his captors did not take any precautions to avoid that he escapes and the fact that he did not escape earlier, taking into account that he was alone in the room where he was kept. The State party affirms that the author has not provided any reasonable explanation regarding such inconsistencies which relate to essential points of his account.

4.7 The State party also indicates that the author's account is not consistent with the background material available. It refers to a report by the DIS, according to which, contrary to what the author states, the Taliban do not recruit young boys by force, but that they join the Taliban voluntarily.²⁸ In addition the report indicates that most of the suicide bombers are poor young males originating from the Punjab province in Pakistan, or from the North and South Warziristan.²⁹ Furthermore, the State party points out that the recruitment of suicide bombers requires a certain level of willingness and belief in the purpose of the action, which is in contradiction with the author's account.³⁰

4.8 The State party further submits that the fact that the author is a Tajik does not in itself justify asylum. The State party refers to the UNHCR Eligibility Guidelines for assessing the international protection needs of asylum-seekers from Afghanistan, according to which the persons perceived as supportive of the international community are for example local leaders, religious leaders and women in the public sphere.³¹ Concerning men and boys of fighting age, the Guidelines indicate that there is a risk for those boys and men in areas where the government does not exercise control and in the areas affected by the conflict between pro-governmental forces and non-governmental forces.³² In addition, persons perceived as contravening Taliban's interpretation of Islamic values can be attacked in those same areas, and the Taliban mainly target musicians, film makers, people playing sports, and persons who have attended events perceived as violating Islamic

²⁵ See para. 2.2.

²⁶ Ibid.

²⁷ See footnote 7.

²⁸ Danish Immigration Service, Country of Origin Information for Use in the Asylum Determination Process, Fact Finding Mission to Kabul, Afghanistan, 25 February to 4 March 2012, p. 26 -28. Available at <https://www.nyidanmark.dk/NR/rdonlyres/3FD55632-770B-48B6-935C-827E83C18AD8/0/FFMrapportenAFGHANISTAN2012Final.pdf>.

²⁹ Ibid. p. 26-28.

³⁰ Ibid., p. 29.

³¹ UNHCR, Eligibility guidelines for assessing the international the protection needs of asylum seekers from Afghanistan, 6 August 2013, p. 36 and 37.

³² Ibid., p. 40-41.

principles, norms and values.³³ Finally, regarding the author's allegation that individuals of an ethnic minority would face a risk if returned to Afghanistan, the State party submits that such groups may need protection, if they originate from an area not subject to government control in which their ethnic group constitutes a minority. The State party points out that the author does not fall in any of these categories, as he is a Tajik from the capital controlled by the government, where Tajiks are about 15% of the population; he is a low profile person, as he has never been politically active and has never experienced any problems with the Afghan authorities.

4.9 With respect to the author's allegations related to the general situation in Afghanistan, in particular, the call made by the Minister of Refugees and Repatriation not to deport nationals of Afghanistan back to the country, the State party affirms that such statement does not lead to a revised legal assessment of the author's asylum request and that the Afghan authorities have accepted to receive him. In addition, it submits that contrary to what the author states, Kabul continues to be a safe place, as confirmed by the statement of the Afghan Minister of Refugees and Repatriation referred to by the author.

4.10 The State party submits that the RAB's decision of April 2015 was taken after a thorough review of the author's claims, the evidence he submitted, and in accordance with domestic legislation. It considers that the author is trying to use the Committee as an appellate body to have the factual circumstances of his asylum application reassessed. The State party also submits that the Committee must give considerable weight to the RAB's findings, as it is better placed to assess the facts in the author's case.³⁴ It further submits that the author's communication merely reflects that he disagrees with the assessment of his case made by the RAB, and considers that he has failed to identify any irregularity in asylum proceedings' decision-making process or any risk factors that the RAB failed to take properly into account. The State party further highlights that the author has not rendered probable that he would be subjected to persecution, or that he would face any risk to his life or of being subjected to torture or ill-treatment in Afghanistan.

4.11 The State party further reiterates that the alleged violations of articles 13 and 26 of the Covenant have not been substantiated.

Author's comments on the State party's observations

5.1 On 24 February 2016, the author submitted his comments on the State party's observations. With regard to the observations on the admissibility of the communication, in particular the State party's argument that the author's allegations regarding the violation of his rights under articles 6 and 7 of the Covenant lack substantiation, the author considers that such allegations are duly substantiated, as the current situation in Afghanistan is extremely dangerous. He provides a press article dated 2 February 2016, reporting on a meeting between the Afghan Minister of Refugees and Repatriation and Germany's Interior Minister, according to which the government of Afghanistan had declared that it will only accept those refugees and asylum seekers who accept to return to the country voluntarily.³⁵ The author further refers to another press article dated 26 April 2015, according to which a young Afghan man had been raped by several Taliban militants in

³³ Ibid. p. 47-48.

³⁴ The State party refers to several Views adopted by the Committee including: Communication 2272/2013, P.T. vs. Denmark, Views adopted on 1 April 2015, para. 7.3; Communication 2393/2014, K. vs. Denmark, Views adopted on 16 July 2015, paras. 7.4-7.5; Communication 2329/2014, Z. vs. Denmark, Views adopted on 15 July 2015, para. 7.4; and Communication 2186/2012, Mr. X and Ms. X vs. Denmark, Views adopted on 22 October 2014, para. 7.5.

³⁵ DW, "Afghanistan's Minister of Refugees: No agreement on taking back deportees from Germany", 2 February 2016. Available at <http://www.dw.com/en/afghanistans-minister-of-refugees-no-agreement-on-taking-back-deportees-from-germany/a-19020715>.

order to force him to commit a suicide attack. The article indicates that the young man was arrested just before the attack and that he had confessed his intention to blow up a police station in Kabul, so as to “wash off his sins”.³⁶ The author also provides a “travel warning” issued by the Government of Denmark in which it recommends its nationals not to travel to Afghanistan, given the “heightened risk of terrorist attacks and kidnappings in the country, including Kabul”.³⁷

5.2 The author further reiterates his submissions related to the alleged violation of articles 13 and 26 of the Covenant.

5.3 The author considers that according to its observations on the merits, the State party seems to give more importance to credibility issues than to the actual situation in Afghanistan. He indicates that although, according to background information, suicide bombers are not generally recruited by force, one cannot exclude the possibility that young boys could be forced by the Taliban to commit suicide attacks. In this connection, he refers to the case of a young boy who was raped in order to force him to commit a suicide attack.³⁸ He further argues that the RAB could have used more recent information to base its decision of ● April 2015, as it refers to reports from 2012, while information as recent as 2016 and more relevant to the author’s situation was already publicly available then. The author further reiterates that the current situation in Afghanistan is extremely dangerous, which is confirmed by the State party’s “travel warning” which discourages any travel there.

5.4 The author reiterates his reference to the cases in which the Committee’s interim measures requests resulted in the reopening of the cases of the people concerned, who then received a residence permits.³⁹ The author claims that this demonstrates that the RAB often commits mistakes and indicates that the RAB’s decision of ● April 2015 was manifestly unreasonable and arbitrary.⁴⁰

Further submissions by the State party

6.1 On 19 August 2016, the State party provided further observations to the Committee. The State party reiterates that according to the Committee’s jurisprudence, article 13 of the Covenant does not establish the right to appeal or the right to a court hearing.⁴¹ In addition, in accordance with domestic legislation, the author had the possibility to appeal the DIS decision of ● December 2014 to the RAB. RAB’s decisions are final and not subjected to judicial review. This has been confirmed by the Danish Supreme Court which has established that however, aliens can, by virtue of the Constitution, bring an appeal before the courts which have the competence to adjudicate any matter concerning the limits of competence of a public authority. Nevertheless, such review by the courts is limited to points of law.

6.2 With respect to the author’s allegation that his rights under article 26 of the Covenant have been violated, the State party reiterates that he has not been treated differently from any other person applying for asylum and that in his asylum proceedings

³⁶ Khaama Press, Taliban rape suicide bomber before sending for attack, 26 April 2015. Available at <http://www.khaama.com/would-be-suicide-bomber-gang-raped-by-fellow-taliban-3229>

³⁷ Ministry of Foreign Affairs of Denmark, “All travel to Afghanistan discouraged”. The author does not provide further details in relation to this document. .

³⁸ This case is referred in the press article referred to before: see Deutsche Welle, “Afghanistan’s Minister of Refugees: No agreement on taking back deportees from Germany”, op. cit., available at <http://www.dw.com/en/afghanistans-minister-of-refugees-no-agreement-on-taking-back-deportees-from-germany/a-19020715>.

³⁹ The author refers again to communications 2320/2013, 2150/2012 and 2286/2013. See footnote 26.

⁴⁰ The author does not develop this argument.

⁴¹ See para. 4.4

no distinction was made on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

6.3 In relation to the author's argument that the current situation in Afghanistan is extremely dangerous, and that even the State party recommends not to travel there, the State party submits that the foreign travel advice issued by the Danish Ministry of Foreign Affairs applies to Danish nationals and Danish interests and that the risk of terrorist attacks and abductions only relate to Danish nationals. In addition, it indicates that the RAB keeps abreast of information on conditions in Afghanistan, including information on the general security situation. For this purpose, the RAB searches for background material four times a year.⁴²

6.4 In relation to the author's allegation that the RAB's decision of 1 April 2015 only took into account information of 2012, the State party submits that the 2016 UNHCR Guidelines for assessing the international protection needs of asylum-seekers from Afghanistan, were also considered. According to these Guidelines: "in areas where AGEs - Anti Government Elements- exercise effective control, they are reported to use a variety of mechanisms to recruit fighters, including recruitment mechanisms based on coercive strategies [...] People who resist recruitment are reportedly at risk of being accused of being a government spy and being killed or punished". The State party reiterates that as the author originates from Kabul, an area controlled by the Afghan government, the RAB's assessment that the general situation in Afghanistan does not justify residence under Section 7 of the Danish Aliens Act, still applies.⁴³

6.5 Furthermore, the State party refers to several decisions by the European Court of Human Rights on the general conditions in Afghanistan. For instance, it refers to *A.W.Q and D. H vs. the Netherlands* in which the Court stated that it did not find that the general situation in Afghanistan would reach such a level of violence that the simple return of a person there would give rise to a risk of ill-treatment.⁴⁴

6.6 The State party further submits that the author has failed to demonstrate that the reopened cases that he referred to are similar to his situation, beyond the fact that the asylum seekers in these cases were also Afghan. In addition, the State party reiterates that the RAB decides to reopen a case on the basis of an individual assessment of the applicant's situation. In the author's case it found that he had not produced any new information or rendered it probable that he would risk a violation of his rights under articles 6 and 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.

⁴² The State party provides a list of approximately 200 reports on Afghanistan by Governments, Intergovernmental Organizations and NGOs, taken into account by the RAB.

⁴³ See para. 2.5

⁴⁴ European Court of Human Rights, Application 25077/06, *A.W.Q and D. H vs. the Netherlands*, adopted on 12 April 2016, para. 71. The State party also refers to Application 13442/08, *A.G.R vs. the Netherlands*, adopted on 6 June 2016, para. 59; Application 46856/07, *M.R.A. and Others vs. the Netherlands*, adopted on 12 April 2016, para. 112; Application 39575/06, *S.S vs. the Netherlands*, adopted on 12 April 2016, para. 66.

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 recalls its general comment No. 31 in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.⁴⁵ 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.⁴⁶ The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party,⁴⁷ and that it is generally for organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.⁴⁸

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

7.6 The Committee notes the author's claim that the RAB often commits mistakes and that its decision of April 2015 is manifestly unreasonable and arbitrary. The Committee observes however, that the author has not identified any irregularities in the decision-making process, or any risk factor that the State party's authorities failed to take properly into account. It considers that while the author disagrees with the factual conclusions of the State party's authorities, he has not shown that they were clearly arbitrary or manifestly erroneous, or amounted to a denial of justice.

7.7 The Committee further observes that the author's request for asylum on the grounds of his fear of persecution by the Taliban because he escaped from them, after they had kidnapped him in order to force him to commit a suicide attack, was rejected by the DIS and the RAB because he had failed to establish that he would face any risk for his life or to be subjected to torture if returned to Afghanistan. The Committee notes the State party's argument that during his asylum proceedings, the author made several contradictory and unlikely statements, and that it was difficult for him to provide clear information related to essential points of his account, including the period during which he was abducted; the period during which he stayed with his parents after the abduction, and then with his

⁴⁵ See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

⁴⁶ See for example communication No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

⁴⁷ See for example communications No. 2344/2014, *E.P. and F.P. v. Denmark*, Views adopted on 2 November 2015, para. 8.4; No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

⁴⁸ See for example communication No. 2344/2014, *E.P. and F.P. v. Denmark*, Views adopted on 2 November 2015, para. 8.4.

grandparents; and the moment when his family was asked about his whereabouts by the Taliban. The Committee further notes the State party's argument that the author has not provided any reasonable explanation regarding such inconsistencies. The Committee also takes note of the State party's affirmation that the author's account is not consistent with the background material available, according to which the Taliban do not recruit suicide bombers by force. The Committee further notes the State party's statement that, according to the background information available at the moment the decision on his asylum application was taken, the author did not fall within any of the categories identified by the UNHCR as being at risk in Afghanistan, as he originates from an area controlled by the government, he has never been politically active and has never had any problems with the authorities. In addition, the Committee notes the State party's statement that the fact that the author is a Tajik does not justify asylum, as according to background information available when the RAB's decision was made, minorities are at risk only in those areas where the Anti-Government Elements have control, but not where, such as in Kabul, the Afghan government is in control of the situation. The Committee also takes note of the State party's affirmation that, according to background material available at the moment the decision on the author's application was taken, the general situation in Afghanistan could not by itself be considered as the basis to grant asylum and that the Afghan authorities had accepted to receive the author.

7.8 The Committee also notes the author's allegation that the current situation in Afghanistan is very dangerous and could constitute the basis for granting asylum to persons who like him, belong to a minority and have spent some time in the West, and could therefore be perceived by the Taliban as supporting the government and the international community. The Committee further takes note of the author's claim that although the majority of suicide bombers join the Taliban voluntarily, it is possible that young boys such as the author are recruited by force. The Committee also notes the author's submission that, given the bad security situation in the country, the Afghan government is advising against deporting nationals. The Committee however observes that the author is from Kabul; that according to the statement made by the Afghan Minister on Refugees and Repatriation and quoted by the author, Kabul remained a safe area; and that publicly available information indicates that persons from places where the Anti-Government Elements do not exercise control, such as Kabul, are not at risk of persecution by the Taliban.⁴⁹

7.9 The obligation not to remove an individual contrary to a State party's obligations under the Covenant applies at the time of removal. The Committee recalls that in cases of imminent deportation, the material point in time for assessing this issue must be that of its consideration of the case. Accordingly, in the context of the communications procedure under the Optional Protocol, in assessing the facts submitted to its consideration by the parties, the Committee must also take into account new developments that have come to its attention by the parties which may have an impact on the risks that an author subject to removal may face. In the present case, the information in the public domain has signaled

⁴⁹ See for example UNHCR Eligibility Guidelines for assessing the international protection needs of asylum-seekers from Afghanistan, *op. cit.* Available at <http://www.refworld.org/pdfid/51ffdca34.pdf>; UK Home Office, Country Policy and Information Note Afghanistan: Fear of anti-government elements (AGEs), December 2016. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/576895/CPIN-Afghanistan-Fear-of-AGEs-v2-December-2016.pdf; Danish Immigration Service, Afghanistan: Country of Origin Information for Use in the Asylum Determination Process, Report on fact finding mission to Kabul, 25 February to 4 March 2012. Available at <http://www.refworld.org/docid/505af0352.html>.

the significant deterioration of the situation in Kabul in recent times.⁵⁰ However, on the basis of the information in the case file, the Committee is not in a position to assess the extent to which the current changed situation in his country of origin may impact the author's personal risk. In this context, the Committee recalls that it remains the responsibility of the State party to continuously assess the risk that any person would face in case of return to another country before the State takes any final action regarding his/her deportation or removal.

7.10 Without prejudice to the continuing responsibility of the State party to take into account the present situation of the country to which the author would be deported, and in light of the available information regarding the author's personal circumstances, the Committee considers that the author's claims under articles 6 and 7 of the Covenant have been insufficiently substantiated for the purposes of admissibility, and concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.11 The Committee further notes the author's claims under articles 26 of the Covenant that the RAB's decision and its procedure constitute a discrimination against asylum seekers, since all other decisions by administrative bodies can be appealed before courts pursuant to the State party's law. It also notes the State party's statement that the author has been treated equally to any person applying for asylum before its authorities, whatever their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Committee observes that the author has not provided any further arguments on this part of the complaint. It therefore considers that the author has failed to sufficiently substantiate his claims under article 26 and declares this part of the communication inadmissible under article 2 of the Optional Protocol.⁵¹

7.12 The Committee further notes the author's claims that the impossibility for him to appeal the RAB's decision of April 2015 amounts to a violation of his right to a fair trial under article 13 of the Covenant, as the decisions of the RAB are the only administrative decisions that cannot be appealed before the national courts. The Committee recalls its jurisprudence, referred to by the State party, according to which article 13 of the Covenant offers to asylum seekers some of the protection afforded under article 14 of the Covenant, but not the right of appeal to judicial courts.⁵² The Committee therefore concludes that the author has failed to sufficiently substantiate his claims under article 13 and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8. The Human Rights Committee therefore decides:

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

⁵⁰ See for example, press release issued by the Secretary General of the United Nations on 31 May 2017: "UN condemns terrorist attack in Kabul, underscores need to protect civilians". Available at <http://www.un.org/victimsofterrorism/en/node/3466>

⁵¹ See for example Communication No. 2115/2011, *I.A.K. vs. Denmark*, Views adopted on 3 November 2016, para. 9.7.

⁵² See communication No. 2288/2013, *Osayi Omo-Amenaghawon v. Denmark*, Views adopted on 23 July 2015, para.6.4; general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras.17 and 62.