



**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. 2640/2015\*\***

<i>Submitted by:</i>	Mr. R.I.H and Ms. S.M.D. (represented by the Danish Refugee Council, initially, and thereafter by the Advokat Kompagniet)
<i>Alleged victims:</i>	The authors and their four children
<i>State party:</i>	Denmark
<i>Date of communication:</i>	6 August 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and rule 97 of the Committee's rules of procedure, transmitted to the State party on 6 August 2015 (not issued in a document form)
<i>Date of adoption of Views:</i>	13 July 2017
<i>Subject matter:</i>	Deportation from Denmark to Bulgaria
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Risk of torture and ill-treatment
<i>Article of the Covenant:</i>	7
<i>Article of the Optional Protocol:</i>	2

\* Adopted by the Committee at its 120<sup>th</sup> session (3 – 28 July 2017).

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

1.1 The authors of the communication dated 5 August 2015 are R.I.H., born on [REDACTED] 1971, and his wife, S.M.D., born on [REDACTED] 1971. They present the communication on their own behalf, and on behalf of their four children, two of whom are minor: R.R.H., born on [REDACTED] 2002, and M.R.H., born on [REDACTED] 2003. The authors also have two grown-up children, Ri.R.H., born on [REDACTED] 1996, and Ra.R.H., born on [REDACTED] 1995.

1.2 The family is currently staying at the Sandholm Asylum Center in Birkerød. Their deportation to Bulgaria, where they have subsidiary protection, was scheduled for 6 August 2015. The authors claim that by deporting them to Bulgaria, Denmark would violate their rights under article 7 of the International Covenant on Civil and Political Rights.

1.3 The communication was registered on 6 August 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 to refrain from deporting the authors to Bulgaria, while their case was under consideration by the Committee. On 7 August 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.

1.4 On 8 February 2016, as part of its observations on admissibility and merits, the State party requested that the Committee review its request for interim measures. On 2 May 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 The authors originate from Syria and fled the country together to seek protection in Europe. They entered Denmark in January 2015. On [REDACTED] April 2015 and [REDACTED] June 2015, the Danish Immigration Service rejected their applications for residence. On [REDACTED] August 2015, the Refugee Appeals Board upheld the decisions of the Danish Immigration Service

2.2 In Bulgaria, they were registered as asylum seekers, but they did not receive any assistance and had to buy their own food. There was only a common bath and toilet and at one point there was no water for 10 days. The guards at the asylum center did not speak to the applicants in a good tone, and the children were not allowed to go to school.

2.3 The authors themselves did not need medical assistance. A friend of the authors' eldest son, RA., died, because no one called for an ambulance, when he needed it. The friend died about a week after the authors left Bulgaria. The eldest son was sent a photo of his dead friend and this had a great psychological impact upon him.

2.4 Furthermore, individuals from a party called "the bald ones" attacked an asylum center located around 30 minutes from where the authors were staying. According to the authors, this party hates refugees and asylum seekers.

2.5 When the family received their residence permits in Bulgaria in November 2014, they had to sign a document whereby they committed to leave the asylum center within 14 days. As asylum seekers, they had received 65 Leva (about 13 euros) monthly, but this support was discontinued once they obtained a residence permit. The authors did not receive any other type of support. The family stayed at the asylum center and every second day, guards would come and threaten to forcefully evict them from the center, if they did not leave voluntarily. The family had nowhere to go and they were not given any form of assistance.

#### **The complaint**

3.1 The authors claim that by deporting them to Bulgaria, Denmark would breach their rights under article 7 of the Covenant. They maintain that they should be regarded as vulnerable given the young age of their two minor children. The authors claim they fear

that a return to Bulgaria will expose them and their children to inhuman or degrading treatment contrary to the best interest of the child, as they face homelessness, destitution, lack of access to health care and of personal safety in Bulgaria, where they did not find any durable humanitarian solutions.

3.2 The authors are not prepared to go back to Bulgaria because there is no access to health care, even in very urgent situations. Secondly, the authors' children do not have access to school and the authors themselves do not have access to employment. Consequently, the family does not have access to decent living conditions.

3.3 The authors add that reception conditions in Bulgaria for asylum seekers are substandard. Although in theory, an integration program formally exists, and, although, according to national law, asylum seekers have access to the labour market, health care system, social service, or assistance in finding housing, in reality, it is almost impossible for this group to find a job or a safe place to live.<sup>1</sup> According to the authors, several organisations such as AIDA and UNHCR have reported that persons, who have been granted refugee status or subsidiary protection in Bulgaria, lack possibilities to be integrated and find lasting solutions. Refugees and humanitarian status holders have to ensure their integration in the local society by means of their own efforts and capacity, and with the limited assistance of non-governmental and volunteer organisations.<sup>2</sup> Conditions for children, in particular, have been described as particularly problematic by UNHCR, which has stressed the "urgent need for asylum seeking children, and children found to be in need of international protection, to be provided with access to education without further delay within the Bulgarian school curriculum".<sup>3</sup> Organisations have also reported that child support had been discontinued for refugee children in Bulgaria: "In November 2013, the Agency for social support" instructed its local departments to reject onward monthly child support allowances, which previously had been provided to recognised individuals without any restrictions or limitations. Restrictions continued during 2014 as well".<sup>4</sup>

3.4 Another organisation has also noted that "after granting refugee or humanitarian status,<sup>5</sup> the government stops providing refugees the 65 leva per month, which they had received as asylum seekers. Human Rights Watch researchers met recognized refugees who were homeless and squatting in unfinished, abandoned buildings in the vicinity of the open centers".<sup>6</sup> In their 15 April 2014 update, UNHCR stated that there continued to be "a gap with regard to access to healthcare when asylum-seekers are recognized as refugees or are granted subsidiary protection (...) Additionally they have to pay a monthly instalment of approximately 17 BGN (8.7 euros) in order to access the services of the national health insurance, as do nationals. Medicines are not covered, nor is psycho-social care (...) Lack of adequate and affordable housing is another area seriously affecting the beneficiaries of protection in Bulgaria." The only accessible accommodation support is in the reception centres, which are only available for six months after status recognition. In addition, the asylum authority is undertaking eviction campaigns even for some refugees who are still

<sup>1</sup> The authors refer to a report from AIDA, "National Country report- Bulgaria" (23 April 2014), and a report from UNHCR, "Where is my home? Homelessness and access to housing among asylum-seekers, refugees and persons with international protection in Bulgaria" (2013), pp- 11-13.

<sup>2</sup> AIDA, 31 January 2015, p. 40.

<sup>3</sup> UNCHR, « Observations on the current situation of asylum in Bulgaria », 15 April 2013, s.13.

<sup>4</sup> AIDA, 31 January 2015, p. 40-41.

<sup>5</sup> Equivalent to subsidiary protection.

<sup>6</sup> Human Rights Watch, « Bulgaria's pushbacks and detention of Syrian and other asylum seekers and migrants » (April 2014, s. 5).

within a valid accommodation period, among whom vulnerable categories such as sick, disabled, elderly, single parents, families with under-aged children, were reported.<sup>7</sup>

3.5 The authors add that without support from Bulgarian institutions for social inclusion and integration, newly recognized refugees are in a highly vulnerable position, exposed to higher risks of extreme poverty, unemployment, homelessness, xenophobic and racist attitudes, and discrimination.

3.6 Although in 2011 the Bulgarian authorities adopted a multi-annual programme for the integration of refugees, supposed to run until 2020, a national audit found that “the implementation of the strategy for the integration of refugees in the period 2011-2013 failed to produce any effect”.<sup>8</sup> The Bulgarian authorities failed to allocate any fund for the integration programme for the year 2014, which resulted in the programme’s discontinuance. UNHCR also expressed concern in this respect: “in the absence of a solid strategy and sustainable programme to ensure access to livelihoods, affordable housing, language acquisition and effective access to formal education for children, beneficiaries of international protection may not have effective access to self-reliance opportunities, and thus may be at risk of poverty and homelessness”.<sup>9</sup> Amnesty International echoed this concern in the following terms: “Recognized refugees faced problems in accessing education, housing, health care and other public services.”<sup>10</sup>

3.7 The authors further fear to be attacked xenophobic groups, which are common and remain unaddressed by State authorities, which cannot protect asylum seekers against such attacks, which have recently increased. In a September 2014 report the European Commission against racism and intolerance expressed concern about hate speech with respect to refugees in Bulgaria, noting that racist and intolerant speech in political discourse was escalating, and that “the authorities rarely voic[ed] any counter-hate speech message to the public”.<sup>11</sup> On 11 March 2014, the European Court of Human Rights ruled, in *Abdu v. Bulgaria* (No. 26827/08) that the Bulgarian authorities had failed to properly investigate the potentially racist nature of an attack on a Sudanese national. The family would therefore not feel safe in Bulgaria, and face destitution, tantamount to inhumane and degrading treatment, which is contrary to the best interest of the child.

3.8 The authors refer to the *Tarakhel v. Switzerland* decision of the European Court of Human Rights, which highlighted the special vulnerability of asylum seeking children, even where accompanied by their parents. The authors also refer to the Committee’s findings under article 7 of the Covenant in the case of *Jasin v. Denmark*. They conclude that as a family unit with young children, they are particularly vulnerable to inhumane and degrading treatment in Bulgaria. They add that the risk faced is personal, and irreparable in case of return, based on the background information available, and the previous experience of the family in Bulgaria.

3.9 According to the authors, even though there is no uniform definition of conditions which would fall within the category of inhumane or degrading treatment, the European Court of Human Rights, in its decision of *MSS v. Belgium and Greece*, determined that a “state of extreme poverty” of the applicant, who lived in a park in Athens for months

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<sup>7</sup> AIDA report (2015), p. 41.

<sup>8</sup> Report of the Commissioner for Human Rights of the Council of Europe following his visit to Bulgaria from 9-11 February 2015 (CHRCE, 22 June 2015), sec. 124.

<sup>9</sup> UNHCR, Bulgaria: “UNHCR says asylum conditions improved, warns against transfer of vulnerable people », Briefing notes, 15 April 2014.

<sup>10</sup> Amnesty International report 2014-15, Bulgaria, 25 February 2015.

<sup>11</sup> European Commission against racism and intolerance (ECRI), report on Bulgaria (fifth monitoring cycle), 16 September 2014, p. 9 (16 September 2014).

without access to food or sanitation, amounted to degrading treatment under article 3 of the European Convention on Human Rights. According to the authors, while the facts differ in the case at hand, the case of *MSS* supports the finding that homelessness and extreme poverty can amount to inhumane and degrading treatment. The authors were asked to leave the asylum center, and felt compelled to flee Bulgaria, faced with no alternative considering the extremely hard living conditions recognized refugees were exposed to.

3.10 The authors reiterate that there is no reintegration programme for refugees in Bulgaria, who thus face serious poverty, homelessness, and limited access to health care, education and employment. They add that, based on their personal experience, vulnerability as parents of two minor children, and in light of the above background information, there is a real risk that they will be exposed to treatment amounting to ill-treatment, in breach of article 7 of the Covenant.

#### **State party's observations on the admissibility and merits**

4.1 On 8 February 2016, the State party submitted that the communication should be considered inadmissible, or, alternatively, devoid of merit. The State party recalls that the authors entered Denmark in January 2015 without valid travel documents. Ra.R.H., the authors' adult son born on [REDACTED] 1995, entered Denmark on [REDACTED] February 2015 without valid travel documents. The authors applied for asylum on [REDACTED] January 2015 and [REDACTED] February 2015, respectively. On [REDACTED] April 2015 and [REDACTED] June 2015, respectively, the Danish Immigration Service refused the authors' applications for residence under section 7 of the Danish Aliens Act in pursuance of section 29b of the Aliens Act. On [REDACTED] May 2015 and [REDACTED] June 2015, the authors appealed the decisions to the Refugee Appeals Board. On [REDACTED] August 2015, the Refugee Appeals Board upheld the decisions of the Danish Immigration Service to refuse residence to the authors.

4.2 On 5 August 2015, the authors brought the matter before the Committee, claiming that it would constitute a breach of Article 7 of the CCPR to deport them to Bulgaria. On 7 August 2015, the Refugee Appeals Board suspended the time limit for the authors' departure from Denmark until further notice in accordance with the Committee's request.

4.3 The State party submits that in its decision of [REDACTED] August 2015, the Refugee Appeals Board (RAB) stated, with respect to the authors R.I.H., S.M.D. and their two minor children as follows: "It appears from the first sentence of section 48a(1) of the Aliens Act that, if an alien claims to fall within section 7, the Danish Immigration Service must make a decision as soon as possible on refusal of entry, transfer or retransfer under the rules of Part 5a or 5b. Pursuant to section 29b, an application for residence under section 7 can be refused if the alien has already obtained protection in a country falling within section 29a(1), that is, a country covered by the Dublin Regulation. In the case at hand, the Board has considered it a fact that the appellants have been granted residence in the form of subsidiary protection in Bulgaria. It appears from the explanatory notes to Bill No. 72 of 14 November 2014 on section 29b of the Aliens Act that refusal of residence under this provision is allowed only if the conditions for considering the relevant country to be a country of first asylum have been met because the alien has previously obtained protection in that country. One of the requirements for such refusal of residence is that the alien must be protected against refoulement and that it must be possible for the alien to enter and stay lawfully in the country of first asylum. The personal integrity and safety of the alien must also be protected, but it cannot be required in that connection that the alien must have the exact same social living standard as the nationals of the country of first asylum. However, it is a requirement under ExCom Conclusion No. 58 (1989) that the alien must be 'treated in accordance with recognized basic human standards' in the country of first asylum."

4.4 According to its case-law, the RAB notably examines whether the alien has access to housing and medical assistance, the possibility of employment in the private or public

sector, the possibility of settling freely and the possibility of owning real estate. In the present case, the RAB determined that it would be possible for the authors to enter and stay lawfully in Bulgaria and that the latter would be protected against refoulement in Bulgaria. The RAB observed that, on 10 October 2014, the authors obtained subsidiary protection in Bulgaria, which is a member of the European Union, and which has acceded to the Convention relating to the Status of Refugees, which includes compliance with the principle of non-refoulement as set out in Article 33(1) of the Convention relating to the Status of Refugees.

4.5 As regards general conditions for aliens granted residence in Bulgaria, the Board determined that it would not imply a risk of inhumane or degrading treatment as defined in Article 4 of the Charter and as comprised by Article 3 of the European Convention on Human Rights and Article 7 of the International Covenant on Civil and Political Rights to refuse entry to the appellants. The Board also determined that the authors' personal integrity and safety would be protected.

4.6 Concerning the authors' allegation of xenophobic violence in Bulgaria, the Board indicated that if relevant, the authors would be able to seek protection from the Bulgarian authorities. Moreover, it was observed that, based on their interview with the Danish

Immigration Service on 10 March 2015 and 10 June 2015, the authors did not refer to any specific conflict with private individuals or authorities in Bulgaria.

4.7 The RAB further determined that the general socio-economic conditions for refugees who were granted residence in Bulgaria could not independently lead to the conclusion that the authors cannot be returned to Bulgaria. The RAB took into consideration background information available, including a report published by the UNHCR in December 2013,<sup>12</sup> which indicates that individuals who have been granted refugee or protection status in Bulgaria enjoy the same rights as Bulgarian nationals. It also appears from a report published by the Danish Refugee Council<sup>13</sup> that, once issued, a permit gives access to the labour market and social benefits, including unemployment benefits, although it is difficult to find a job in practice because of language problems and a high unemployment rate. It also follows from a Memorandum on the conditions for asylum-seekers and refugees in Bulgaria drafted by the Danish Refugee Council in November 2014, on the basis of meetings with Bulgarian NGOs, that individuals with refugee status have access to health insurance, although they must pay for it. Furthermore, it appears from a report published by the UNHCR in December 2014<sup>14</sup> that, under Bulgarian legislation, alien beneficiaries of international protection are entitled to the same social assistance and services as Bulgarian nationals, and they also have the same healthcare rights and the right to health insurance of their own choice.

4.8 According to the RAB, the housing situation of refugees is often difficult because the latter do not obtain financial support, and municipal housing requires that at least one member of the family holds Bulgarian nationality, and that there has been a determinate period of registration in the relevant municipality. Children of refugees granted international protection have access to schooling, but a precondition is that refugee children must have successfully completed a language course, and that the family be registered at a definite address.

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<sup>12</sup> Refugee Integration and the Use of Indicators: Evidence from Central Europe.

<sup>13</sup> Bulgaria: Overview of the asylum system, reception facilities and other conditions of relevance to the matter of transfers under the Dublin Regulation (26 February 2014).

<sup>14</sup> Monitoring Report on the Integration of Beneficiaries of International Protection in the Republic of Bulgaria.

4.9 In light of this background information, the Refugee Appeals Board found no basis to set aside the assessment made by the Danish Immigration Service, according to which the authors' personal integrity and safety would be protected in Bulgaria, where the socio-economic conditions must be considered adequate. Accordingly, the RAB determined that it would not be contrary to Article 3 of the Convention on the Rights of the Child to deport the authors to Bulgaria.

4.10 The State party recalls that the authors were granted residence in Bulgaria in November 2014. It also notes that after spending four months at the asylum centre, the authors were given a residence permit valid for three years. It considers 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, as they were not capable to show substantial grounds for believing that they would be in danger of being subjected to inhuman or degrading treatment or punishment if deported to Bulgaria. The communication is therefore manifestly ill-founded.

4.11 Should the Committee find the authors' communication admissible, the State party submits that the authors have not sufficiently established that it would constitute a violation of article 7 of the Covenant to deport them to Bulgaria. The State party recalls the Committee's jurisprudence, which sets the threshold for the risk, which must be real and personal.<sup>15</sup> According to the State party, the authors did not produce any substantial new information or views on their circumstances beyond the information which was already relied upon within their asylum proceedings.

4.12 The State party recalls that, when considering whether a country can serve as a country of first asylum under the Dublin procedure, the Refugee Appeals Board requires as an absolute minimum that the relevant asylum-seeker must be protected against refoulement, and his/her personal integrity and safety must be protected in the country of first asylum, which includes a certain socioeconomic considerations. However, it cannot be required that the relevant asylum-seekers must have completely the same social living standards as the country's own nationals.

4.13 The State party recalls that the author's statements and allegations were thoroughly considered by the Danish Immigration Service and the Refugee Appeals Board, including their claims related to living conditions. The State party also stresses 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. In this regard, the authors' reference to the Country Report published by the Asylum Information Database (AIDA), and updated as at 31 January 2015, only concerns reception conditions for *asylum-seekers* in Bulgaria.

4.14 The State party adds that the authors' assertion that they risk homelessness and having to live on the streets if deported to Bulgaria is substantiated neither by their past experience, nor by the background information available. According to their own information, the authors were accommodated at the asylum centre after being granted residence in Bulgaria and were allowed to stay there even though they had been told to leave the centre within 14 days and had been instructed by the police to stay elsewhere. Accordingly, the authors were not homeless during their stay in Bulgaria. The Government further observes that it appears from a UNHCR 2013 report,<sup>16</sup> that the quality of

<sup>15</sup> The State party refers to the Committee's Views in Communication 2007/2010, *J.J.M. v. Denmark*, adopted on 26 March 2014, para. 9.2.

<sup>16</sup> "Where is my home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria" (page 6).

accommodation of asylum-seekers and protection status holders after leaving the registration and reception centres is directly dependent on their employment and income, but also on their family status. In general, refugee families, in particular those with young children, receive a more positive attitude from landlords. No cases have been recorded of families being forced to leave the registration and reception centres without having been provided with accommodation or at least with funds to rent lodgings.

4.15 With respect to the authors' allegation, based on a report,<sup>17</sup> that the Bulgarian authorities discontinue the payment of a monthly allowance once asylum-seekers are granted residence, the State party stresses that based on the same source of information, refugees acquire the rights and obligations of Bulgarian nationals. During their own experience, the authors were provided with 65 leva per month as asylum-seekers, and non-governmental information indicates that the amount granted to persons with protection status is equal to the social aid granted to Bulgarian nationals, and that recognised refugees have the right to receive financial support up to six months after the positive decision.<sup>18</sup>

4.16 The State party further submits that the authors' submission on the alleged lack of access to medical assistance during their stay in Bulgaria is based solely on unsubstantiated information, and is not aligned with the general information available on conditions for aliens granted protection status in Bulgaria.<sup>19</sup> The same is true with the authors' submission that they risk having only limited access to healthcare if deported to Bulgaria.<sup>20</sup> Information indicates that, under Bulgarian legislation, beneficiaries of international protection are entitled to the same social assistance and services as Bulgarian nationals, and they also have the same healthcare rights and the right to health insurance of their own choice.<sup>21</sup> The State party further observes that the authors have neither requested nor needed medical assistance or healthcare services in Bulgaria.

4.17 As regards the authors' information on racially motivated assaults and rhetoric, the State party observes that the Bulgarian government has addressed and condemned racist attacks and rhetoric, including that '[o]n 14 February 2014, following the attack on the Dzhumaya Mosque in Plovdiv, they published a second joint declaration calling for guarantees of civil, ethnic and religious peace, and the police detained over 120 people in connection with the attack'.<sup>22</sup> The Government also observes in this respect that the authors can seek protection from the relevant authorities, should they experience any problems of a racist nature. Their reported past experiences of fearing a group called 'The Bald Ones' cannot lead to a different assessment. Besides, the authors themselves have not experienced any problems with that group or similar groups.

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<sup>17</sup> Human Rights Watch, "Containment Plan: Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants", April 2014 (page 5).

<sup>18</sup> Country Report – Bulgaria, published by Asylum Information Database (AIDA) updated as at 31 January 2015, page 41.

<sup>19</sup> For example "Where is my home? Homelessness and access to housing among asylum-seekers, refugees and persons with international protection in Bulgaria, UNHCR, 2013, which states, inter alia, that 'access to medical care in RRC Sofia follows the same logic – that individuals have the same rights as insured Bulgarians, which do not cover the cost of medicine' (p. 24).

<sup>20</sup> The State party refers to the reports "Bulgaria as a Country of Asylum", published by the UNHCR in April 2014, and "Trapped in Europe's Quagmire: The Situation of Asylum Seekers and Refugees in Bulgaria", published by Bordermonitoring.eu in July 2014, from which it appears that refugees in Bulgaria have access to healthcare services and that medical treatment is free if the asylum-seekers register with a general practitioner.

<sup>21</sup> Monitoring Report on the Integration of Beneficiaries of International Protection in the Republic of Bulgaria in 2014 (Bulgarian Council on Refugees and Migrants), December 2014.

<sup>22</sup> The State party cites the report: "Bulgaria As a Country of Asylum", UNHCR (April 2014), it appears from page 14 of Bulgaria As a Country of Asylum, published by the UNHCR in April 2014.



4.18 As regards the submission on insufficient access to education and schooling, the State party notes that available information<sup>23</sup> indicates that observes that asylum-seekers under 18 years of age have access to education based on the same conditions as those applicable to Bulgarian nationals. However, before being enrolled in Bulgarian municipal schools, refugee and asylum-seeking children must successfully complete a language course. Attending compulsory school is free of charge.

4.19 Concerning the authors' allegations that, if deported to Bulgaria, they will not have access to accommodation, and that they will thus most likely have to live on the streets with their children, the State party refers to the 2 April 2013 decision of the European Court of Human Rights in *Samsam Mohammed Hussein and others v. the Netherlands and Italy*.<sup>24</sup> The European Court of Human Rights stated in the decision that the assessment of whether there are substantial grounds for believing that an applicant faces a real risk of being subjected to treatment in breach of Article 3 of the ECHR 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. In that connection, the Court further stated (in paras 70 and 71), that "the mere fact of return to a country where one's economic position will be worse than in the expelling Contracting State is not sufficient to meet the threshold of ill-treatment proscribed by article 3"; 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 (§ 249).

4.20 Regarding the authors' reference to the decision of the Grand Chamber of the European Court of Human Rights (4 November 2014) in *Tarakhel v. Switzerland*,<sup>25</sup> the State party is of the opinion that it cannot be inferred from this judgment that individual guarantees must be obtained from the Bulgarian authorities in the case at hand, which concerns the transfer of a family granted protection status in Bulgaria.

4.21 As for the Committee's Views in the case of *Warda Osman Jasin v. Denmark* (communication No. 2360/2014), the State party distinguishes the facts from the present case, noting that the case of *Jasin* concerned a single woman with minor children, whose residence permit for Italy had expired. The case at hand concerns the deportation of a family consisting of a mother, a father and their two minor children as well as two adult children, who all still hold valid residence permits for subsidiary protection in Bulgaria. In the opinion of the State party, the cases are therefore not comparable.

4.22 The State party therefore submits that the Refugee Appeals Board took into account in its decision all relevant information and that the communication has not brought to light any information substantiating that the authors risk persecution or abuse justifying asylum on their return to Bulgaria. It recalls the Committee's established jurisprudence,<sup>26</sup> according to which important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice. In the present case, the authors are trying to use the Committee as an appellate body to have the factual circumstances advocated in support of their claim for asylum reassessed by the Committee. There is no basis to challenge the assessment made by the Refugee Appeals Board, according to which the authors have failed to establish that there are substantial

<sup>23</sup> "Bulgaria As a Country of Asylum", UNHCR, April 2014.

<sup>24</sup> Application No. 27725/10.

<sup>25</sup> Application No. 29217/12.

<sup>26</sup> *P.T. v. Denmark* (communication No. 2272/2013, 1 April 2015), para. 7.3, *K v. Denmark* (communication No. 2393/2014, 16 July 2015 ), paras 7.4 and 7.5.

grounds for believing that they would be in danger of being subjected to inhuman or degrading treatment or punishment if deported to Bulgaria. Against this background, the State party submits that the deportation of the authors to Bulgaria would not constitute a violation of article 7 of the Covenant.

**Authors' comments on the State party's observations<sup>27</sup>**

5.1 In their comments of 11 April 2016, the authors maintain that their deportation to Bulgaria would 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 The authors stress that the assessment of a first-asylum claim not only includes the principle of non refoulement, but also the assessment of whether the person with international protection is "permitted to remain there and to be treated in accordance with recognized basic human standards until a durable solution is found for them."<sup>28</sup> The authors submit that the RAB has failed to undertake a thorough assessment of the risk that the authors would face in case of deportation to Bulgaria and, in particular, to establish whether the author would be treated in accordance with recognized basic humane standards. The mere fact that Bulgaria is bound by the European Convention on Human Rights is not an automatic indication that this country complies with the Convention.

5.3 The authors further stress that the RAB has already determined, in the past, that families with minor children are in a particularly vulnerable situation. From October 2014 to September 2015, the RAB has assessed 72 cases of applicants with refugee status or subsidiary protection status in Bulgaria. The RAB granted asylum in 11 of these cases, based on the vulnerable status of families, along the lack of essential support and medical treatment in Bulgaria. Therefore, the Board not only has the possibility to, but has actually granted protection to families in need of special care.

5.4 With respect to the State party's claim that the authors did not experience homelessness, the latter stress that they had nowhere to go, and when they were forced to leave the asylum center, they found themselves in a situation where they were forced to secondary movement due to, inter alia, homelessness.

5.5 As for medical care, the authors stress that the RAB has in several decisions established the lack of appropriate medical support in Bulgaria. They add that whether or not the family has requested or needed medical assistance or healthcare does not affect the assessment whether the lack of appropriate medical support may expose them to a breach of article 7 of the Covenant. The authors add that refugees' access to healthcare is restricted in Bulgaria. General access depends on a prepaid insurance, which is not covered by the State. Even where a refugee has paid for the health insurance, s/he still has to pay for medicine and psychological treatment, which may be vital for traumatized refugees and torture victims.<sup>29</sup> In addition, due to the administrative workload and prejudice against refugees, only 4 out of 130 general practitioners agreed to admit refugees on their patient lists.

5.6 The authors stress that the *cumulative* effect of their experiences amounts to a well-founded fear of treatment contrary to article 7 of the Covenant. They reiterate that there

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<sup>27</sup> It is as of this date that the authors have been represented by the Advokat Kompagniet. [A valid power of attorney is in file.]

<sup>28</sup> ExCom Conclusion No. 58.

<sup>29</sup> The authors refer to a report of Proasyl, "Erniedrigt, misshandelt, schutzlos: Flüchtlinge in Bulgarien", April 2015, p.34.

racially motivated crimes against minorities are not prosecuted, and are treated by the Bulgarian authorities as hooliganism.<sup>30</sup>

5.7 As for children education, the authors note that the Bulgaria Council on Refugees and Migrants reported in 2014 that only 45 refugee children were enrolled in the Bulgarian municipal school system. There were 825 refugee children registered in Bulgaria. Thus, more than 90 percent of the registered refugee children were not enrolled in the municipal school system. The bureaucratic administration and the difficulties of enrolment in the mandatory language course constitute a *de facto* violation of the children's right to education.

5.8 The authors reiterate that the Committee's Views in *Jasin* are relevant in their situation: Similar to the facts of that case, it was wrong from the State party to assume that as holders of valid residence permits in Bulgaria, the authors would benefit from their theoretical rights and social benefits. It is up to the State party to undertake an individualized assessment on the actual risk faced in case of deportation. As such, there were procedural defects in the RAB's assessment, which is why the authors have resorted to the Committee.

#### State party's additional observations

6.1 On 4 November 2016, the State party provided additional observations, generally referring to its observations of 8 February 2015. It reiterates that the RAB made a full and thorough assessment of all the circumstances of the case, including an assessment of the information in the case at hand, in conjunction with the information on conditions in the country of first asylum. The authors have not established that the assessment made by the Refugee Appeals Board is clearly arbitrary or manifestly ill-founded.

6.2 According to the State party the various cases cited by the authors in which the RAB determined that Bulgaria could not serve as the country of first asylum do not reflect arbitrariness, but rather that the Board makes a specific and individual assessment in each individual case. The finding made by the Refugee Appeals Board in the case at hand that Bulgaria can serve as the authors' country of first asylum was thus based on a specific assessment of the circumstances.

6.3 The State party refers to the Committee's jurisprudence,<sup>31</sup> and distinguishes the present case from that compared of *Jasin et al. v. Denmark*, previously decided by the Committee, which concerned the deportation of a single mother who suffered from asthma and required medication, had three minor children and whose residence permit for Italy had expired. The State party stresses that the case at hand concerns the deportation of a married couple with four children, two of whom are adult; that none of the family members suffer from any diseases requiring medical treatment; and that all family members were granted residence permits in Bulgaria. The State party further notes that the authors failed to point at any irregularity in the domestic decision-making, and refers to the case of *A.A.I. and A.H.A. v. Denmark*,<sup>32</sup> in which the Committee found that it was not contrary to article 7 of the Covenant to deport a married couple and their two minor children to Italy, where they

<sup>30</sup> Amnesty International, "Missing the point- lack of adequate investigation of hate crimes in Bulgaria", February 2015, p. 27.

<sup>31</sup> The State party further refers to the individual opinion of Committee members Yuval Shany, Konstantine Vardzelashvili and Sir Nigel Rodley in the case of Abdilafir Abubakar Ali and Mayul Ali Mohamad v. Denmark (CCPR communication No. 2409/2014, Views adopted on 29 March 2016).

<sup>32</sup> Communication No. 2402/2014, Views adopted by the Committee on 29 March 2016

had all previously been issued with residence permits. According to the State party, the same reasoning should apply in the case at hand.

6.4 As for the background information referred to by the authors, the State party notes that this information was included in the other background material on Bulgaria available to the RAB, and was thus also taken into account in the Board's assessment of the authors' 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 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 3 August 2015. 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 in violation of article 7 of the Covenant. As no other obstacles to admissibility exist, 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 four children, two of whom are minor, to Bulgaria, based on the Dublin Regulation principle of "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, notably the lack of access to financial help or social assistance and to integration programs for refugees and asylum seekers, as well as by the general conditions of reception for asylum seekers and refugees in Bulgaria. The authors have contended that they would have no access to social housing or temporary shelters; that they would not be able to find accommodation and a job, and therefore they would face homelessness and be forced to live on the streets; and that they would be exposed to acts of a xenophobic nature, and left without protection.

8.3 The Committee recalls its general comment No. 31,<sup>33</sup> 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 has also indicated that the risk must be personal<sup>34</sup> and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.<sup>35</sup> 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,<sup>36</sup> unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>37</sup>

8.4 The Committee observes that it is not disputed that the authors have obtained subsidiary protection, and were accordingly granted a residence permit in November 2014, with a validity period of three years; and that they could stay in the asylum camp after they obtained a residence permit. The Committee also notes that the RAB determined that the authors did not face any problems with the nationals and authorities of Bulgaria, and that they are entitled to enjoy the necessary social rights if they were returned to Bulgaria, including access to school for the children and medical care.

8.5 The Committee further notes that the authors relied on third party information and reports on the general situation of asylum seekers and refugees in Bulgaria,<sup>38</sup> to argue that they would not have access to housing in case of return and would be deprived of medical care. In this respect, the Committee notes the State party's statement that, by law, persons granted refugee and protection status in Bulgaria have the same rights as Bulgarian nationals;<sup>39</sup> and its argument, according to which the authors have not requested, nor needed medical assistance during their stay in Bulgaria, such as to substantiate their allegation that no medical support is available. Regarding allegations of xenophobic violence, the Committee also takes note of the RAB's determination that during their asylum interviews, the authors failed to report any specific conflict, and that they would have the possibility to seek the protection of the relevant Bulgarian authorities should their personal integrity and safety be threatened.

8.6 The Committee observes that, notwithstanding the fact that it is difficult, in practice, for refugees and beneficiaries of subsidiary protection to get access to the labour market or to housing, the authors have failed to substantiate a real and personal risk upon return to Bulgaria. The authors have not established that they were homeless before their departure from Bulgaria; they did not live in destitution; and their situation with four children, the youngest of whom is 14, must be distinguished from that of the author in the decision of

<sup>33</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>34</sup> Communications No. 2007/2010, *J.J.M. v. Denmark*, Views adopted on 26 March 2014, para. 9.2, and No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6. See also Committee against Torture, communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

<sup>35</sup> See *J.J.M. v. Denmark*, supra n. 24, para. 9.2, and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>36</sup> 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.

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

<sup>38</sup> See par. 3.3. and following above.

<sup>39</sup> Article 32(2) of the Law on asylum and refugees.

*Jasin v. Denmark*,<sup>40</sup> which concerned a single mother of three minor children, suffering from a health condition, and holding an expired residence permit. The mere fact that they may be possibly confronted with difficulties upon return by itself does not necessarily mean that they would be in a special situation of vulnerability – and in a situation significantly different to many other families –, such as to conclude that their return to Bulgaria would constitute a violation of the State party's obligations under article 7 of the Covenant.<sup>41</sup>

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

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

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<sup>40</sup> Communication No. 2360/2014.

<sup>41</sup> See e.g. communication No. 2569/2015, *Issa and Khalifa v. Denmark*, par. 8.6 (deportation to Bulgaria).