



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Views adopted by the Committee under article 5 (4) of the  
Optional Protocol, concerning communication No. 2253/2013\*\***

<i>Submitted by:</i>	A.P.J. (represented by counsel)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Denmark
<i>Date of communication:</i>	10 June 2013 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 12 June 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	16 March 2017
<i>Subject matter:</i>	Torture, cruel, inhuman or degrading treatment or punishment; deportation to Iran; freedom of expression and equality before the law
<i>Procedural issues:</i>	Lack of substantiation
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment or punishment;
<i>Articles of the Covenant:</i>	7, 19 and 26
<i>Articles of the Optional Protocol:</i>	2

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

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

1.1 The author of the communication is Mr. A.P.J, an Iranian national born on — October 1981. He claims that his deportation to Iran by Denmark would constitute a violation of articles 7, 19, and 26 of the International Covenant on Civil and Political Rights (Covenant). He is represented by counsel, Ms. Marianne Volund. The Optional Protocol entered into force for the State Party on 6 January 1972.

1.2 On 12 June 2013, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures.

1.3 The author was deported to Iran on — June 2013. He was escorted to the airport in Teheran. After having received the author's expired Iranian passport and a copy of the author's Iranian proof of nationality, the Iranian authorities accepted taking back the author.

#### **Factual background**

2.1 The author and his parents are ethnic Kurds and Sunni Mulsim. The author's parents fled Iran to Iraq where he was born, in the Al Tash camp in Romadiéh. They returned to Iran when the author was 11 years old. They lived in Sare Pole Zahab where the author attended school for about 4 years. He states that he cannot read or write in Farsi or Kurdish. He alleges that he has not been member of any Kurdish organization, but that his brother was an active member of the Democratic Party of Iranian Kurdistan (KDPI).

2.2 The author claims that in 2008, he started helping a friend, A.M., who distributed medication smuggled to Iran from Iraq. He was contacted by A.M. because the author's family owned land in a village in the border, and they had a card allowing them to get into town without being controlled. The author helped to transport the medication about 15 times. However, the last two times he did so, he found out that his friend also transported political material from the KDPI.

2.3 On — October 2008, Iranian authorities searched the author's house asking for him. He was absent, as he was visiting a friend living in the same town. In order to avoid being arrested, the author went to hide in his cousin's garage. While he was hiding, his brother came to visit and informed him that their father was arrested by the intelligence service. After hearing this news, the author decided to leave Iran and went to Turkey with the help of an agent.<sup>1</sup> He claims that he bribed the authorities to have a stamp in his passport without being registered in the computer system. The author indicates that on his way to Denmark, he had been arrested in Greece, Germany and in Italy, where his fingerprints were taken. He also states that the agent told him not to tell the Danish authorities his real departure date from Iran, appearing in his passport. He claims that he followed the agent's instructions, as he feared for his life and because his passport was taken from him by the agent while they were in Turkey.<sup>2</sup>

2.4 The author submits that after his departure, his father was questioned a couple of times and was taken once to the police station to be questioned about his whereabouts. He also indicates that his brother has informed him that the authorities had asked for him for about one month after his departure and that he has been told that his friend, A.M., had

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<sup>1</sup> The author first stated to the Danish authorities that he left Iran on around — February 2009. However, the RAB points out in its decision that according to the stamp on his passport, the author left Iran on — October 2008.

<sup>2</sup> The State party has indicated that the author has entered Denmark without any valid travel documents. However, his passport was later forwarded to an address in Denmark and was confiscated by the Danish authorities.

been arrested just before the authorities checked his house, in October 2008.<sup>3</sup> The author also claims that his brother has advised him not to return home, as he risks being arrested.

2.5 On — March 2009, the author arrived to Denmark. Since he is illiterate, he was unable to make a written asylum application. The Police interviewed him on — March, — May, and — June 2009. On — November 2009, he also held an interview with the Immigration Service. The author further submits that while in Denmark, he participated in several demonstrations in front of the Iranian Embassy against the Iranian authorities, in particular in 2012 and 2013, including a hunger strike in May and June 2012. He indicates that there is information of public access in Youtube and a common Facebook profile where he appears with posters against the Iranian government. Moreover, he indicates that during the hunger strike, he criticized the Iranian regime in a film that has been shown in Iran. He indicates that the criticism to the Iranian regime has been cut off the film and that it has become a propaganda film in favour of the Iranian government. He further claims that given that the film's director is pro-regime, it is likely that he has provided the whole film to the Iranian authorities, containing the author's interview in which he criticises the government.

2.6 On — November 2009, the Immigration Service rejected the author's asylum request. The author appealed this decision to the Refugee Appeals Board (RAB). On — April 2010, the RAB rejected the author's appeal. It found that the fact that the author had provided a false date of departure from Iran weakened his credibility and noted that the author has also provided contradictory information regarding the date of the arrest of his friend A.M.<sup>4</sup> In addition, it considered the author's statement about the illegal smuggling of goods and KDPI material not convincing, as he should have been aware of the danger of smuggling KDPI leaflets and despite this, he agreed to continue doing so; although he has specifically indicated to the Danish authorities that he has never been politically active. The RAB also found "remarkable" that the author has not sought to obtain more information about the situation of his friend A.M. after his detention, including if he has been sentenced, taking into account that A.M.'s arrest is a crucial element of the author's asylum application. Further, the RAB noted that the general condition regarding Kurds in Iran could not justify in itself an asylum request.

2.7 The author requested to reopen his asylum proceedings in August 2010<sup>5</sup> and sent further information to the RAB in August 2012.<sup>6</sup> He indicated that he had been unable to present his asylum case adequately, as he had been under pressure and "mentally uncomfortable" during the interviews with the immigration authorities due to the events he had been exposed to in Iran and to the threats received from the smugglers during his trip to Denmark. As a result, he ended up mixing details and dates in his account. The author has also provided the RAB with a summons ordering him to appear before the 6<sup>th</sup> Division of the District Court on — November 2008 on the occasion of his "case" before the Court. The author reiterated his allegations regarding the risk he would be exposed to if returned to Iran, adding that due to his participation in a hunger strike criticizing the Iranian regime and

<sup>3</sup> In the RAB's decision it is stated that the author had affirmed to the Danish Police on — May 2009, that his friend A. M. was arrested on around — February 2009. The RAB's decision also indicates that in a different interview with the Danish Police held on — November 2009, the author affirmed that A.M. was arrested on — November 2008. When asked about this contradiction, he stated that he mixed up the dates mixed up. The RAB decision also indicates that when asked about his friend A. M., the author stated that he believed he was still detained, but that he did not know if he had been charged or convicted.

<sup>4</sup> See footnotes 1 and 2

<sup>5</sup> The author did not provide a copy of his request to reopen the asylum proceedings.

<sup>6</sup> The author sent a letter to the RAB about his participation in the hunger strike held in May 2012.

against the situation of immigrants in Denmark, held in May 2012, the risk for him in Iran had increased, given that photos of it had been widely circulated on Facebook. The author also indicated that the names of those participating in the hunger strike had been included in a black list by Iranian authorities, and that their families have been subjected to harassment by the Iranian Ministry of Intelligence.

2.8 On January 2013, the RAB rejected the author's request to reopen his asylum proceedings, as it considered that no new substantial information had been submitted by the author.<sup>7</sup> It further indicated that no evidential weight could be attached to the summons submitted by the author, as it was served on — November 2008, after his departure from Iran. The RAB recalled that when the author was asked by the Danish immigration authorities if the Iranian authorities had delivered any summons to him after his departure, he replied negatively. In addition, he did not explain how he came into possession of the mentioned document or why he did not submit it earlier to the State party's authorities, taking into account that it dates from 2008. The RAB also considered that the author's allegations regarding his mental state when was interviewed by the Danish Police, could not change the assessment of his credibility, as his statements during the asylum proceedings were unlikely, incoherent and inconsistent. With regards to the hunger strike, the RAB stated that the author had not rendered probable any risk of persecution in Iran, as he did not provide any information indicating that he made any statements to the press, or any other declaration in relation to such event that could have exposed him to a risk upon return. In addition, he did not provide any evidence corroborating his allegation that the families of the hunger strikers were subjected to harassment by the Iranian intelligence.

### The complaint

3.1 The author alleges that his deportation to Iran will put him at risk of inhuman and degrading treatment, in violation of article 7 of the Covenant. He claims that the Iranian authorities are aware of his activities against the Iranian government in Denmark, since the information concerning such activities, including the hunger strike, are available in Youtube and Facebook. Should the Iranian authorities not already have knowledge of the author's Facebook account, there is a high risk that they will get access to it if he is removed to Iran.<sup>8</sup> In addition, it is well known that the Iranian authorities film the demonstrations in front of their Embassies and that they monitor the internet. Therefore, he submits that, given his participation in several demonstrations in front the Iranian Embassy in Denmark, he would be at risk of ill treatment or torture, if deported to Iran.<sup>9</sup>

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<sup>7</sup> A copy of the decision has been provided by the State party.

<sup>8</sup> The author refers to a report by the UK Home Office, "Iran country of origin information report", January 2013. According to this report the Wall Street Journal reported in 2009 that "Iran has been conducting a campaign of harassing and intimidating members of its diaspora world-wide – not just prominent dissidents – who criticize the regime (...). Part of the effort involves tracking the Facebook, Twitter and YouTube activity of Iranians around the world, and identifying them at opposition protests abroad, these people say". The report further indicates that "dozens of individuals in the U.S. and Europe who criticized Iran on Facebook or Twitter said their relatives back in Iran were questioned or temporarily detained because of their postings, and that interviewees who travelled to Iran said they were forced by police at Tehran's airport to log in to their Facebook accounts. Several reported having their passports confiscated because of harsh criticism they had posted online about the way the Iranian government had handled its controversial elections earlier this year [June 2009]".

<sup>9</sup> The author refers to Reporters without Borders, *Enemies of the internet Iran 2011*, 2011, available at [https://www.ecoi.net/local\\_link/156365/273147\\_de.html](https://www.ecoi.net/local_link/156365/273147_de.html). According to this report: "In January 2011, the authorities finished setting up the first Iranian cyberpolice to strengthen their control of the Internet. On 20 May 2010, Ebrahim Jabari, an Islamic Revolutionary Guard Corps (IRGC)

3.2 The author further claims that, as he does not have a valid passport,<sup>10</sup> he would be exposed to further risk of violation of article 7 upon return to Iran. He claims that Iranians who return without a passport or any valid travel document are arrested and brought to a special court located at the airport in Teheran. The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, and their connection with any organisation or groups and any other circumstances.<sup>11</sup> Taking into account that this procedure is applied to people who are deported to Iran not in possession of a passport containing an exit visa,<sup>12</sup> and the author's background: a person of Kurdish origin who has carried out illegal activities before his departure from Iran – smuggling of KDPI material into Iran- and his political activities against the Iranian government while in Denmark, he states that he would be exposed to further risk of persecution.<sup>13</sup>

3.3 The author also claims that the State party would violate article 19 of the Covenant, as if returned to Iran, he would not be able to express his sympathy for Kurdish political parties and freely express his opinions, breaching his right to freedom of expression. In addition, the author fears that his right to live free of discrimination established by article 26 of the Covenant would also be violated, given the situation of Kurds in this country and taking into account his political support to Kurdish organizations.

#### State Party's observations

4.1 On — December 2013, 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, as a result of his deportation to Iran.

4.2 The State party describes the structure, composition and functioning of RAB,<sup>14</sup> as well as the legislation applying to asylum proceedings.<sup>15</sup> 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

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commander, officially confirmed the creation of an Iranian "Cyber Army" which has already cracked down on online networks deemed "destructive," and arrested hundreds of citizens". He also refers to the 2013 report by the UK Home Office mentioned above, according to which "A Times article dated 11 July 2009 reported that there had been protests outside the Iranian Embassy in London. The article observed: from the rooftop of the Iranian Embassy in London an unmanned video camera records the faces of the angry crowd gathered in Knightsbridge (...)"

<sup>10</sup> The author indicates that the Iranian Embassy in Denmark has for many years not been willing to issue travel documents to Iranian citizens who are not leaving Denmark voluntarily. Therefore, he would not have a valid travel document in case he is removed to Iran.

<sup>11</sup> The author refers to the 2013 UK Home Office report mentioned above, page 260.

<sup>12</sup> Ibid.

<sup>13</sup> The author refers to the report of the Danish Immigration Service, the Norwegian LANDINFO and the Danish Refugee Council, On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures, 9 November to 20 November 2012 and 8 January to 9 January 2013, according to which there is no information available regarding the situation of deportees in Iran, as International Organisation for Migration (IOM) only deals with persons who have voluntarily returned to Iran. Available at <https://www.nyidanmark.dk/nr/rdonlyres/a8c2c897-1ca9-49d1-ba32-ec3e599d646d/0/iranendeligudgave.pdf>.

<sup>14</sup> See Communication 2379/2014, Ms \_\_\_\_\_ v. Denmark, Views adopted on 8 July 2016, paras. 4.1-4.3.

<sup>15</sup> The State party refers to sections 7 (1), 7 (2), 31 (1) and 31 (2) of the Aliens Act.

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 article 7 of the Covenant, as he has not substantiated that he has faced any risk or danger after his deportation to Iran; therefore his allegations under this provision should be considered ill-founded. Regarding his allegations under article 19, the State party refers to the author's statement that State parties are obliged to not deport persons who are in risk of deprivation of their rights, including their freedom of expression which entails the possibility of sympathizing with and expressing the views of Kurdish political parties. The State party indicates that beside such statement, the author has not elaborated on how his freedom of expression has been or would be violated by his deportation to Iran, and thus these allegations should be considered inadmissible for lack of substantiation. As for the author's allegations under article 26 of the Covenant, the State party refers to the author's statement that with his deportation to Iran, his right to live as a Kurd without discrimination has been violated. The State party points out that the author has not elaborated further this statement and requests that it is considered inadmissible for lack of substantiation.

4.4 The State party further indicates that the Committee is not competent to review the author's allegations under articles 19 and 26, as it would imply an extraterritorial application of the Covenant, given that such violations would not take place in Denmark or in any territory under the effective control of Danish authorities, but in Iran. The State party refers to several decisions by the European Court of Human Rights (ECHR) which has applied extraterritorial effect with respect of articles 2 –right to life- and 3- prohibition of torture- of the European Convention of Human Rights,<sup>16</sup> based on the fundamental importance of these provisions. However, the State party points out that the Court has also stated that “it cannot be required that an expelling Contracting State only return an alien to a country which is in full and effective enforcement of all the rights and freedoms set out in the Convention”.<sup>17</sup> The State party considers that a similar reasoning can be applied in the present case, and recalls that article 1 of the Optional Protocol and Rule 96(a) of the Rules of Procedure establish that the Committee has competence to consider communications from individuals who are subject to the jurisdiction of a State party and who claim to be victims of a violation of any of the rights contained in the Covenant by that State party. Although the Committee has found on a number of occasions that deportations of persons by a State party to other States would result in a foreseeable breach of their right to life or to their freedom of torture as established by articles 6 and 7 of the Covenant, it has never considered a complaint on its merits regarding the deportation of a person who feared a violation of other provisions than articles 6 and 7 of the Covenant in the receiving State. Thus, extraditing, deporting, expelling or removing a person in fear of having his rights under articles 19 and 26 violated by another State party will not cause an irreparable harm as required by the Committee's jurisprudence<sup>18</sup> and the State party therefore requests that

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<sup>16</sup> The State party refers to European Court of Human Rights, Application 14038/88, *Soering v. United Kingdom*, 7 July 1989; Application 27034/05, *Z and T v. United Kingdom*, 28 February 2006.

<sup>17</sup> European Court of Human Rights, Application 17341/03, *F. v. United Kingdom*, 22 June 2004

<sup>18</sup> The State party refers to paragraph 12 of the Committee's General Comment 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, para. 12, which states that “[...] the article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation 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 articles

this part of the communication is declared inadmissible *ratione loci* and *ratione materiae* pursuant to Rule 96(d) of the Rules of Procedure read together with Rule 96(a) and article 2 of the Optional Protocol.

4.5 Regarding the merits of the communication, the State party submits that the author has failed to establish that his return to Iran constitutes a violation of articles 7, 19 and 26 of the Covenant. Regarding article 7, the State party indicates that its obligations under such provision are reflected in Section 7(2) of the Aliens Act which establishes that a permit will be issued to an alien if he or she risks death penalty or torture or ill-treatment in his/her country of origin. The State party recalls that the author alleged that he would be at risk of a breach of article 7 of the Covenant if returned to his country because he was involved in smuggling medicine and KDPI political material from Iraq to Iran and he participated in several demonstrations against the Iranian government while in Denmark, including a hunger strike which was broadly disseminated through Facebook and a film which has been showed in Iran. The author also feared being returned to Iran without a valid travel document.

4.6 The State party indicates that the RAB made a comprehensive and thorough examination of the evidence submitted by the author. It considers that he is trying to use the Committee as an appellate body to have the factual circumstances of his asylum application reassessed. The State party submits that the Committee must give considerable weight to the RAB's findings, as it is better placed to assess the facts in the author's case. The State party recalls that the RAB considered that the credibility of the author was weakened by contradictory information provided during his asylum proceedings, in particular regarding his departure date from Iran and the date of the arrest of his friend A.M. In addition, the RAB took into account that he stated that he did not consider himself as politically active and that he left Iran on his authentic passport.

4.7 The State party submits that both RAB's decisions of— April 2010 and— March 2013 were taken after a thorough review of the author's claims, the evidence he submitted, and in accordance with domestic legislation. It further indicates that it agrees with the RAB in so far as it did not attach any evidential weight to the summons submitted by the author when he requested the reopening of his case,<sup>19</sup> as he did not explain why he submitted this document so late in the proceedings. Furthermore, he did not provide a satisfactory explanation regarding the summons' date — November 2008, after he left Iran-, and did not explain why he did not mention it in his statement before the RAB when he was asked on the matter. The State party further highlights that the author has not rendered probable that he would be subjected to persecution in Iran due to his participation in the hunger strike held in May 2012 in Denmark. It submits that nothing proves that the author was exposed to the press or that he stood out to any particular degree, as he did not appear to be particularly exposed in any of the pictures of the hunger strike that the RAB has had access to.

4.8 The State party further indicates that the RAB has included all relevant information in its decisions and considers that the author has not provided any additional information or evidence to the Committee rendering it probable that his rights under article 7 of the Covenant may be violated. Regarding the author's statement to the Committee that he was interviewed by a film director in connection with his participation in demonstrations against the Iranian government and in the hunger strike held in May 2012 and that the film has been shown in Iranian TV, the State party indicates that the author never mentioned this

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6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed". Available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en).

<sup>19</sup> See para. 2.7.

interview during the asylum proceedings, that this information is solely based on his statements and that he has not provided any satisfactory explanation of why he did not mention this to the Danish authorities. Therefore, the State party submits that this information cannot be considered as a fact.

4.9 The State party concludes that the author has not rendered probable that his participation in the demonstrations and the hunger strike while in Denmark reflect an in-depth political interest, taking into account that he had previously stated that he was not politically active.<sup>20</sup> Consequently, it considers that the author has not been exposed as an opponent to the Iranian government, and therefore, he would not be exposed to any risk in his country of origin. The State party further reiterates that the alleged violations of articles 19 and 26 of the Covenant have not been substantiated.

#### **Author's comments on the State Party's observations**

5.1 On February 2014, the author submitted his comments on the State Party's observations. The author indicates that when he arrived to Teheran's airport after being deported from Denmark, on June 2013, he was first questioned by the passports office and then by the police. He was asked about where he had been, who he had been in contact with, and if he had political activities while he was abroad. He claims that he was specifically asked if he participated in the "Danish hunger strike" and if he knew who joined such hunger strike. He denied everything. He also indicates that before being deported, he injured himself to try to avoid the deportation and that once in Iran, he was also questioned about his injuries. The author also claims that he was asked why he did not request a prolongation of his passport before it expired, and indicates that the fact that he was born in Iraq was "causing some problems", as there were discussions if he should be deported to Iraq. He states that after the questioning, he was detained for three days and then released. The police kept his passport and he was told that he should return to the passport office for further questioning and to recover his passport.

5.2 In October 2013, as instructed, the author went to the passport office in Teheran. He was asked to fill a questionnaire with questions similar to those he was asked when he arrived. He was also asked to indicate how he left Iran and to provide information on who helped him to leave the country. He was detained for 48 hours, his passport was not returned to him and he was informed that the authorities were analysing his situation and that consequently, he could not leave the country. He was instructed to stay only in the Kermanshah area. The author further claims that intelligence officers were present during the interrogations. After the questioning, he went back to his grandparents' house in the village of \_\_\_\_\_, where he is hiding and looking for a way out of the country, as he is afraid that the authorities would find out that he has criticized the Iranian government during his interview with the film director.

5.3 The author further submits that other Iranian asylum seekers who have been interviewed for the film have been granted refugee status in Denmark on the grounds of their participation in it.<sup>21</sup>

#### **Further submissions by the State party**

6.1 On 24 June 2014, the State party provided further observations to the Committee. It refers to the author's allegation that his participation in the interview with the film director would enhance the risk he would be exposed to in Iran, as well as to the author's allegation that in a decision of a similar case, the RAB granted refugee status to another asylum seeker who also gave an interview for the film in question. The State party indicates that the

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<sup>20</sup> Ibid.

<sup>21</sup> The author provides a decision of the RAB dated November 2013 and a partial unofficial translation of it. See footnote 24.



circumstances of the case of the other asylum seeker were very different from those in the author's case. For example, in the other case, the asylum seeker had been politically active in Iran and in Denmark, as opposed to the author's case, and therefore the RAB considered it a fact that the asylum seeker had been taking part in different activities in Denmark where he had been criticizing the Iranian regime to some extent. Moreover, the majority of the RAB attached weight to the fact that the asylum seeker had been interviewed for the mentioned film and considered a fact that it had been shown on Iranian TV, where it came across as a propaganda film for the Iranian government. Therefore, the RAB considered that the asylum seeker had rendered probable that he would be exposed to a risk if returned to Iran, as it was possible that the film had been exposed to the Iranian authorities. The RAB, taking into account this background and considering the fact that the asylum seeker had left Iran illegally, found that the asylum seeker would be at risk of persecution if returned to Iran.<sup>22</sup>

6.2 The State party further reiterates that the RAB takes its decisions on the basis of a specific and individual assessment of the applicant's asylum grounds combined with its background knowledge on the general situation in Iran and the specific details of the case. Therefore, it maintains that there is no basis for doubting the assessment made by the RAB in its decisions of—April 2010 and— March 2013 which considered that the author had not established that there were substantial grounds for believing that his life is in danger or that he faces a risk of torture or ill treatment in Iran. Furthermore, the State party notes that from the information provided by the author's counsel, it does not appear that he has been subjected to torture or ill treatment after being returned to Iran.

6.3 The State party therefore reiterates that the communication should be declared inadmissible as it is manifestly ill-founded. It also reiterates that the author's allegations under articles 19 and 26 are inadmissible *ratione loci* and *ratione materiae*. The State party further indicates that if the Committee finds the communication admissible, it should declare it as not substantiated on the merits, as the author has not established that there are substantial grounds for believing that his return to Iran constituted a violation of articles 7, 19 and 26 of the Covenant.

#### Further submissions by the author

7.1 On— August 2014, the author's counsel submitted further comments to the State party's observations. The counsel informed that in the case similar to the author's , in which the RAB granted refugee status to another asylum seeker who was also interviewed in the film referred to previously –RAB's decision of — November 2013-<sup>23</sup> the RAB had rejected the asylum seeker's initial application, as it did not consider that he had been politically active in Iran. The RAB had also rejected two reopening requests made by the same asylum seeker, on —October 2008 and on — March 2012; and only after the third reopening request on grounds of the political activities of the asylum seeker in Denmark, the RAB had granted him refugee status. Counsel indicates that in the third reopening request, the asylum seeker did not submit new information on his political activities in Iran and that during the hearing held on — November 2013, the asylum seeker was only asked about his political activities in Denmark.<sup>24</sup> Therefore, counsel considers that the RAB based its decision on the

<sup>22</sup> See footnotes 21 and 24.

<sup>23</sup> See paras. 5.3 and 6.1.

<sup>24</sup> The author provides a full unofficial translation of the RAB's decision dated —November 2013. The decision indicates that the applicant alleged that in Iran, he was a member of a forbidden political party, the \_\_\_\_\_, for three years; and that he had carried out several political activities while in Denmark, including being the spokesperson of those doing the hunger strike and that he had participated in demonstrations, interviews and exposing articles. The applicant also alleged that he feared that the Iranian authorities would recognize him because he had been filmed beating a police officer before leaving Iran. Moreover, he feared that the authorities would recognize

asylum seeker's political activities in Denmark, and not on those in Iran, contrary to what the State party states in its observations. Counsel further submits that it appears clearly from the RAB's decision in the referred case, that the main reason why the asylum seeker was granted refugee status was his interview for the film, and not his other activities in Denmark, including his role as spokesperson of the hunger strikers.

7.2 The author's counsel further reiterates that the author could also be considered as politically active both in Iran and Denmark, as he had participated in the smuggling of KDPI material from Iraq to Iran, and while in Denmark, he participated in demonstrations and took part in a hunger strike against the Iranian regime, during which pictures of him were taken and disseminated through his Facebook profile. In addition, like the other hunger strikers, the author gave an interview for the film mentioned above, in which he introduced himself with his name and criticized the Iranian government. Counsel further reiterates that after giving the interview, the author learnt that the film was a propaganda film for the Iranian regime, that it had been shown in Iranian TV, and that the parts in which the hunger strikers appeared to be criticizing the government were cut off. Counsel indicates that the author fears that given that the film director supports the Iranian government, he may have provided a full version of the film to the Iranian authorities. Counsel also reiterates that the RAB has considered the participation in this film as a risk for other asylum seekers who have participated in it and has granted refugee status to at least two of them.<sup>25</sup> Furthermore, counsel indicates that the fact that the author has not been

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him, because he appeared in pictures participating in political activities in Denmark which had been showed in the Iranian media. The RAB's decision refers to a "videosequence" and a radio interview in which the applicant criticized the Danish refugee system and the Iranian government, and mentions that the asylum seeker had been interviewed by an Iranian born film director residing in Germany, who was filming a documentary on asylum seekers in Denmark. The RAB further indicates that it had access to a clip in which it appears that the film had been showed in Iranian national TV, and it found that the asylum seeker had credibly explained his participation in the film and the views he expressed in it, as well as the fact that it appeared that the film was edited in a way that it became a propaganda film for the Iranian government. The RAB found probable that the asylum seeker could be exposed to a risk if returned to Iran, given his participation in the film in conjuncture with his illegal departure from Iran, and considered that the asylum seeker could be questioned by the Iranian authorities on the assumption that his departure, long absence and participation in the film could reflect a critical attitude towards the Iranian government. Therefore, the RAB granted him refugee status.

<sup>25</sup> The author provides another decision of the RAB dated March 2014 and a partial unofficial translation of it. In this case, the asylum seeker claimed that he feared persecution if returned to Iran, because of his activities supporting the KDPI since 2006. In addition, he had brought food to the peshmerga in the mountains four times and had been imprisoned for 6 days in 2008. The asylum seeker left Iran after the authorities came to his family's tent and arrested his uncle. After the asylum seeker left, the authorities came to look for him at least once. The asylum seeker also alleged that he feared persecution in Iran because of his political activities in Denmark, where he continued to support the KDPI, by participating in demonstrations and in the hunger strike held in May 2012. The asylum seeker indicated that a picture of him while he was doing the hunger strike, was published in the Iranian media. Moreover, he claimed that he gave an interview to a film director in which he criticized the Iranian government. Thereafter, he learnt that the film had been shown in Iran and that the sections in which the persons interviewed were criticizing the Iranian regime, were cut off. The asylum seeker claimed before the RAB that he feared that the film director, who appeared to be in favour of the Iranian government, had provided the Iranian secret service with a full version of the film. The asylum seeker further claimed that he also feared persecution because he became Christian while in Denmark. The RAB found that the applicant's explanation about the creation and distribution of the film could not be objected and therefore considered that it could not be rejected that the Iranian authorities knew the applicant's identity and were aware of his views against the Iranian government. In addition, the RAB considered that the author explained in a coherent way his other political activities in Denmark, and found credible that the author had anti-government pictures on his Facebook profile. The RAB also considered that the author had coherently explained the

subjected to torture or ill treatment after his return to Iran, does not mean that he would not be subjected to it in the future.

7.3 The author's counsel also informs that she has not been able to communicate with the author since February 2014. By then, he informed her that he had been questioned by the Iranian authorities twice, that his passport was still confiscated and that he was not allowed to leave the Kermanshah area. The counsel claims that this could mean that the author is still under investigation by the Iranian authorities and therefore, considers that there is still a risk that they will find out that he gave an interview for the film criticizing the Iranian government. Counsel further indicates that by February 2014, the author was still hiding in his grandparent's house in Pabli village, but she indicates that she does not know if he still there, if he has left the country or if he has been arrested.

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

8.1 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.

8.2 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.

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

8.4 The Committee further notes the State party's objection to the admissibility of the communication regarding the author's allegations that his rights under articles 19 and 26 of the Covenant would be breached because of his removal to Iran, as such allegations have not been substantiated. The Committee notes the author's allegations that his freedom of expression, as established by article 19 of the Covenant, would be violated by his removal to Iran, as he would not be able to express his sympathy for Kurdish political parties and freely express his opinions. The Committee also notes the author's allegation that his removal to Iran would violate his right to live free of discrimination as established by article 26 of the Covenant, given the situation of Kurds in this country, and taking into account his political support to Kurdish organizations. The Committee notes that the author has not provided any further information or evidence on how his rights under articles 19 and 26 of the Covenant have been or would be violated by the State party through his removal to Iran in a manner that would give rise to an irreparable harm such as that contemplated under articles 6 and 7 of the Covenant.<sup>26</sup> Accordingly, the Committee concludes that in the circumstances of the present case, the author's allegations under articles 19 and 26 of the Covenant are incompatible with the provisions of the Covenant and declares them inadmissible under article 3 of the Optional Protocol.

8.5 The Committee also notes the State party's challenge to the admissibility of the communication on the ground that the author's claim under article 7 of the Covenant is unsubstantiated. It further notes that according to the author, his removal to Iran would

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circumstances of his conversion to Christianity. Therefore, the RAB, after doing an overall assessment of the author's claims, decided to grant him refugee status.

<sup>26</sup> See General Comment 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, para. 12.

violate his rights under article 7 of the Covenant. In this connection, he submits that he still faces a risk of torture or ill-treatment there because of the illegal activities he carried out before his departure from Iran, when he smuggled KDPI materials from Iraq; when he participated in several protests against the Iranian regime while in Denmark, including a hunger strike and an interview for a film in which he criticized the Iranian authorities; and because he is a failed asylum seeker and has been returned to Iran without a passport or any valid travel document. In view thereof, the Committee considers that the author has sufficiently substantiated his allegations under article 7 of the Covenant for the purpose of admissibility.

*Consideration of the merits*

9.1 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, paragraph 1, of the Optional Protocol.

9.2 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.<sup>27</sup> The Committee has also indicated that the risk must be personal<sup>28</sup> and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>29</sup>

9.3 The Committee recalls its jurisprudence that significant weight should be given to the assessment conducted by the State party, and that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.<sup>30</sup>

9.4 The Committee notes the author's claim that the State party failed to take into account that he faces a risk of being subjected to torture or ill treatment because of his deportation to Iran, as he is an ethnic Kurdish, who carried out illegal activities before his departure from Iran – smuggling KDPI's material into Iran- and because of his political activities against the Iranian government while in Denmark, in particular his participation in demonstrations against the Iranian government and in a hunger strike held in May 2012. The Committee also notes the State party's argument that the RAB has made a comprehensive and thorough examination of the evidence submitted by the author and considered that he was not credible, as he provided contradictory information regarding his departure from Iran; and also considered that his activities while in Denmark would not expose him to a risk upon return, as he did not demonstrate that he was exposed to the press or that he stood out to any particular degree, as he did not appear to be particularly exposed in any of the pictures of the hunger strike that the domestic authorities had access to. The Committee further takes note of the State party's argument that the Committee must give considerable weight to the domestic authorities' findings, specifically the RAB, as it is better placed to assess the facts in the author's case. The Committee observes that the

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<sup>27</sup> See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

<sup>28</sup> See, inter alia, Communications No. 2280/2013, *Y. v. Canada*, Views adopted on 22 July 2015, para. 7.2, No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.2; No.2314/2013.

<sup>29</sup> See *Y v. Canada*, para. 7.2, *X v. Denmark*, para. 9.2; communication No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>30</sup> See, inter alia, *Y v. Canada*, 2280/2013, Views adopted on 22 July 2015, para. 7.5, *Rasappu v. Canada*, 2258/2013, Views adopted on 4 November 2015, para. 7.3, *X v. Canada*, para. 9.3

author has not pointed to any procedural irregularities in the decision-making procedure by the Danish Immigration Service or the RAB. Nor has he demonstrated that the decision to return him to Iran was manifestly unreasonable or arbitrary in nature.

9.5 The Committee further notes the author's allegation that the interview he gave to a film director in which he criticized the Iranian authorities, would enhance the risk he is exposed to in so far as the film director supports the Iranian government, and he may therefore have provided the authorities with a full copy of the film in which the author identified himself and expressed anti-government views. The Committee also takes note of the author's allegation that the RAB has granted refugee status to other asylum seekers who also appeared in that film and that such participation was considered by the RAB as a crucial element for deciding those cases. In this regard, the Committee notes the State party's argument that the author never mentioned this interview during the asylum proceedings, that this information is solely based on his statements and that he has not provided any satisfactory explanation of why he did not mention this to the State party's authorities. The Committee also notes that in the decisions regarding other asylum seekers who participated in the film, the RAB made an integral assessment of the personal circumstances of the applicants which differ from those of the author. The Committee therefore considers that while the author disagrees with the factual conclusions of the RAB, he has failed to show that they were arbitrary or manifestly erroneous or amounted to a denial of justice.<sup>31</sup>

9.6 In light of the above, the Committee cannot conclude that the information before it shows that the author would have faced a personal and real risk of treatment contrary to article 7 of the Covenant because of his return to Iran.

10. The Human Rights 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 author's removal to Iran did not violate his rights under article 7 of the International Covenant on Civil and Political Rights.

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<sup>31</sup> See, *inter alia*, *Y v. Denmark*, Views adopted on 22 March 2016, para. 7.6.

