



**International Covenant on
Civil and Political Rights**

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**Views adopted by the Committee under article 5 (4) of the
Optional Protocol, concerning communication No. 2585/2015*,**
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<i>Submitted by:</i>	[MAS] and [L.B.H.] (represented by counsel)
<i>Alleged victim:</i>	The authors and their three children
<i>State Party:</i>	Denmark
<i>Date of communication:</i>	9 March 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 10 March 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	8 November 2017
<i>Subject matter:</i>	Deportation to Bulgaria
<i>Procedural issues:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Risk of torture, cruel, inhuman or degrading treatment or punishment, <i>non-refoulement</i>
<i>Articles of the Covenant:</i>	7
<i>Articles of the Optional Protocol:</i>	2

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

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelic, Barnariam Koita, Marcia V. J. Kran, Photini Pazartzis, Mauro Politi, Jose Manuel Santos Pais, Yuval Shany, and Margo Waterval. A joint dissenting opinion by Committee members Mauro Politi and Jose Manuel Santos Pais is annexed to the present Views.

1.1 The authors of the communication dated 9 March 2015 are Mr. M.A.S., born on [...] 1973, and his wife, Ms. L.B.H., born on [...] 1976. They present the communication on their own behalf and on behalf of their three minor children: X, born on [...] 2000; Y, born on [...] 2003; and Z, born on [...] 2012. The authors are Syrian nationals seeking asylum in Denmark and subject to deportation to Bulgaria following the Danish authorities' rejection of their application for refugee status in Denmark. The authors claim that by forcibly deporting them and their children to Bulgaria, Denmark would violate their rights under article 7 of the International Covenant on Civil and Political Rights. The authors are represented by counsel, the Danish Refugee Council, followed by Ms. Hannah Krog. The first Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976.

1.2 On 10 March 2015, pursuant to rule 92 of the Committee's rules of procedure, the Special Rapporteur on New Communications and Interim Measures requested the State party to refrain from deporting the authors and their children to Bulgaria, while their case was under consideration by the Committee.

The facts as presented by the authors

2.1 The authors are Kurds from Syria. They fled the country to seek refuge in Europe due to the civil war. They first fled to Lebanon, then proceeded to Turkey and arrived to Denmark in January 2014 through Bulgaria.

2.2 The authors allege that they paid an amount of money to go to Denmark, but the agent dropped them near the Bulgarian border. He told them that they had arrived in Denmark and disappeared immediately. The authors walked for about seven hours. On [...] July 2013, the authors and their children arrived in Bulgaria. The Bulgarian border guards arrested them for illegal entry, fingerprinted them and registered them as asylum-seekers. The authors were detained in a prison for 23 days, in a 40 square meter room with five to six other families. They allege that there were about 400 people detained in that prison, 14 of whom were minors. Due to unsuitable meals for their children,¹ and because of the harassment and degrading treatment they suffered in prison,² the authors decided to hunger strike for three

¹ In particular, their youngest child was only one-year old and still drank replacement milk. Due to the conditions in prison, they had no choice but to feed her with the unsuitable food they were given. They had to ask the prison staff to buy breast-milk substitute, but not all prison guards had been willing to buy it for them. They did not receive nappies either.

² This is the authors' statement in their initial communication to the Committee, dated 9 March 2015. However, in their asylum screening interviews before the DIS, on [...] January 2014 and [...] February 2014, respectively, Mr. M.A.S. declared that they had gone on hunger strike as a protest against their arrest, and Ms. L.B.H. declared that they had gone on hunger strike hoping that the authorities would release them. Moreover, in the statement made by Mr. M.A.S. at the consultation with DIS on [...] July 2014, they mentioned that "they had been subjected to no physical assaults during their detention [but] that the police/prison staff had acted violently towards the applicant when they wanted to fingerprint him and he had refused to let them. The applicant stated that they had undressed him." Mr. M.A.S. also conceded that he had not lodged a complaint with a superior authority about the treatment that they had been given by the police and prison staff. Following Ms. L.B.H.'s interview with DIS, it is mentioned that "during her detention, the applicant had suffered no physical assaults, but that they had been spoken to and looked at in a very degrading manner. They had been given a limited amount of food, and the food had been bad." Ms. L.B.H. informed that she did not lodge a complaint with a superior authority about the treatment that they had been given by the prison staff because "they had been too afraid to do so because there was already a negative public feeling about refugees in Bulgaria". The RAB decision of [...] December 2014 also mentions that at the hearing, Ms. L.B.H. declared that when she was arrested, she was placed on the floor and started to cry. The police allegedly undressed her spouse and children.

days, together with three other families, during which they were not given any water. They maintained their strike until their release, which took place following a visit from a humanitarian organization³ and media pressure.⁴

2.3 After being released from prison, the authors were moved to a refugee camp in Sofia, where they stayed around three months. There, they could not move freely due to the overwhelming presence and fear of the police, because asylum seekers were mistreated and felt insecure. Their child Y was allegedly beaten by police officers several times because he was too noisy. On [redacted] October 2013, the authors were granted residence permits in Bulgaria, which were valid until [redacted] October 2016 for Ms. L.B.H. and until [redacted] October 2016 for Mr. M.A.S. On that day, they were requested to leave the reception facilities. Since they were offered no assistance, they struggled to find accommodation, work and education, and had no access to the medical care they needed.

2.4 The authors managed to rent a room of 30 square meters in Sofia. They paid with the money sent by family members living in Turkey and Iraq. For two months, they remained in that room. Fearing for the security of the family due to the wave of racism in Bulgaria, only Mr. M.A.S. was getting out of the room from time to time to buy food or retrieve money.

2.5 A series of incidents made the authors feel unsafe in Bulgaria: in December 2013, Mr. M.A.S. witnessed the murder of an Iraqi person by a couple of Bulgarian citizens in a park in Sofia. He ran away from the place fearing for his life. On another occasion, while he was shopping for the family, three Bulgarian men entered the shop and made him sing that Bulgaria was not a place for him. They told him to go back home, and they hit and kicked him. After these incidents, fearing for their safety and due to the harsh living conditions in the absence of an effective integration program in Bulgaria, the authors left the country and travelled to Denmark. The authors were driven to Denmark by a lorry driver contacted by Ms. L.B.H. They presented their Bulgarian residence permits and were allowed to cross the borders. After a three-day journey, they arrived into an unknown town in Denmark, from where they travelled to Aarhus.

2.6 On [redacted] January 2014, the family arrived in Aarhus and applied for asylum on the same day. Mr. M.A.S. declared that the reason for the request was his fear that he will be recalled as a reservist by the Syrian military if he returned to Syria. In that connection, he declared that before he left Syria in July 2013, he had been recalled to enroll but that, instead, he left the country. Ms. L.B.H. referred to her spouse's grounds for asylum. The authors also referred to the poor conditions in Bulgaria, to the impossibility to find a job, to the general discrimination against refugees in Bulgaria, and to the threats by unknown Bulgarians. On [redacted] and [redacted] August 2014, the Danish Immigration Service (DIS), in separate decisions for each author and their children, decided not to grant them asylum as Bulgaria was their first country of asylum and they had already been granted residence permits, which were still valid. The DIS considered that the authors' statements about the poor conditions in Bulgaria, including the impossibility to find a job and discrimination against refugees were a question of socio-economic conditions beyond the scope of section 7 of the Aliens Act. The DIS also indicated that the authors' claim about being threaten by Bulgarian individuals and also by the police during their arrest and detention would not change its assessment because the authors can ask the Bulgarian authorities for protection and also lodge a complaint. The DIS noted that the

Ms. L.B.H. was so upset that she fainted. The police brought her to hospital and afterwards to prison, where she was reunited with her family.

³ The authors did not mention the name of the organization. However, in the consultation of Mr. M.A.S. with DIS on [redacted] July 2014, it is mentioned that "relief organizations, maybe the UN and the Red Cross, had visited the applicant and others during their hunger strike and had given them an opportunity to talk about the treatment they had been given in the Bulgarian prison".

⁴ The "media pressure" was mentioned by the authors only in their first communication to the Committee dated 9 March 2015, but with no specific reference.

authors have never lodged a complaint with the Bulgarian authorities, neither to denounce threats by private persons, nor the ill-treatment they allegedly suffered during their arrest and detention. Finally, the DIS attached great importance to the fact that the authors have not been involved in any conflicts of such a nature that could put them at risk upon their return to Bulgaria.

2.7 The authors submit that they have increased symptoms of post-traumatic stress disorder, such as insomnia, excessive thoughts, depressive and nervous behavior and an increased tendency to isolation. In particular, after coming to Denmark, their son Y has received extensive psychological assistance because of the experiences in Bulgaria and because he witnessed the killing of some friends by a bomb in his school in Syria. Mr. M.A.S. suffers from high blood pressure and a heart condition, for which he receives medical treatment, and he also exhibits symptoms of post-traumatic stress disorder, allegedly due to torture to which he was subjected to while in prison in Syria. Ms. L.B.H. has problems with her metabolism, for which she receives medical treatment, and she also receives analgesics to alleviate her back problems due to a herniated disc.⁵

2.8 On [] December 2014, the Danish Refugee Appeals Board (RAB) upheld the DIS decision and ordered the authors to leave Denmark within 15 days. The RAB considered that the authors fell under section 7 (1) of the Aliens Act, but that Bulgaria was their first country of asylum where they were granted protection status, and that they should therefore be returned there.⁶ The Board declared that according to background information available, the authors would not be exposed to a risk of *refoulement* once in Bulgaria; that their personal safety would be protected to the extent necessary; and that they should seek the protection of the Bulgarian authorities in respect of the threats made by unknown Bulgarians against them. The RAB also indicated that according to a UNHCR report,⁷ refugees and persons with a protection status in Bulgaria enjoyed the same rights as Bulgarian nationals, and that although difficult, the general situation, including socio-economic conditions, were not of such nature as to prevent Bulgaria from serving as a country of first asylum. To deliver its decision, the RAB took into account the authors' allegations that they were detained and ill-treated in prison. In particular, the RAB noted that the authorities had confiscated Ms. L.B.H.'s medication; that they did not give milk for the applicants' youngest child; that Mr. M.A.S. was harassed by private individuals; that their children were all seriously mentally affected by their experiences in Syria and Bulgaria, and that only after coming to Denmark they started to feel better: they were able to go to school whereas in Bulgaria, where there was nothing but fear and fights, they were afraid of going anywhere.

The complaint

3.1 The authors submit that, by forcibly returning them and their children to Bulgaria, the Danish authorities would violate their rights under article 7 of the International Covenant on Civil and Political Rights. Based on their experience, they allege that, if returned to Bulgaria, they and their three children would be exposed to inhuman or degrading treatment contrary to the best interests of the child, as they would face homelessness, destitution, lack of access to health care and of personal safety. The three minor children have already been deeply scarred and traumatised by the civil war in Syria and by their stay in Bulgaria, disclosing

⁵ Statements of [] December 2014 and [] January 2015 by Solvita, an organization that works with traumatized children, youth and adults in Denmark. However, Solvita concluded, *inter alia*, that "the parents are not psychologically elucidated of a PTSD diagnosis, but both have symptoms on it" (statement of [] January 2014).

⁶ The RAB referred to Section 7 (3) of the Aliens Act.

⁷ UNHCR, *Refugee Integration and the Use of Indicators: Evidence from Central Europe*, December 2013, available at <http://www.refworld.org/docid/532164584.html>.

antisocial behaviour and stagnation in their development. They therefore need stability and access to continued psychosocial and medical treatment. The authors therefore argue that they should be regarded as extremely vulnerable and that the first country of asylum, Bulgaria, is not adapted to their needs.

3.2 The authors further allege that Bulgaria does not have any integration programme for asylum seekers or refugees. The last National Integration Programme finished in 2013, and there is currently no effective integration program for persons who are granted refugee status or subsidiary protection in Bulgaria.⁸ Although according to national law, these persons have access to the labour market, health care system, social services and assistance in finding housing, in practice it is almost impossible for them to find a job or a place to live.⁹ Access to health care is very difficult, as they need to provide an address which, for most asylum seekers and persons in need of international protection, is almost impossible to get.¹⁰ Conditions for children, in particular, have been described as particularly problematic by UNHCR, which stressed "the urgent need for asylum-seeking children and children found to be in need of international protection to be provided with access to education without further delay within the Bulgarian school curriculum".¹¹

3.3 The authors further indicate that integration in the Bulgarian society is almost impossible, as once asylum seekers obtain refugee status or subsidiary protection, they stop receiving the monthly 65 BGN (36 USD) allocated to them during the asylum procedure. As a result, they face extreme poverty and are forced to live in unfinished and abandoned buildings located near the asylum centres.¹² They also refer to a UNHCR report according to which there is a protection gap for these persons once they are granted the refugee status or subsidiary protection. In particular, they have to pay a monthly instalment of approximately 17 BGN (approximately 9 USD), as do nationals, in order to access medical services, while they usually have no income. In addition, medicines and psychological care are not covered by the health care system.¹³

3.4 The authors point out that, once a person is granted refugee status or subsidiary protection, he or she has to move out from the reception centre in a matter of days. Further, even if refugees are entitled to receive a home allowance, the State Agency for Refugees has stopped paying it, because it has run out of funds, forcing many families to live on the

⁸ The authors refer to Tselina Hristova et al., *Trapped in Europe's Quagmire: The Situation for Asylum Seekers and Refugees in Bulgaria*, 2014, available at <http://bordermonitoring.eu/wp-content/uploads/reports/bm.eu-2014-bulgaria.en.pdf>.

⁹ The authors refer to UNHCR report, *Where is my home? Homelessness and access to housing among asylum-seekers, refugees and persons with international protection in Bulgaria*, 2013, available at <http://www.refworld.org/docid/51b57c864.html>; and AIDA, *AIDA National Country Report – Bulgaria*, 18 April 2014, available at http://www.asylumineurope.org/sites/default/files/report-download/aidabulgariareport_secondupdate_final.pdf.

¹⁰ The authors refer to the above-mentioned UNHCR report *Where is my home?...*, pp. 11-13.

¹¹ UNHCR, *UNHCR observations on the current asylum system in Bulgaria*, April 2014, p. 13, available at <http://www.refworld.org/docid/534cd85b4.html>.

¹² Human Rights Watch, *Bulgaria's pushbacks and detention of Syrian and other asylum seekers and migrants*, April 2014, p. 5, available at <https://www.hrw.org/report/2014/04/28/containment-plan/bulgarias-pushbacks-and-detention-syrian-and-other-asylum-seekers>.

¹³ The authors refer to *UNHCR observations on the current asylum system in Bulgaria*, supra note 11, p. 12.

streets.¹⁴ The authors also refer to a report by the Danish Refugee Council according to which the short-term solutions for asylum seeker families in Bulgaria are not sustainable.¹⁵

3.5 The authors further refer to background documentation according to which Bulgaria faces serious problems of xenophobic violence and harassments, which remain unaddressed by the authorities. To this end, they cite a report according to which an “institutional racism” exists in Bulgaria, in the form of racist statements made by high-level politicians, which fuel violent physical attacks on asylum seekers and refugees. As a result, such attacks have recently increased.¹⁶ The authors also refer to the jurisprudence of the European Court of Human Rights, in particular to the case of *Abdu v. Bulgaria*, where the Court established that the Bulgarian authorities had failed to properly investigate an alleged racist attack on a Sudanese national.¹⁷

3.6 The authors refer to General Comment No. 20 of 10 March 1992 concerning the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, and according to which it is the duty of the State party to afford everyone protection against the acts prohibited by article 7 of the Covenant and they must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or *refoulement*.¹⁸ They further refer to UNHCR’s ExCom Conclusion No. 58, which indicates that the principle of first country of asylum should only be applied if the applicant is permitted to remain there upon return and is treated in accordance with recognized basic human standards until a durable solution is found.¹⁹

3.7 The authors further refer to the jurisprudence of the European Court of Human Rights which imposes an obligation upon the State planning to deport to investigate for each case the possibility of a real risk of torture, inhuman and degrading treatment upon the return of the deported person, even when it is assumed that human rights are usually respected in the receiving country. They refer to the judgment in *M.S.S. v. Belgium and Greece*, where the Grand Chamber considered that it was the responsibility of the Belgian authorities not merely to assume that the applicant would be treated in conformity with the standards of the European Convention on Human Rights in the first country of asylum – Greece – but, on the contrary, they should have first verified how the Greek authorities applied their legislation on asylum in practice. Had they done this, they would have seen that the risks faced by the applicant were real and individual enough to fall within the scope of article 3 of the European Convention.²⁰ The authors also cite the ruling in *Tarakhel v. Switzerland*, where the Grand Chamber considered that children have “specific needs” and “extreme vulnerability” and that reception facilities for children “must be adapted to their age, to ensure that those conditions

¹⁴ The authors refer to a report by the Integrated Regional Information Networks (IRIN), *Syrians face bleak time in Bulgaria’s broken asylum system*, 22 October 2013, available at <http://www.irinnews.org/report/98983/syrians-face-bleak-time-bulgaria%E2%80%99s-broken-asylum-system>.

¹⁵ Danish Refugee Council, *Notat om forhold for asylansøgere og flygtninge i Bulgarien*, November 2014.

¹⁶ The authors refer to *Trapped in Europe’s Quagmire* report, *supra* note 8, p. 32.

¹⁷ *Abdu v. Bulgaria*, no. 26827/08, 11 March 2014, paras. 40-53.

¹⁸ CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992.

¹⁹ UNHCR’s ExCom Conclusion No. 58 on the *Problem of Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection*, 13 October 1989, available at <http://www.unhcr.org/excom/exconc/3ae68c4380/problem-refugees-asylum-seekers-move-irregular-manner-country-already-found.html>.

²⁰ *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, ECHR 2011, para. 359.

do not create [...] for them a situation of stress and anxiety, with particular traumatic consequences".²¹

3.8 The authors conclude that in the current circumstances, having fled from civil war in Syria and in the view of the deplorable living conditions of people who are granted refugee status and subsidiary protection in Bulgaria, there is a real risk that they and their children be subjected to inhuman and degrading treatment contrary to the best interests of the child in case of being returned to Bulgaria. As an extremely vulnerable group, they are in a serious and real risk of facing homelessness, destitution as well as limited access to medical care and schooling. Furthermore, the background information indicates that they could face an additional risk of being exposed to unaddressed xenophobic violence. Therefore, they consider that Bulgaria is unsuitable as the family's first country of asylum.

3.9 The authors claim that they have exhausted all domestic remedies because the RAB decisions cannot be appealed before the Danish courts.

State party's observations

4.1 On 9 September 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 authors have not demonstrated any possible breach of the Covenant if deported to Bulgaria.

4.2 The State party describes the structure, composition and functioning of the RAB,²² as well as the legislation applying to asylum proceedings.²³ Regarding the admissibility of the communication, the State party indicates that the authors have failed to establish a *prima facie* case for the purpose of admissibility under article 7 of the Covenant, in the absence of substantial grounds for believing that they are in danger of being subjected to inhuman or degrading treatment if deported to Bulgaria. It therefore considers that the communication is manifestly unfounded and should be declared inadmissible.

4.3 Regarding the merits of the communication, the State party submits that the authors have failed to establish that their return to Bulgaria would constitute a violation of article 7 of the Covenant. It refers to the Committee's jurisprudence according to which States parties are under an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where the necessary and foreseeable consequence of the deportation would be a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, whether in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The Committee has also indicated that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.²⁴ The State party indicates that its obligations under article 7 of the Covenant are reflected in section 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.

4.4 The State party indicates that the authors have not provided any new information to the Committee that has not been already reviewed by the RAB. The State party recalls that the RAB considered that the authors fell within section 7 (1) of the Aliens Act but that, as they had been granted refugee status there, Bulgaria would serve as their country of first

²¹ *Tarakhel v. Switzerland* [GC], no. 29217/12, ECHR 2014 (extracts), para. 119.

²² See Communication No. 2379/2014, *Obah Hussein Ahmed v. Denmark*, Views adopted on 8 July 2016, paras. 4.1-4.3.

²³ The State party refers to Sections 7 (1), 7 (2), 7 (3), 31 (1) and 31 (2) of the Aliens Act.

²⁴ The State party refers to Communication No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

asylum. The State party further indicates that the RAB requires as an absolute minimum that the asylum seeker or refugee is protected against *refoulement*. It also must be possible for him/her to enter lawfully and to take up lawful residence in the country of first asylum, and his/her personal integrity and safety must be protected. That concept of protection also includes a certain social and economic element, since asylum seekers must be treated in accordance with basic human standards. However, it cannot be required that the relevant asylum seekers will have exactly the same social living standards as the country's own nationals. The core of the protection concept is that the persons must enjoy personal safety, both when they enter and when they stay in the country of first asylum.

4.5 Furthermore, the State party recalls that the RAB, based on the authors' long statements about their stay and living conditions in Bulgaria, on the available background material and on the applicable international case law, considered that the authors do not risk *refoulement* in Bulgaria and that their personal safety would be protected to the extent necessary there and that the financial and social circumstances will be adequate. The RAB took into account a report published by the UNHCR in December 2013,²⁵ and considered that the socio-economic conditions in Bulgaria are sufficient to enable the authors to obtain the necessary help and support, and that they would enjoy the same rights as Bulgarian nationals. The RAB further indicated that even though the socio-economic conditions in Bulgaria are difficult, they are not of such nature that Bulgaria cannot serve as country of first asylum.

4.6 Regarding the authors' claim that no integration programme is functioning in Bulgaria, the State party indicates that on 25 June 2014, the Bulgarian authorities published a new integration programme, scheduled to be implemented as of 2015, which would cover a larger number of persons, including language training for a greater number of beneficiaries than the preceding programme.²⁶ The State party highlights that Bulgarian authorities have identified eight areas of priority for the *2014 National Action Plan for Integration of Refugees*, including access to training, employment, healthcare, housing and assistance to persons with special needs, and unaccompanied minors.²⁷ The State party adds that the circumstance that the authors may not have access to an effective integration programme in Bulgaria cannot lead to the conclusion that Bulgaria cannot be their first country of asylum.

4.7 With respect to the authors' reference to a Human Rights Watch report, the State party indicates that even if the report indicates that Bulgarian authorities discontinue the payment of a monthly allowance once asylum seekers are granted residence, it also indicates that conditions in the reception centres have improved and that many residents are allowed to remain in such centres for longer periods of time, after they are granted refugee or humanitarian status, if they lack the means to support themselves.²⁸ In addition, the State party refers to available background material according to which the quality of the accommodation provided to asylum seekers and protection status holders after leaving the asylum centres depends on their employment and income, but also on their family status. It submits that, in general, families with young children benefit of a more positive attitude from landlords.²⁹ The State party points out that no cases have been recorded of families being

²⁵ *Refugee Integration and the Use of Indicators: Evidence from Central Europe*, *supra* note 7.

²⁶ The State party refers to the same report invoked by the authors, *Trapped in Europe's Quagmire*, *supra* note 8, pp. 24 and 25.

²⁷ The State party refers to a report commissioned by the Bulgarian Council on Refugees and Migrants, *Monitoring report on the integration of beneficiaries of international protection in the Republic of Bulgaria in 2014*, available at http://www.bcrm-bg.org/docs/monitoring_integration%20refugees_2014-EN.docx.

²⁸ *Supra* note 12, *ibid.*

²⁹ The State party refers to UNHCR report *Where is my home? ...*, *supra* note 9, p. 6.

forced to leave asylum centres without having been provided with accommodation or funds to rent lodgings.³⁰

4.8 As to the authors' allegations that they would not have access to healthcare in Bulgaria, the State party indicates that refugees have access to health care services under the same conditions as Bulgarian nationals and that the medical treatment is free if they are registered with a general practitioner.³¹ The State party therefore considers that it is a fact based on available background information that the authors will have access to the necessary health care services and treatment in Bulgaria.

4.9 In relation to the authors' claim that their children would not have access to education if returned to Bulgaria, the State party indicates that asylum seekers less than 18 years old have access to free³² education in the same conditions as Bulgarian nationals, after successfully completing a language course.³³

4.10 With respect to the authors' statement that they would risk racist attacks in Bulgaria, the State party submits that they can request protection to the national authorities that have already taken measures against such incidents. The State party refers to a report by UNHCR indicating that in February 2014, following an attack on a mosque, the authorities arrested 120 people, thereby indicating that the Bulgarian authorities have addressed and condemned racist attacks and rhetoric.³⁴

4.11 Regarding the authors' allegation that, if deported to Bulgaria, they will not have access to accommodation and will probably have to live on the streets with no access to a minimum living standard, the State party refers to the decision of the European Court of Human Rights in the case of *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*.³⁵ In that ruling, the Court stated that the assessment of a possible violation of article 3 of the European Convention must be rigorous and should analyse the conditions in the receiving country against the standard established by such provision of the Convention. The Court also reiterated that the mere return to a country where one's economic position will be worse than in the expelling State party is not sufficient to meet the threshold of ill-treatment proscribed by article 3. It stated that article 3 cannot be interpreted as obliging the States parties to provide everyone within their jurisdiction with a home, and that it does not entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living.³⁶ Moreover, the Court indicated that in the absence of exceptionally compelling humanitarian grounds against removal, the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed from the Contracting State, is not sufficient in itself to give rise to a breach of article 3.³⁷ Furthermore, the State party considers that it cannot be inferred from the judgment of the Court in the case of *Tarakhel v. Switzerland* that individual guarantees must be obtained from the Bulgarian authorities in the case at hand, as it concerns the transfer of a family which has

³⁰ *Ibid.*

³¹ The State party refers to the *UNHCR observations on the current asylum system in Bulgaria*, *supra* note 11, p. 12; the *Trapped in Europe's Quagmire* report, *supra* note 8, p. 16; and the *Monitoring report...*, *supra* note 27, p. 51.

³² The State party refers to the report of the Danish Refugee Council, *supra* note 15.

³³ The State party refers to the *UNHCR observations on the current asylum system in Bulgaria*, *supra* note 11, p. 12.

³⁴ *Idem*, p. 14.

³⁵ *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, no. 27725/10, 2 April 2013.

³⁶ *Idem*, para. 70.

³⁷ *Idem*, para. 71.

been granted subsidiary protection in Bulgaria, while in *Turakhel v. Switzerland* the authors' application for asylum in Italy was still pending when the case was reviewed by the Court.

4.12 The State party therefore submits that when delivering its decision, the RAB took into account all relevant information, and that the communication has not brought to light any new, specific information about the authors' situation. It recalls the Committee's established jurisprudence,³⁸ according to which important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice. In the present case, the authors are trying to use the Committee as an appellate body to have the factual circumstances advocated in support of their claim for asylum reassessed by the Committee. There is no basis to challenge the assessment made by the RAB, according to which the authors have failed to establish that there are substantial grounds for believing that they would be in danger of being subjected to inhuman or degrading treatment or punishment if deported to Bulgaria. Against this background, the State party submits that the deportation of the authors to Bulgaria would not constitute a violation of article 7 of the Covenant.

• Authors' comments on the State party's observations

5.1 In their comments of 25 November 2015, the authors maintain that their deportation to Bulgaria would constitute a breach of article 7 of the Covenant. They consider that their allegations are duly substantiated and assert that they would face inhuman and degrading treatment by being forced to live on the streets with no access to housing, food or sanitary facilities, and no prospect of finding durable humanitarian solutions.

5.2 The authors consider that Bulgaria cannot serve as country of first asylum. They argue that certain conditions are necessary to become a country of first asylum: the authors should be protected against *refoulement*; they should be able to travel and stay lawfully in the country; and their personal integrity should be protected. They submit that the concept of protection includes a social and a financial element and that their basic rights must be protected. The authors refer to Chapters II to V of the Convention relating to the Status of Refugees and to UNHCR's Conclusion No. 58, emphasizing that before returning asylum seekers or refugees to a country where they obtained protection, it must be ensured that they will be "treated in accordance with recognized basic human standards" in that country.³⁹ They submit that, as a minimum, refugees must be offered housing and access to paid work or an allocation until they find a job. The authors further state that according to the most recent background information regarding refugees with temporary residence documents in Bulgaria, they would not enjoy the necessary protection there.

5.3 The authors indicate that the State party did not contest that they stayed at a detention centre for approximately 23 days and that subsequently they were transferred to an asylum centre where they stayed for approximately three months, and where the conditions were appalling. They reiterate that when they left the reception centre, they were not given any instructions as to where to go, or how to get accommodation or food; they managed to find a temporary room with a small kitchen for which they paid with money received from their family, given that they did not receive any financial support from the Bulgarian authorities. They were in contact with other refugees who told them that it was impossible to find a job. Both authors have health problems, but they did not receive any medical assistance in Bulgaria.

³⁸ The State party refers to Communications No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.3; No. 2186/2012, *Mr. X and Ms. X v. Denmark*, Views adopted on 22 October 2014, para. 7.5; and No. 2329/2014, *Z. v. Denmark*, Views adopted on 15 July 2015, para. 7.4.

³⁹ *Supra* note 19.

5.4 The authors reiterate that refugees in Bulgaria do not have access to housing, work or social benefits, including health care and education. They cite a report by the Commissioner for Human Rights of the Council of Europe, according to which the system to support the integration of refugees and other beneficiaries of international protection still suffers from serious and concerning deficiencies, mainly connected with the insufficient funding of the system. Consequently, refugees and other beneficiaries of international protection face serious integration challenges, which threaten their enjoyment of social and economic rights. They face a serious risk of becoming homeless and problems in accessing health care services; they suffer high levels of unemployment; and they have no real access to education. They are also vulnerable to hate crimes. The report further indicates that, although persons granted refugee status are apparently given the possibility to stay in the reception centres when they have no means of sustaining themselves, they can only stay for six months. There are allegations of corruption by the staff of the reception centres, who are said to extort payment from the families for the right to stay.⁴⁰ The authors consider that these problems will persist for long. They also quote a 2015 report by Amnesty International according to which, although the conditions in reception centres partially improved, concerns persist over the reception conditions of asylum seekers, in particular with regard to food, shelter and access to health care and sanitary goods.⁴¹ The report further states that the prevention and investigation of hate crimes have been inadequate.⁴²

5.5 The authors further submit that the living conditions in Bulgaria for beneficiaries of international protection are worse for returned beneficiaries because they seem to be excluded from the reception facilities due to their initial stay and to the fact that they left the reception facilities. The authors therefore submit that they will not benefit from proper housing and adequate medical treatment. They and their children will be exposed to substandard living conditions, lack of social assistance from the authorities and no prospect of finding a durable humanitarian solution. They will end up living in deprived and marginalized conditions due to the "zero refugee integration policy" in Bulgaria.

5.6 With regard to the State party's reference to the ruling of the European Court of Human Rights in the case of *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, the authors submit that the issue at stake is not that refugees in Bulgaria have significantly reduced material and social living conditions, but that the current living conditions there do not meet basic humanitarian standards, as required by Conclusion No. 58 of the Executive Committee of UNHCR. They also indicate that, based on their experience in Bulgaria, there is no basis for assuming that the Bulgarian authorities will prepare for their return in accordance with basic humanitarian standards. They reiterate that the decision of the European Court in *Tarakhel v. Switzerland* is applicable to their case, as the living conditions of beneficiaries of international protection in Bulgaria can be regarded as similar to the situation of asylum seekers in Italy, and that the premise outlined in the *Samsam Mohammed Hussein* case is no longer sufficient: individual guarantees, especially protecting returning children from destitution and harsh accommodation conditions are now required by the European Court of Human Rights. The authors argue that the Court's reasoning in *Tarakhel v. Switzerland* regarding article 3 of the European Convention can be regarded as corresponding to article 7 of the Covenant.

5.7 The authors also refer to the Committee's Views in *Jasin et al. v. Denmark*,⁴³ in which it emphasized the need to give sufficient weight to the real and personal risk a person might

⁴⁰ Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, *Report following his visit to Bulgaria from 9 to 11 February 2015*, pp. 28-29, available at <https://rm.coe.int/16806db7c2>.

⁴¹ Amnesty International, *International Report 2014-2015 – Bulgaria*, 25 February 2015, p. 87, available at <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>.

⁴² *Idem*, p. 88.

⁴³ Communication No. 2360/2014, *Jasin et al. v. Denmark*, Views adopted on 22 July 2015.

face if removed. The authors submit that this requires an individualized assessment of the risk faced, rather than reliance on general reports and on the assumption that having been granted subsidiary protection in the past, they would in principle be entitled to work and receive social benefits.

5.8 The authors finally submit that as newly recognized refugees, they need further support to be established in a country of asylum, as they do not have cultural or social networks. They submit that special attention must be given to the fact that they have three minor children; that they suffer from severe medical conditions and are dependent on medication; and that they did not receive any help from the Bulgarian authorities during their initial stay in Bulgaria, where they have no possibility to exercise the most basic economic and social rights in Bulgaria. They submit that, consequently, they may have no choice but to return to Syria, rendering illusory their right to *non-refoulement* under international refugee law. They also claim that, regardless of Bulgarian legislation on the formal access to social benefits, health care and education, relevant background information indicates that refugees in Bulgaria risk facing homelessness and destitution. They further submit that the RAB has failed to give sufficient weight to the real personal risk they would face if removed there, that it did not take into account that they did not receive any assistance from the Bulgarian authorities; and that the only reason why they did not leave on the streets was that they had received money from their family. In addition, the RAB did not contact the Bulgarian authorities to ensure that they and their children would be received under circumstances that would guarantee the protection of their rights.

Further submissions by the State party

6.1 On 27 April 2016, the State party provided further observations to the Committee, generally referring to its observations of 9 September 2015. It reiterates that the authors failed to establish a *prima facie* case for the purposes of admissibility and that the communication should be declared inadmissible, as manifestly unfounded. It further reiterates that should the Committee consider the communication admissible, it should be deemed as lacking substantiation, as the authors have failed to establish a violation of their rights under article 7 of the Covenant.

6.2 The State party considers that the Committee's jurisprudence in *Jasin et al. v. Denmark* is not applicable to the present case because the circumstances are different. While the *Jasin* case concerned the deportation of a single mother with minor children to Italy, whose residence permit for Italy had expired, the present case concerns the deportation of a married couple with minor children to Bulgaria, who were in possession of valid residence permits when they applied for asylum.

6.3 The State party also indicates that the RAB took into account all the information provided by the authors, which was based on their own experiences. Moreover, the background material consulted by the RAB is obtained from a wide range of sources, which is compared with the statements made by the relevant asylum seekers, including as to their past-experience. The State party observes that in the present case, the authors have had the opportunity to make submissions in writing and orally before the domestic authorities and that the RAB has thoroughly examined their case on the basis of those submissions.

6.4 The State party further notes that there is no indication that the authors made any request for help to the Bulgarian authorities. On the contrary, the authors managed to find private accommodation in Sofia and they also managed to support themselves before leaving Bulgaria. Referring to the fact that the authors did not manage to find work during the period of about two months spent in Bulgaria after having been granted residence, the State party considers that this is also not a circumstance that would lead to a different assessment. According to the information provided, the authors did not request assistance from the authorities in this respect either. Besides, it is not reasonable to require that everybody is

given a job within such a short period of time. The State party further notes that the authors have referred to the problems encountered by other refugees in finding work, but that they have not looked themselves for a job. As regards the authors' allegations that Mr. M.A.S. was threaten by private individuals who told him that he should leave the country, the State party notes that they did not contact the Bulgarian authorities to seek protection.

6.5 With respect to the authors' reference to the *Tarakhel* case, the State party considers that it cannot be inferred from that case that individual guarantees must be obtained from the Bulgarian authorities before effecting a transfer. *Tarakhel v. Switzerland* concerned a family with the status of asylum seekers in Italy and that this case is not comparable with the present one, where the authors have already been granted subsidiary protection in Bulgaria. The State party further considers that the *Tarakhel* case, which concerned specifically the reception and accommodation conditions for families with young children in Italy, cannot lead independently to a requirement for other Member States to provide individual guarantees when families have already been granted subsidiary protection and when the available background material does not allow to assume that aliens risk ill-treatment contrary to article 7 of the Covenant due to the general conditions in the country.

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 it is admissible under the Optional Protocol to the Covenant.

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

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

7.4 The Committee notes the State party's challenge to the admissibility of the communication on the grounds that the authors' claim under article 7 of the Covenant is unsubstantiated. However, the Committee considers that, for the purpose of admissibility, the authors have adequately explained the reasons for which they fear that their forcible return to Bulgaria would result in a risk of treatment in violation of article 7 of the Covenant. As no other obstacles to admissibility exist, the Committee declares the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

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

8.2 The Committee notes the authors' claim that deporting them and their three children to Bulgaria, based on the Dublin Regulation principle of "first country of asylum", would expose them to a risk of irreparable harm, in violation of article 7 of the Covenant. The authors base their arguments, *inter alia*, on the treatment they received when they arrived in Bulgaria and after they were granted residence permits, and on the general conditions of reception for asylum seekers and refugees in Bulgaria. The Committee notes the authors' argument that they would face homelessness, destitution, lack of access to health care and lack of personal safety, as demonstrated by their experience after they were granted

subsidiary protection in October 2013. The Committee further notes the authors' submission that since they had already benefitted from the reception system when they first arrived in Bulgaria, and as they were granted a form of protection, they would have no access to accommodation in the reception facilities.

8.3 The Committee recalls its General Comment No. 31,⁴⁴ 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 personal⁴⁵ and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.⁴⁶ 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,⁴⁷ unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.⁴⁸

8.4 The Committee notes the finding of the Refugee Appeals Board that Bulgaria should be considered the first country of asylum of the authors, and the position of the State party that the first country of asylum is obliged to provide asylum seekers with basic human rights, although it is not required to provide for such persons the same social and living standards as nationals of the country. The Committee further notes the reference made by the State party to a decision of the European Court of Human Rights according to which the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed from the Contracting State – Denmark – is not sufficient in itself to give rise to breach of article 3 of the European Convention of Human Rights.⁴⁹

8.5 The Committee also notes the authors' submission that they were detained for approximately 23 days upon their arrival in Bulgaria, during which time they suffered abuse and degrading treatment, and that they were transferred to a reception centre, where they lived for around three months in appalling conditions. The Committee also notes the authors' allegations that their son Y was abused by the police in the reception centre and that they did not receive proper food for their youngest child. The Committee further notes that the authors were then transferred to another reception centre in Sofia, where they stayed for approximately three months, until they were granted residence permits, when they were asked to leave, without being provided with alternative accommodation.

8.6 However, the Committee notes that since the authors now have a residence permit, they are not likely to be detained upon arrival, as had happened when they entered Bulgaria in July 2013 without a permit. Nor would they be required to reside in a State-run reception facility. As a result, the Committee does not consider it probable that the authors would face

⁴⁴ See Committee's General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

⁴⁵ See Communications No. 2007/2010, *J.J.M. v. Denmark*, Views adopted on 26 March 2014, para. 9.2, and No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6. See also Committee against Torture, Communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.J. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

⁴⁶ See *X. v. Denmark*, *supra* note 24, *ibid.*, *A.R.J. v. Australia*, *supra* note 45, *ibid.*, and Communication No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

⁴⁷ See Communications No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 11.4, and No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

⁴⁸ See, *inter alia*, *ibid.*, and Communication No. 541/1993, *Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2.

⁴⁹ See *M.S.S. v. Belgium and Greece*, *supra* note 20, para. 249.

once again the same harsh treatment from the detaining authorities to which they were exposed when they first entered Bulgaria. The conditions in which the authors lived in Sofia, after they received their residence permit on [redacted] October 2013 are more relevant to present risk analysis, as the authors are likely to find themselves upon return to Bulgaria in a similar legal and factual situation.

8.7 The Committee notes in this regard the author's claims that they managed to find accommodation in Sofia, paying with money received from their family. The Committee also notes the authors' allegations that they did not feel safe in Bulgaria, that Mr. M.A.S. was harassed and threatened by unknown private persons and that the authors and their children suffer from anxiety due to their experience there. The Committee further notes the authors' claim that they left Bulgaria and went to Denmark out of fear for their safety and due to the harsh living conditions in Bulgaria.

8.8 The Committee further notes the authors' allegation that, as they were granted a refugee status, they would, upon their return, be excluded from the reception facilities which they already benefited from when they first arrived in Bulgaria and that they would not have access to social housing or temporary shelters. The Committee notes the authors' argument that: (i) they would face precarious socio-economic situation, given the lack of access to financial help or social assistance and to integration programs for refugees; (ii) that they would not be able to access employment because of the language barrier; (iii) that they would not be able to find accommodation because of their lack of resources and incomes; and (iv) that they would therefore face homelessness and be forced to live with their children in the streets.

8.9 The Committee also takes note of the various reports submitted by the authors highlighting the lack of a functional integration programme for refugees in Bulgaria and the serious practical difficulties they face in gaining access to housing, work or social benefits, including health care and education. The Committee further notes the background material, according to which places in reception facilities for asylum seekers and returnees under the Dublin regulation are missing, and are often in poor sanitary conditions. It observes that returnees like the authors, who have already been granted a form of protection and benefited from reception facilities in Bulgaria, are not entitled to accommodation in the asylum camps beyond the six-month period after protection status has been granted; and that although beneficiaries of protection are entitled to work and enjoy social rights in Bulgaria, its social system is in general insufficient to attend all persons in need, in particular in its current socio-economic situation.⁵⁰

8.10 However, the Committee notes the State party's statement that, by law, persons granted refugee and protection status in Bulgaria have the same rights of access to several important social services on the same terms as Bulgarian nationals, and that although difficulties are encountered in the implementation of such rights, Bulgaria has been taking some steps aimed at improving their refugee integration policies. It also notes the State party's argument according to which the authors have not requested assistance during their stay in Bulgaria in respect of accommodation and employment. Regarding the authors' allegations that they have not received any medical assistance, the Committee notes the information submitted by the State party, according to which refugees have access to health care services on the same terms as Bulgarian nationals and that the medical treatment is free if they are registered with a general practitioner for a nominal sum. The Committee observes that the authors have not submitted any evidence or explanation whether they have registered

⁵⁰ See, for example, the *UNHCR observations on the current asylum system in Bulgaria*, *supra* note 11, p. 12; the *Trapped in Europe's Quagmire* report, *supra* note 8; and the report of the Danish Refugee Council, *supra* note 15.

with a general practitioner, and that they have not claimed before the Danish immigration authorities that their health situation should bar their deportation.

8.11 Regarding the authors' allegations of xenophobic violence, the Committee takes note of the State party's submission, based on the RAB's determination that the authors did not experience, after leaving the reception centre, any aggressive treatment from the Bulgarian authorities and did not seek protection from the Bulgarian authorities against the private act of racism that Mr M.A.S. experienced. The Committee further notes that the authors did not lodge a complaint with the Bulgarian authorities in respect of their allegations of ill-treatment during arrest and while in prison. The Committee therefore considers that although the authors may have not placed trust in the Bulgarian authorities, they have not demonstrated that these authorities are not able and willing to provide appropriate protection in their case.

8.12 The Committee observes that, notwithstanding the fact that it is difficult, in practice, for refugees and beneficiaries of subsidiary protection to get access to the labour market or to housing, the authors have failed to substantiate a real and personal risk upon return to Bulgaria. In this connection, the authors have not established that they were homeless before their departure from Bulgaria; they did not live on the streets; and their situation with three children must be distinguished from that of the author in the decision of *Jasin et al. v. Denmark*, which concerned a single mother of three minor children, suffering from a health condition, and holding an expired residence permit.⁵¹ The fact that they may be possibly confronted with serious difficulties upon return, in light of the past traumas suffered by all members of the family - in particular the children - this by itself does not necessarily mean that they would be in a special situation of vulnerability - and in a situation significantly different to many other refugee families - such as to conclude that their return to Bulgaria would constitute a violation of the State party's obligations under article 7 of the Covenant.⁵²

8.13 The Committee further considers that although the authors disagree with the decision of the State party's authorities to return them to Bulgaria as a country of their first asylum, they have failed to explain why this decision is manifestly unreasonable or arbitrary in nature. Nor have they pointed out any procedural irregularities in the procedures before the DIS or the RAB. Accordingly, the Committee cannot conclude that the removal of the authors to Bulgaria by the State party would constitute a violation of article 7 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the authors' removal to Bulgaria would not violate their rights under article 7 of the Covenant. The Committee, however, is confident that the State party will duly inform the Bulgarian authorities of the authors' removal, in order for the authors and their children to be taken charge of in a manner adapted to their needs, especially taking into account the age of the children.

⁵¹ See Communication No. 2640/2015, *R.I.H. and S.M.D. v. Denmark*, Views adopted on 13 July 2017, para. 8.6.

⁵² *Ibid.*, and Communication No. 2569/2015, *Issa and Khalifa v. Denmark*, Views adopted on 28 October 2016, para. 8.6 (deportation to Bulgaria).

Annex :

Individual Opinion of Mr. José Santos Pais and Mauro Politi (dissenting)

1. We regret not being able to share the decision reached by the majority of the Committee, that the removal of the authors and their three children to Bulgaria will not violate their rights under article 7 of the Covenant.
2. In the present case, both the authors and their children had a most traumatic experience when entering Bulgaria in 2013 (see para. 2.2), where they were detained, subject to hunger, harassment and degrading treatment and the authors were even forced to resort to a hunger strike in order to be released. They were then moved to a refugee camp, where they could not move freely due to the overwhelming presence and fear of the police, which allegedly beat one of the authors' child repeatedly (see para. 2.3). One of the authors even witnessed the murder of an Iraqi person and was harassed by Bulgarian nationals because he was a foreigner (see para. 2.5).
3. The authors, as a result, experience now increased symptoms of post-traumatic stress disorder (PTSD) and both of them receive medical treatment for several ailments (high blood pressure, heart condition, problems with metabolism and a herniated disc). The authors' children, already deeply scarred and traumatized by the civil war in Syria, have also been seriously affected by their experience in Bulgaria. One of them has even undergone extensive psychological assistance to overcome the trauma he has consequently suffered (see para. 2.7). The State party acknowledged all these allegations (see para. 2.8).
4. And now, the authors and their children will have to move again from Denmark to Bulgaria, the third change of countries in a very short period of time.
5. It is doubtful whether the authors and particularly their children, besides facing difficult economic and social conditions upon their return to Bulgaria, will be guaranteed access in practice to the medical assistance they, and especially their children, so desperately need. Not to mention that, vulnerable as they already are, they will all certainly be exposed to homelessness, destitution and lack of personal safety. Moreover, the children will face difficult integration conditions, especially in regard to access to education, as rightly acknowledged by the UNHCR (see para. 3.2).
6. It does not seem, on the other hand, the State party has given sufficient weight to the real and personal risk the authors and their children will face, once deported.¹ 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 should have been based not only on the assessment of the general conditions in the receiving country, but also on the individual circumstances of the persons in question. And these circumstances include vulnerability-increasing factors relating to such persons, as in the present case, which may transform a general situation that is tolerable for most removed individuals to intolerable for some other individuals.
7. The evaluation by the State party should also have taken into account elements from the past experience of the authors and their children in Bulgaria, which indeed underscore the special risks they are likely to be facing and will render their return to this country a particularly traumatic, and unfortunately renewed experience, for them.²
8. Finally, the assessment by the State party failed to take duly into account the protection of the best interest of the authors' children, which should have been of paramount importance in the present case.

9. Therefore, in our view, the removal of the authors and their children to Bulgaria constitutes a violation of article 7 of the Covenant by the State party.

¹ See for example, Communications No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, paras. 11.2 and 11.4; and No. 2409/2014, *Abdilafr Abubakar Ali et. al. v. Denmark*, Views adopted on 29 March 2016, para. 7.8.

² Communication No. 2681/2015, *Y.A.A. and F.H.M. v. Denmark*, Views adopted on 10 March

Efterbehandling udtalelse fra komité

1. Journaliser mailen i EstherH ✓

2. Orienter oprindelige nævn + HBA → Gul mappe ✓
(anvend skabelon fra K-drev) + (oprindelige nævn kan ses på dagsordenen)

3. Udrejsefrist:

- Hvis ej kritik/inadmissible: ny udrejsefrist skal fastsættes
(Skabelon på k-drev)
 - Skal oprettes som delafgørelse (udrejsefrist ej udsat)
 - Forkyndelse kan først opdateres ved modtagelse af forkyndelsesrapport
 - Vær OBS på om foreløbige foranstaltninger er opløst, eller ej nedlagt eller om ansøgeren er udrejst → her fastsættes ej udrejsefrist.
- Hvis kritik: sagen skal drøftes med Stig, evt. genoptages.

4. Ændre tilstand i EstherH/Opdater afgørelse:

(Udfald: udtalelse fra int. Organ, % lovn., udfyld dato for udtalelsen)

5. Lukke sagen

→ enten når forkyndelsesrapport er kommet (hvis afventes) ellers når gul mappe er afsendt.

6. Udtalelse på hjemmeside som nyhed

- Kritik: tal med Stig om indhold inden
- Ej kritik: skal blot godkendes af Stig.
- Se eksempler i egen MR-mappe + mail fra Ninna
- Anonymiser udtalelse i hånden og scan ind
- Anonymiser nævnets præmisser i word dok. (husk overskrift)
- Filerne vedhæftes mail som sendes til Anders, Rasmus og Morten

7. Notat over verserende sager (10/04468)

- Sagen skal rykkes fra verserende sager til afsluttede sager (vær obs på at benytte korrekte notater)
- Evt. vente med at rykke sagen hvis kritik

8. Evt. lave udkast til årsberetningen.

→ Se skabelon i min egen MR-mappe