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Human Rights Committee

Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2569/2015*,**

Submitted by:	B.M.I. and N. A.K. (represented by counsel, Hannah Krog)
Alleged victims:	The authors and their two minor children
State party:	Denmark
Date of communication:	6 February 2015 (initial submission)
Document references:	Decision taken pursuant to rules 92 and rule 97 of the Committee's rules of procedure, transmitted to the State party on 13 February 2015 (not issued in a document form)
Date of adoption of Views:	28 October 2016
Subject matter:	Deportation from Denmark to Bulgaria
Procedural issue:	Level of substantiation of claims
Substantive issues:	Risk of torture and ill-treatment
Article of the Covenant:	7
Article of the Optional Protocol:	2

1.1 The authors of the communication are B.M.I., born on 1 January 1982, and N.A.K., born on 1 August 1988 respectively. They submit the communication on their behalf and on

* Adopted by the Committee at its 118th session (17 October - 4 November 2016).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Sarah Cleveland, Yuji Iwasawa, Ivana Jelic, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

behalf of their two minor daughters: P., born on 9 October 2012 in Syria, and B., born on 3 July 2014 in Denmark. The authors are ethnic Kurds from Syria, of Muslim faith. The authors are subject to deportation to Bulgaria, following the rejection of their application for refugee status by the Refugee Appeals Board on 20 January 2015. They claim that their deportation to Bulgaria would amount to a violation by Denmark of their rights under article 7 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Denmark on 23 March 1976. The authors are represented by counsel, Ms. Cecilia Vejby Andersen, from the Danish Refugee Council. [1]

1.2 The communication was registered on 13 February 2015. Pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party as an 'interim measure' to refrain from deporting the authors to Bulgaria, while their case was under consideration by the Committee. On 23 February 2015, the Refugee Appeals Board (RAB) suspended the time limit for the authors' departure from Denmark until further notice in accordance with the Committee's request.

1.3 On 4 August 2015, the State party requested that the Committee review its request for interim measures in the present case as the authors allegedly failed to render it probable that, if deported to Bulgaria, they would be at risk of irreparable harm. On 15 March 2016, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, denied the State party's request to lift interim measures.

The facts as presented by the authors

2.1 On 5 November 2013, B.M.I., N.A.K. and their daughter P. fled from Syria and arrived in Bulgaria on 14 November 2013, due to the civil war in Syria. On 30 June 2014, they entered Denmark without valid travel documents and applied for asylum. As his grounds for asylum, B.M.I. referred to his fear of being called as a reservist in the Syrian military in case of his return to Syria. He also referred to the requirement made by the Syrian authorities that he works for them as an informer. The authors have not been members of any political or religious associations or organizations, and they have not been politically active in any other way. The authors have no family ties in Denmark.

2.2 When living in Syria, B.M.I. owned a cafeteria, which was frequently visited by students because of its location close to a university. In view thereof, the Syrian authorities required B.M.I. to pass information about upcoming demonstrations, which he refused. Consequently, he was detained in 2012, and in September 2013. He was also summoned to meet the authorities three or four times. As her grounds for asylum, N.A.K referred to her spouse's conflict with the Syrian authorities, and the general situation in Syria.

2.3 Upon arrival in Bulgaria, the authors were apprehended by the Bulgarian police, as they entered the country illegally, and detained at a detention facility for about 11 days. The authors were transferred to the asylum camp in Harmanli where they were handed a mattress, a pillow, and a tent. It was winter; the tent was in very bad conditions and the ground was wet. The sanitary conditions in the asylum camp were very poor, with limited access to toilets and bathing facilities. Their daughter was crying every night because she was afraid and very cold, and N.A.K. was ill. The authors stayed in the asylum camp for 2 months. The authors paid a lawyer to represent their case and to seek a residence permit in particular.

[1] Ms. Cecilia Vejby Andersen has been replaced as counsel by Ms. Hannah Krog, as of 23 October 2015.

2.4 In the asylum camp, a doctor told to N.A.K. that there was something wrong with her stomach and that she needed a thorough examination. She was told by the doctor that she could not undergo the prescribed medical examination as she had no medical insurance.

2.5 As one of the requirements to receive a residence permit is to have an address, B.M.I. went to Sofia to rent an apartment, while they continued staying in the camp. On an unknown date, the authors received a residence permit and were informed that they could not stay in the asylum camp. They did not receive a medical insurance cards, but the authorities[2] informed them that they could receive medical assistance along with the residence permit.

2.6 The authors submit that once they had received a residence permit for Bulgaria, they were expelled from the camp; and then moved to Sofia to an apartment they rented. At an unknown date, during their stay in Sofia, their daughter fell ill with high fever. They then went to the emergency receptions of three different hospitals all of which rejected them with the explanation that the hospitals did not receive refugees, and because they did not have a medical insurance card.[3] The authors therefore had to ask for help from their neighbours who took them to their own doctor.

2.7 The authors had limited financial resources and were concerned about their own economic situation, lack of access to health care and safety, while N.A.K. was then pregnant. They therefore decided to leave Bulgaria, and left on 28 June 2014. They came to Denmark only with 20 Euros. On 2 July 2014, N.A.K. gave birth in a Danish hospital, only two days after their arrival in Denmark. She was informed that her daughter was weak and that she needed to stay at the hospital for observation. N.A.K. then entered into depression and expressed a will to commit suicide on several occasions.[4] The authors submit that their eldest daughter has breathing difficulties and she is seen by a nurse every second week in Denmark.

2.8 On 14 July 2014, the Danish Immigration Service (DIS) requested the Bulgarian authorities to take the authors and their children back, in compliance with the Dublin III Regulation. On 30 July 2014, the Bulgarian authorities informed the DIS that the authors had been granted refugee status and residence in Bulgaria on 17 March 2014, and 14 April 2014, respectively. On 9 October 2014, the DIS refused asylum to the authors making reference to Bulgaria as the first country of asylum. The authors consider that, as the Dublin Regulation does not regulate the situation for people once they have been granted international protection, their asylum application should not be rejected in Denmark since the safety of their stay cannot be guaranteed in Bulgaria. On 20 January 2015, the RAB upheld the decision by the DIS denying the authors asylum in Denmark, referring to the possibility that the authors could take up residence in Bulgaria as the first safe country of asylum. The authors were ordered to leave Denmark within 15 days of the date of the RAB decision.

2.9 The authors claim that they have exhausted all available and effective domestic remedies, as the decision of the RAB of 20 January 2015 is final and cannot be appealed. The authors have not submitted their communication to any other procedure of international investigation or settlement. They contend that the RAB based its negative decision on the fact that they had received refugee status and residence permit in Bulgaria, that they did not risk *refoulement* from Bulgaria, that they could enter and reside there legally (the country of first asylum), and that they may obtain adequate socio-economic conditions there as well.

[2] No details have been provided on the authorities referred to.

[3] The authors indicated to the RAB that the female author has been mistakenly entered in the asylum registration system as a man, and that it had taken two months to have this entry system corrected.

[4] The female author has a past of suicide attempts.

The complaint

3.1 The authors claim that Denmark would violate its obligations under article 7 of the Covenant by forcibly returning them and their minor children to Bulgaria, where they would be exposed to "inhuman or degrading treatment contrary to the best interests of the child, as they face homelessness, destitution, lack of access to health care and [lack] of personal safety in Bulgaria, where they did not find any durable humanitarian solutions."[5] B.M.I. also fears for the wellbeing of his family since his wife suffers from suicidal tendencies due to depression, and he fears that she would commit a suicide if they were to be returned to Bulgaria. He also submits that their eldest daughter suffers psychological problems due to their experience in Syria and Bulgaria; that she has breathing difficulties,[6] is scared and is seen regularly by a nurse, and that they are therefore vulnerable and should be attended accordingly.

3.2 The authors also refer to the various reports by UNHCR and the Asylum Information Database (AIDA) on conditions in Bulgaria.[7] According to those reports, there is no effective integration program for persons who have been granted refugee status, or subsidiary protection in Bulgaria, and they face poverty, homelessness and limited access to health care and schooling if returned to Bulgaria. The reports also indicate that Bulgaria currently faces serious problems of xenophobic violence and harassments, and that the violent actions remain unaddressed by the authorities. This situation submits asylum seekers and refugees to serious risk of acts of racism and xenophobic violence, as they cannot effectively seek protection from the competent Bulgarian authorities.[8]

3.3 The authors refer to the Committee's General Comment no. 20 (para. 2) concerning the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, according to which it is the duty of the State party to afford everyone protection against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, or in a private capacity. The authors also refer to the reports according to which the *country of*

[5] The authors cite the following: European Court of Human Rights, *M.S.S. v. Belgium and Greece* (application No. 30696/09), judgment adopted on 15 December 2010, and *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* (application No. 27725/10), decision adopted on 2 April 2013.

[6] No medical details have been provided to the RAB on their youngest daughter.

[7] See the UNHCR report: *Where is My home? Homelessness and Access to Housing among Asylum Seekers, Refugees and Persons with International Protection in Bulgaria*, 2013 pp.11-13; UNHCR report: *Observations on the Current Situation of Asylum in Bulgaria*, 15 April 2014, s.13. Also AIDA report, *AIDA National Country Report – Bulgaria*, 23 April 2014 pp. 10-13 - http://www.asylumineurope.org/sites/default/files/report-download/aidabulgariareport_secondupdate_final.pdf; Human Rights Watch's report: *Containment Plan: Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrant*, April 2014, s.5.

[8] According to the report *Trapped in Europe's Quagmire*: *The Situation of Asylum Seekers and Refugees in Bulgaria* by Bordermonitoring.eu in 2014 (Tsvetelina Hristova et. al.), p. 22.: "*The last National Integration Programme finished in 2013 and as of currently there is no operational integration program in the country. This leaves the ever-growing number of newly recognized refugees and humanitarian status holders in a void, without sufficient support from the Bulgarian institutions for further social inclusion and integration into Bulgaria society. Without such support, the newly recognized refugees are put in highly vulnerable position, exposed to higher risks of extreme poverty, unemployment, homelessness, xenophobic and racist attitudes and discrimination."* See also that on 11 March 2014, the European Court of Human Rights ruled, in *Abdu v. Bulgaria* (application No. 2687/08), that the Bulgarian authorities had failed to properly investigate the potentially racist nature of an attack on a Sudanese national. The Court held that there had been a violation of Articles 3 and 14 of the European Convention of Human Rights. According to the report of Integrated Regional Information Networks (IRIN), "the Syrians face bleak time in Bulgaria's broken asylum system" (October 22, 2013).

first asylum principle can be applied only if, upon return to their country of first asylum, asylum-seekers 'are permitted to remain there and to be treated in accordance with recognized basic human standards until a durable solution is found for them'.[9]

3.4 The authors furthermore submit that, according to the jurisprudence of the European Court of Human Rights, State parties are under an obligation to investigate in each case the possibility of a real risk of torture, inhuman and degrading treatment upon the return of the deported person.[10] The authors also submit that according to the European Court's jurisprudence children have "*specific needs"* and *"extreme vulnerability"* and that reception facilities for children *"must be adapted to their age, to ensure that those conditions do not create […] for them a situation of stress and anxiety, with particular traumatic consequences*".[11]

3.5 The authors claim 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 in Bulgaria, there is a real risk that they and their children would be subject to inhuman and degrading treatment contrary to the best interests of the children in case of being returned to Bulgaria. They argue that, if returned, they will no longer have the possibility to rent an apartment.

State party's observations on the admissibility and merits

4.1 On 4 August 2015, the State party submitted its observations on the admissibility and merits of the communication, and requested the Committee to lift the interim measures. The State party considers that the communication should be held inadmissible, as the authors have failed to establish a *prima* facie case. The authors have failed to provide substantial grounds to demonstrate that they would be at risk of being subjected to inhuman or degrading treatment if returned to Bulgaria. The RAB found that the authors have a residence permit in Bulgaria, and did not face any problems with the nationals and authorities of Bulgaria. Additionally, in case of return to Bulgaria, they would not risk *refoulement* to Syria.

4.2 The State party also submits that in case the Committee would hold the authors' complaint admissible, it should consider it unsubstantiated as the authors failed to establish that their deportation to Bulgaria would constitute a violation of article 7 of the Covenant. In this connection, the State party claims that the authors failed to provide any new information on their personal circumstances beyond the information already relied upon in

[9] See fn. 3 – *Trapped in Europe's Quagmire: The Situation of Asylum Seekers and Refugees in Bulgaria;* UNHCR ExCom Conclusion No. 58 (1989).

[10] The European Court considered in *M.S.S. v. Belgium and Greece* (application No. 30696/09) that it was the responsibility of the Belgian authorities, not to assume that the applicant would be treated in conformity with the Convention standards. The Belgian authorities should first verify how the Greek authorities applied their asylum legislation in practice and had they done this, they would have seen that the risks the applicant faced were real and individual enough to fall within the scope of Article 3 of the European Convention, which corresponds to Article 7 of the Covenant. The fact that a large number of asylum seekers in Greece find themselves in the same situation as the applicant does not make the risk any less individual where it is sufficiently real and probable. In a recent judgement of 4 November 2014 in *Tarakhel v. Switzerland* (application No. 29217/12), the European Court states "*to fall within the scope of Article 3 the ill-treatment must attain a minimum level of severity. The assessment of the minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instance, sex, age and state of health of victims*". The Court further emphasizes, that especially children are to be considered vulnerable.

[11] See e.g. *Tarakhel v. Switzerland* (application No. 29217/12), paragraph 119.

the context of their asylum application, as reflected in the RAB's decision of 20 January 2015. The State party submits that throughout the asylum procedure, the authorities of the State party have considered (i) that the authors fall within section 7(1) of the Aliens Act because of a well-founded fear of being subjected to specific, individual persecution of a certain severity if returned to their country of origin; and (ii) that the authors had been granted refugee status in Bulgaria. The RAB refused to grant asylum to the authors under section 7(3) of the Aliens Act in so far as Bulgaria could serve as the authors' country of first asylum. If an asylum-seeker has obtained or is able to obtain protection in the country of first asylum, his/her application for a residence permit can be rejected in Denmark. When considering whether a country can serve as a country of first asylum, the RAB applies protection against *refoulement* and assesses whether the asylum-seeker can enter and reside lawfully in the country of first asylum, and whether the asylum-seeker's integrity and safety would be protected in that country. The concept of protection also includes certain social and financial elements, taking into account Chapters II to V of the Geneva Convention on the Status of Refugees. However, it cannot be required that the asylum-seekers must have exactly the same social and living standards as the receiving country's own nationals. The concept of protection requires that asylum-seekers must enjoy personal safety when they enter and stay in the country serving as the country of first asylum. When considering whether Bulgaria could serve as a country of first asylum, the RAB examines whether at an absolute minimum the asylum-seeker is protected against being returned to the country of persecution.

4.3 The State party submits that in its decision of 20 January 2015, the RAB took into account that the authors had managed to obtain medical care for their eldest daughter and the female author, and that they had also been able to rent a flat in Sofia. The majority of the RAB also observed that no medical details had been provided on the youngest daughter and that, based on the background information available, the general assumption is that persons granted refugee and protection status in Bulgaria have the same rights as Bulgarian nationals. The RAB found that the authors would enjoy the necessary social rights if they were returned to Bulgaria, having thoroughly assessed the authors' statements on their stay and living conditions in Bulgaria, the general background information available on living conditions in Bulgaria, and the applicable international case-law. In this respect, the State party claims that "the authors' statements about reception conditions in Bulgaria are relevant only to individuals falling under the Dublin procedure, but not for the assessment of whether a country can serve as the authors' country of first asylum."

4.4 With reference to the living conditions in Bulgaria, and also regarding the authors' reference to *Trapped in Europe's Quagmire: The Situation of Asylum Seekers and Refugees in Bulgaria*,[12] the State party observes, based on that report, that a new integration programme was published on 25 June 2014. The programme is to be implemented as of 2015. The new integration programme will cover a much higher number of persons and language training will be accessible to a greater extent than under the previous programme. The State party observes that the circumstances that the authors may not have access to an effective integration programme in Bulgaria cannot independently lead to a different assessment of Bulgaria as the country of first asylum.

4.5 Regarding the authors' claim that they risk homelessness because the authorities discontinue the payment of a monthly allowance to asylum-seekers once they are granted residence,[13] the State party submits that refugees acquire the rights and obligations of Bulgarian nationals, except for the right to participate in elections and to occupy positions

[12] Published by Bordermonitoring.eu in 2014. pages 24 to 25.

[13] See e.g. the Human Rights Watch's report: *Containment Plan: Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, April 2014.

that require Bulgarian nationality.[14] While Bulgaria registered about 1,000 asylum-seekers per year in the past decade, more than 11,000 people submitted asylum applications in 2013 and Bulgaria was unprepared for processing such an amount of asylum claims.[15] However, the conditions in reception centres have reportedly improved.[16] The State party also observes that according to UNHCR, the quality of accommodation of asylum-seekers and the protection of status holders after leaving the registration and reception centres, is dependent on their employment and income, but also on their family status.[17] In general, refugee families in particular those with young children, receive a more positive attitude from landlords. To date, no family has ever been forced to leave the registration and reception centres without first having been provided with accommodation, or at least with funds to rent a living place. In the same perspective, the State party objects to the authors' allegations that, if deported to Bulgaria, they will have no way of accessing a minimum living standard due to the absence of accommodation, meaning that they will most likely have to live on the streets with their children.

4.6 In relation to the issue of access to healthcare services and medical treatment, the State party asserts that according to the available background information, refugees in Bulgaria have access to healthcare services under the same conditions as Bulgarian nationals, and medical treatments are free if the asylum-seekers or refugees register with a general practitioner.[18] The State party therefore considers it a fact that the authors will have access to the necessary healthcare services and treatment in Bulgaria. It also submits that, according to the statement by N.A.K. at the hearing before the RAB, the authors had been told by a doctor that their daughter was physically all right, but that she was feeling mentally unwell, and that N.A.K. herself was fine (Exhibit 1). It also appears from the medical record appended to the authors' communication of 6 February 2015 that both children had been attended by a health visitor, who considered them healthy.

4.7 In relation to authors' claims of insufficient access to education for their children, the State party asserts that beneficiaries of international protection and asylum-seekers under the age of 18 years have access to education under the same conditions as Bulgarian nationals. However, before being enrolled in Bulgarian municipal schools, refugee and asylum-seeking children must successfully complete a language course. Attending primary school is free of charge.[19]

4.8 As to the authors' claims of lack of protection against acts of racism against refugees, the State party notes that the Bulgarian authorities have addressed and condemned

[14] *Ibid*, page 72.

[15] *Ibid*, page 2.

[16] *Ibid*, page 5. According to the UNHCR, all centres have heat, the SAR provides two hot meals a day to residents, and many residents are now being allowed to remain in the centres for longer periods after being granted refugee or humanitarian status if they lack the means to support themselves.

[17] See e.g. the UNHCR report (2013): *Where is my home? Homelessness and access to housing among asylum-seekers, Refugees and Persons with International Protection in Bulgaria*.

[18] See e.g. the reports: *Bulgaria as a country of asylum*, by UNHCR, April 2014, page 12; *Trapped in Europe's Quagmire: the situation of Asylum Seekers and Refugees and Bulgaria*, by the Bordermonitoring.eu, 2014, page 16; and *Monitoring Report on the Integration of Beneficiaries of International Protection in the Republic of Bulgaria 2014 by* the Bulgarian Council on Refugees and Migrants, December 2014, page 51.

[19] See e.g. the Danish Refugee Council and NGO's *Memorandum on the Conditions of Asylum-seekers and Refugees in Bulgaria*, November 2014, page 5.

racist attacks and rhetoric. The State party therefore considers that the authors are able to seek protection from the Bulgarian authorities in case of experiencing such acts.[20]

4.9 The State party refers to the jurisprudence of the European Court of Human Rights according to which "[…] the assessment of whether there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment in breach of article 3 must necessarily be a rigorous one and inevitably requires that the Court assess the conditions in the receiving country against the standard of that Convention provision."[21] The Court further stated that "aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance" and 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 party is not sufficient in itself to give rise to a breach of article 3 of the European Convention."[22] Further, the Court stated that "Article 3 cannot be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home, and that this provision does not entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living."[23]

4.10 In addition, the State party submits that it cannot be inferred from the judgment of the European Court in *Tarakhel v. Switzerland*[24] that "individual guarantees must be obtained from the Bulgarian authorities in the case at hand, before it is possible to transfer the authors." The RAB, after assessing the authors' specific circumstances and the available background information, found that the authors had failed to render it probable that they are in danger of being subjected to inhuman or degrading treatment or punishment if deported to Bulgaria. In this regard, the State party recalls the jurisprudence of the Committee that "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, and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists."[25] The State party further submits that "the authors have not identified any irregularity in the decision-making process, or any risk factor that the State party's authorities failed to take properly into account."[26]

4.11 The State party observes that in the present case, all due process guarantees were applied to the authors. It considers that the authors merely disagree with the assessment of their specific circumstances and the background information that was made by the RAB in their case, and that they are trying to use the Committee as an appellate body to have the

[20] See e.g. UNHCR: *Bulgaria as a Country of Asylum*, April 2014, page 14, indicating that on 14 February 2014, following the attack on the Dzhumaya Mosque in Plovdiv, the Bulgarian government condemned an attack on a Mosque in Plovdiv and published a second joint declaration calling for guarantees of civil, ethnic and religious peace. The Bulgarian police detained over 120 people in relation to the attack.

[21] See e.g. *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* (application No. 27725/10), paras. 70 and 71.

[22] *Ibid*, paras. 70 and 71.

[23] See *M.S.S. v. Belgium and Greece* (application No. 30696/09), para. 249.

[24] Application No. 29217/12 of 4 November 2014. This decision concerned the refusal of the Swiss authorities to examine the asylum application of an Afghan couple and their six children because Italy was already considering their application.

[25] See e.g. communication No. 2272/2013, *P.T. v. Denmark* of 1 April 2015, para. 7.3.

[26] See e.g. communication No. 2186/2012, *Mr. X and Mrs. X . v. Denmark* of 22 October 2014, para. 7.5

factual circumstances of their case reassessed by the Committee. The State party therefore maintains that the Committee must give considerable weight to the findings of the RAB, which is better placed to assess the factual circumstances of the authors' case.

4.12 The State party further claims that the assessment made by the RAB was not arbitrary and does not amount to a denial of justice, and therefore there is no basis for questioning its assessment according to which the authors have failed to establish that they would be in danger of being subjected to inhuman or degrading treatment or punishment if deported to Bulgaria. In view of the above, the State party submits that the deportation of the authors to Bulgaria will not constitute a violation of article 7 of the Covenant.

Authors' comments on the State party's observations

5.1 In their comments of 19 November 2015, the authors maintain that their deportation to Bulgaria will constitute a breach of article 7 of the Covenant. The authors assert that they would face inhuman and degrading treatment by being forced to live in the streets with no access to housing, food or sanitary facilities, and no prospect of finding durable humanitarian solutions.

5.2 In relation to the question of whether Bulgaria can serve as their country of first asylum, the authors argue that the most recent background information regarding refugees with temporary residence permits establishes that Bulgaria cannot provide basic humanitarian conditions for refugees. The authors argue that, as a minimum, a refugee must be offered "housing and access to paid work or allocation until a job is found." The authors state that this basic minimum is not accessible in Bulgaria.

5.3 In relation to the living conditions in Bulgaria, the authors submit that the State party is mistaken when it considers that "residents of reception centres are being allowed to remain in the centres for longer periods after being granted refugee or humanitarian status." They reiterate that "persons holding valid protection status face severe difficulties in Bulgaria to find basic shelter, access to sanitation facilities and food." The authors refer to a report by the Commissioner for Human Rights of the Council of Europe following his visit to Bulgaria according to which "the system to support the integration of refugees and other beneficiaries of international protection in Bulgarian society still suffers from serious deficiencies."[27] The report further states that "several hundred persons who have been recognised as refugees continue to remain in reception centres because they lack the means to live independently. The authorities give the possibility to stay in the open centre even after having been granted refugee status for a period up to six months."[28] The authors further cite an Amnesty International Report, which found that "recognised refugees faced problems in accessing education, housing, health care and other public services."[29] The authors therefore submit that living conditions for recognised refugees suffer from "serious deficiencies", and that refugees face "serious integration challenges which threaten their enjoyment of social and economic rights, including a serious risk of becoming homeless, high levels of unemployment, no real access to education and problems in accessing health care services." In addition, the authors state that their living conditions in Bulgaria upon their return would be even worse than before their departure to Denmark because they would be excluded from the reception facilities for having previously used them.

[27] See Commissioner for Human Rights of the Council of Europe: Report by Nils Muiznieks, following his visit to Bulgaria from 9 to 11 February 2015 (June 2015), p. 28-29.

[28] Ibid.

[29] The authors cite Amnesty International Report: *The State of the World's Human Rights – Bulgaria*, 25 February 2015.

5.4 In relation to the decision in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, the authors argue that the issue at stake is not the reduced material and social living conditions, but rather the living conditions in Bulgaria being below basic humanitarian standards as required in the UNHCR ExCom Conclusion No. 58. The authors assert that they have already lived and experienced life as refugees in Bulgaria where they did not receive any financial or medical assistance. It is only because they had assistance from their family back in Syria that they were not homeless.

5.5 The authors argue that the European Court's decision in *Tarakhel v. Switzerland*[30] is relevant to their case, as the Court found that if there were no proper reception facilities adapted to children, "the conditions in question would attain the threshold of severity required to come within the scope of the prohibition under Article 3 of the Convention." The authors consider that "individual guarantees especially securing returning children from destitution and harsh accommodation conditions, are required according to the Court."

5.6 The authors further refer to the Committee's Views adopted in *Warda Osman Jasin v. Denmark*, where the Committee emphasised "that States need to give weight to the real and personal risk a person might face if removed. This requires an individualised assessment of the risk faced by the author, rather than reliance on general reports and on the assumption that, having been granted subsidiary protection in the past, the author would in principle be entitled to work and receive social benefits."[31]

5.7 The authors therefore argue that their claim is admissible and that they have provided sufficient reasons for justifying why they fear being returned to Bulgaria as it is not suited to serve as the country of first asylum. The authors assert that the RAB did not give sufficient weight to the "real and personal risk that they would face if removed to Bulgaria."

State party's additional observations

6.1 In their additional observations of 17 May 2016, the State party refers to its observations of 4 August 2015. As regards the authors' reference to the Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, the State party observes that it has been included in the background material of the RAB since 2 September 2015 and was thus taken into account in the RAB's assessment of the case.

6.2 In relation to the *Amnesty International Report 2014/2015: The State of the World's Human Rights – Bulgaria,* published *by Amnesty International in February 2015*, the State party also submits that the information provided in the paragraph referred to by the authors was also taken into account in the RAB's assessment of the case.

6.3 As to the authors' reference to the Committee's views in *Warda Osman Jasin et al. v. Denmark*,[32] according to which States parties need to give sufficient weight to the real and personal risk a person might face if deported, the State party considers that this jurisprudence requires an individualised assessment of the risk faced by the author, rather than reliance on general reports and assumptions.

6.4 In this connection, the Government considers that *Warda Osman Jasin et al. v. Denmark* differs from the case at hand on essential points: it concerned the deportation to Italy of a single mother with minor children, whose residence permit for Italy had expired, whereas in the present case, the deportation under review concerns a married couple with

[30] See fn. 17.

[31] See Communication No. 2360/2014, *Warda Osman Jasin et al. v. Denmark, Views adopted* on 22 July 2015, para. 8.9.

[32] *Warda Osman Jasin et al. v. Denmark,* para. 8.10, footnote No. 35.

minor children to Bulgaria. Furthermore, the residence permit held by the adult author in *Warda Osman Jasin et al. v. Denmark* had expired when she applied for asylum in Denmark, whereas the authors in the case at hand were in possession of valid residence permits for Bulgaria at the time of their application for asylum and continue to hold such residence permits. The State party further observes that the Bulgarian authorities have informed the Danish authorities that the authors were granted refugee status in Bulgaria on 17 March 2014. In the opinion of the Government, the two cases are therefore not comparable.

6.5 The State party further submits that the general background information available to the RAB is obtained from a wide range of sources and is compared with the statements made by the relevant asylum-seekers, including their past experiences. In the present case, the authors have had the opportunity to make submissions both in writing and orally before several bodies, and the RAB thoroughly examined their case taking into account in detail all the information available.

6.6 The State party notes that the authors have provided no new information on the health of the female author. It therefore refers again to the background information described previously, according to which the female author will be able to receive the necessary medical treatment in Bulgaria.

6.7 The State party further submits that the circumstance that the authors did not manage to find work during the three or four months that they stayed in Bulgaria after having been granted residence cannot lead to a different assessment. It observes that according to the information provided, the authors did not request assistance from the authorities. Moreover, it is not reasonable to require that everybody be given a job within such a short period of time.

6.8 The State party observes that, according to the information provided by the authors, they managed to support themselves in the circumstances that they actually faced in Bulgaria as they had savings and received financial support from their family in Syria, and they also managed to find private accommodation before they left Bulgaria of their own accord. Accordingly, the State party submits that the authors have not provided any specific information as to the rights they could not enjoy as refugees with residence permit.

6.9 The State party further submits that it has no legal obligation to contact the Bulgarian authorities to ensure the authors' entry and stay in Bulgaria. In this connection, it observes that the judgement of the European Court in *Tarakhel v. Switzerland* concerned a family with the status of asylum-seekers in Italy. It therefore does not deviate from the findings in previous case-law on individuals and families with a residence permit for Italy, as expressed for example in the European Court's admissibility decision in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*. Accordingly, the State party reiterates that it cannot be inferred from the *Tarakhel* judgment that States parties are required to obtain individual guarantees from the Bulgarian authorities before deporting to Bulgaria individuals or families in need of protection "who have already been granted residence in Bulgaria".

6.10 The State party maintains that the authors have failed to establish a *prima facie* case for the purpose of admissibility of their communication under article 7 of the Covenant, and that the communication should be held inadmissible. It reiterates that no substantial grounds have been established for believing that the deportation of the authors to Bulgaria would constitute a violation of article 7 of the Covenant. Accordingly, the State party requests that the Committee review its request for interim measures in the present case.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 As required under article 5 (2) (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes that the State party has not objected to the admissibility of the communication under article 5 (2) (b), of the Optional Protocol. It also observes that the authors filed an application for asylum, which was rejected by the RAB on 20 January 2015. Since the decisions of the Refugee Appeals Board cannot be appealed, no further remedies are available to the authors. Accordingly, the Committee considers that domestic remedies have been exhausted.

7.4 The Committee notes the State party's argument that the authors' claims with respect to article 7 should be held inadmissible for lack of substantiation. 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 contrary to article 7 of the Covenant. In the absence of any other obstacles to admissibility, the Committee declares the communication admissible insofar as it appears to raise issues under article 7 of the Covenant, and proceeds to its consideration on the merits.

Consideration of the merits

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

8.2 The Committee notes the authors' claim that deporting them and their two minor children to Bulgaria as the "first country of asylum", would expose them to treatment contrary to article 7 of the Covenant. The Committee notes that the authors base their arguments on, *inter alia*, the socio-economic situation they would face, including the lack of access to financial help or social assistance and to integration programs for refugees and asylum seekers, as demonstrated by their experience as asylum-seekers and after they received refugee status and a residence permit, as well as by the general conditions of reception for asylum seekers and refugees in Bulgaria. The Committee further notes the authors' submission that since they already benefitted from the reception system when they first arrived in Bulgaria, and as they were granted a refugee status, they would have no access to reception facilities upon return to Bulgaria; they would not be able to find accommodation and a job; and therefore they would face homelessness and be forced to live with their minor children in the streets.

8.3 The Committee recalls its general comment No. 31,[33] in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant. The Committee

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

has also indicated that the risk must be personal[34] and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.[35] 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,[36] unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.[37]

8.4 The Committee observes that it is not disputed that Bulgaria granted the authors refugee status in March and April 2014, respectively; that they received residence permits; and that they could stay in the asylum camp for several months after having received a refugee status until they rented a flat of their choice. The Committee also notes that the RAB found that the authors did not face any problems with the Bulgarian authorities or with individuals in Bulgaria, and that they would enjoy the necessary social rights if they were returned to Bulgaria. The Committee further notes that the authors relied on reports on the general situation of asylum seekers and refugees in Bulgaria according to which the 6-month assisted accommodation is insufficient to enable people to provide for themselves subsequently,[38] and stating that it is extremely difficult for people who have been granted protection status and are returned to Bulgaria to find accommodation and a job; and that persons who have been granted refugee status or subsidiary protection in Bulgaria face poverty, homelessness and limited access to health care and schooling in case of return.[39] Nonetheless, the Committee also notes the State party's submission that, when they were in Bulgaria, the authors managed to obtain medical care for their eldest daughter and the female author, although by alternative means; that no new information has been provided in the present communication on the health of N.A.K., and that she will be entitled, as refugee, to receive the necessary medical treatment in case of return to Bulgaria. The Committee further notes that, according to the RAB, the authors were able to rent a flat in Sofia, and that the general assumption is that persons granted refugee and protection status in Bulgaria have the same rights as Bulgarian nationals. The Committee further notes that the RAB considered that the authors had sufficient resources to reply to their needs in Bulgaria, thanks to the financial resources they brought from Syria.

8.5 The Committee notes the consultation held by the State party with the Bulgarian authorities in 2014, which confirmed that the authors were granted refugee status and have a valid residence permit in Bulgaria, and therefore do not risk *refoulement* to Syria.

8.6 The Committee observes that the material before it, as well as general information in the public domain on the situation of refugees and asylum-seekers[40] indicate that there may be a lack of available places in the reception facilities for asylum seekers and returnees, that they are often in poor sanitary conditions. It also notes that according to these reports, returnees like the authors who have already been granted a form of protection and benefited from the reception facilities when they were in Bulgaria, are not entitled to accommodation

[34] 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.

[35] See *J.J.M. v. Denmark*, supra n. 40, para. 9.2, and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

[36] 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.

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

[38] See footnote No. 30.

[39] See footnotes No. 8, 9, 30 and 32.

[40] See footnotes No. 8 and 9.

in the asylum camps beyond the six-month period from granting a protection status. It further notes 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. The Committee however notes that the authors were not homeless before their departure from Bulgaria, and did not live in destitution. The Committee further observes that, according to their statements made to the RAB, the authors had access to medical treatment during their stay in Bulgaria. Likewise, the authors have not provided any information that would explain why they would not be able to find a job in Bulgaria or to seek the protection of the Bulgarian authorities in case of unemployment. In this context, the Committee notes that the authors did not substantiate that they would face a real and personal risk of inhuman or degrading treatment in case of return to Bulgaria. Accordingly, the Committee considers that the mere fact that the authors may be possibly confronted with difficulties upon their return to Bulgaria does not in itself mean that they would be in a special situation of vulnerability – and in a situation significantly different to many other families.

8.7 The Committee further considers that although the authors disagree with the decision of the State party's authorities to return them to Bulgaria as their country of first asylum, they have failed to explain why this decision is manifestly unreasonable or arbitrary. 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 kept together and to be taken charge of in a manner adapted to their needs, especially taking into account the age of the children.