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Human Rights Committee

Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2409/2014[*] [**]

Communication submitted by:	Mr. AA et al. (represented by the Danish Refugee Council)
Alleged victim:	The authors and their two children
State Party:	Denmark
Date of communication:	28 May 2014 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 2 June 2014 (not issued in document form)
Date of adoption of Views:	29 March 2016
Subject matter:	Deportation from Denmark to Italy
Procedural issues:	None
Substantive issues:	Torture, cruel, inhuman or degrading treatment or punishment
Articles of the Covenant:	7
Articles of the Optional Protocol:	2

[*] Adopted by the Committee at its 116th session (7-31 March 2016).

[**] The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelic, Duncan Muhumuza Laki, Photini Pazartzis, Sir Nigel Rodley, Fabian Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.
Three opinions signed by six Committee members are appended to the present Views.

1.1. The authors of the communication are Mr. AA (27 years old at the time the communication was submitted) and Ms. MM (24 years old at the time the communication was submitted), Somalian nationals from Mogadishu, and their two children, AAA (2 years old at the time the communication was submitted) and ARA (6 months at the time the communication was submitted).[1] The authors are subject to deportation to Italy, following the Danish authorities' rejection of their application for refugee status in Denmark. The authors claim that by forcibly deporting them and their children to Italy, Denmark would violate their rights under article 7 of the International Covenant on Civil and Political Rights. The authors are represented by the Danish Refugee Council. The first Optional Protocol entered into force for Denmark on 23 March 1976.

1.2 On 2 June 2014, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the authors and their children to Italy while their case was under consideration by the Committee.

1.3 On 4 February 2015 the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request to lift the interim measures.

Factual background

2.1 The authors Mr. AA and Ms. MM are from Mogadishu, Somalia. They are Muslim and belong to the Hawie clan. Both victims of threat from Al-Shabaab, they fled Somalia to Libya where they met while in detention for illegal entry. They therefore submitted their claim for refugee status separately and on different grounds. AA fled to Libya in 2008. His brother was a soldier in the Somali army and was killed by Al-Shabaab in 2007. Following the killing of his brother, AA was threatened by Al-Shabaab because he was suspected of being a spy for the government. MM fled Somalia to Libya after having given an interview on the radio in early 2009, in which she stated that her brother and her then husband were killed by Al-Shabaab because they used to work for the government. MM claims that following this interview, Al-Shabaab members repeatedly threatened her and searched for her at her home.

2.2 The authors were detained in Libya for one year approximately, during which MM gave birth to a girl. In 2011, the authors travelled by boat to Italy. During the trip, they were separated and their daughter drowned.[2] The authors applied for asylum in Italy in April and June 2011 respectively. Once in Italy, they reunited and lived together in an asylum centre. There, they were given food from charities, in particular a church. On 21 December 2011, MM gave birth to their son, AAA in a hospital in Italy. The baby was not well, but the authors allege that no one listened to them or attended them when they asked for medical assistance.

2.3 While still in the asylum centre, the authors received a temporary residence permit. As they do not speak Italian, they did not understand the validity period of the permit. In January 2012, the authors were asked to leave the asylum centre. They lived in the streets for four months approximately, from January to June 2012. They were not offered any assistance to find shelter, permanent housing or work, and they lost their residence permits.[3]

[1] No precise date of birth was provided for the authors.

[2] According to the complaint, Ms. MM travelled with her daughter, but the girl drowned and died.

[3] The RAB decision of 7 October 2013 indicates that Mr. AA was in possession of a valid residence permit for Italy at his arrival to Denmark; however, the expiration date of the residence permit is not provided. The RAB decision also states that Ms. MM informed the Danish authorities that she lost her temporary residence permit while she was living in the streets in Rome.

They slept in train stations with their son and received food from churches. The health of their new-born son deteriorated because of a congenital heart defect, which had not yet been diagnosed at that time. They further allege that they were exposed to violence. In February/March 2012 for example, AA was attacked by three persons who kicked him until he fell to the floor. The police intervened but did not take any measure against the aggressors. They just told the authors not to sleep at the train station. The authors did not file a complaint because they could not speak Italian.

2.4 Because of the very bad conditions they were facing, the authors decided to leave to Denmark. On 20 June 2012, they arrived in Denmark and applied for asylum. On 24 April 2013, the Danish Immigration Service decided that even though the authors were in need of subsidiary protection, they should be transferred to Italy, as it was their first country of asylum. On 7 October 2013, the Refugees Appeals Board (RAB) upheld the decision of the Danish Immigration Service. It considered that the authors fell within the section 7 (2) of the Aliens Act,[4] and that consequently, the question was if Italy could serve as their first country of asylum, in accordance with Section 7(3) of the Aliens Act[5]. The RAB indicated that minimum requirements for a country to be considered as first country of asylum were that the authors were protected against *refoulement*, that they were able to enter and stay there lawfully, and that their personal integrity and safety were protected. Taking into account the information provided by the Italian authorities and by the authors,[6] the RAB considered as a fact that both authors had been granted residence in Italy under the Convention relating to the Status of Refugees. The RAB further stated that the concept of protection comprises certain social and financial elements allowing the asylum seekers to enjoy basic rights and that the authors would be able to obtain such socio-economic conditions in Italy, their first country of asylum.

2.5 On 21 May 2013, the authors' son had a heart surgery in Denmark after the doctors diagnosed a congenital heart defect. According to the authors, the doctors also concluded that the baby had not been sufficiently examined at the hospital in Italy when he was born. In November 2013, the second author gave birth to the authors' second child, ARA, in Denmark.

2.6 The authors claim that they have exhausted all available domestic remedies, as the RAB decision of 7 October 2013 is final and cannot be appealed. The authors contend that the RAB based its negative decision on the fact that they had received a temporary residence permit in Italy, that they could enter and reside there legally, and that they may obtain adequate socio-economic conditions there as well.

The complaint

3.1 The authors submit that, by forcibly returning them and their children to Italy, the Danish authorities would violate their rights under article 7 of the Covenant.[7] They submit

[4] Section 7(2) establishes: "Upon application, a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin (…)"

[5] Section 7(3) establishes: "A residence permit under subsections (1) and (2) may be refused if the alien has already obtained protection in another country, or if the alien has close ties with another country where the alien must be deemed able to obtain protection"

[6] The RAB's decision does not specify what information was received from the Italian authorities. It highlights the fact that the authors made contradictory statements regarding whether they requested help from the Italian authorities in relation to their situation, in particular regarding their son's health.

[7] The authors cite European Court of Human Rights, *M.S.S. v. Belgium and Greece*, application No. 30696/09, judgement adopted on 15 December 2010; and *Mohammad Hussein and Others v. the Netherlands and Italy*, application No. 27725/10, decision adopted on 2 April 2013.

that since they were asked to leave the asylum centre in early 2012, they have not been able to find housing, work or any form of durable humanitarian solution in Italy. In addition, they submit that if they are returned to Italy, they may face homelessness or be obliged to live in self-organized settlements, which are overcrowded and have very bad living conditions, because as they were granted protection and benefitted from the reception system when they first arrived in Italy, they are not entitled to accommodation in reception centres anymore.[8]

3.2 The authors further submit that reception and living conditions in Italy for refugees with valid or expired residence permits do not comply with basic human standards and with international obligations of protection.[9] They consider that their experience demonstrates systemic failures of the support provided to asylum seekers and refugees in Italy, especially members of vulnerable groups. They further argue that they would likely face homelessness, destitution and very limited access to medical care in Italy.[10] The authors therefore consider that Italy does not currently meet the necessary humanitarian standards for the principle of first country of asylum to be applied and that they would be at a real risk of facing inhuman and degrading treatment, if they were returned to Italy. The authors draw attention to the fact that they are a family with two small children. They also consider that their older son, AAA, would be at risk of not receiving adequate medical treatment and follow up to his heart disease in Italy, where he did not receive proper medical assistance when he was born, and where his congenital heart disease was not discovered. The authors further note that after they were told to leave the Italian reception facilities early 2012, they were not able to find shelter, access to medical care, work or any durable humanitarian solution for them and their children, despite having been granted subsidiary protection.

State party's observations on admissibility and merits

4.1 On 2 December 2014, the State party submitted its observations on the admissibility and merits of the communication. The State party considers that the communication should be declared inadmissible because it is manifestly ill-founded. In case the Committee considers that the communication is admissible, the State party considers that the Committee should declare that article 7 of the Covenant would not be violated in case of return of the authors to Italy. More specifically, the State party argues that the authors did not produce any essential new information about their case before the Committee beyond that already relied upon in connection with their asylum proceedings. It considers that the information provided was already thoroughly reviewed by the RAB in its decision of 7 October 2013. The State Party notes that the RAB found that the authors fell under section 7(2) of the Danish Aliens Act (protection status). However, the authors had previously been granted subsidiary protection in Italy and could return and stay there lawfully with their

[8] The authors cite several reports on the situation of returnees in Italy: European Network for technical cooperation of the application of the Dublin II Regulation*, Dublin II Regulation National Report, Italy,* December 2012; Swiss Refugee Council (OSAR), *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees*, October 2013; Jesuit Refugee Service Europe –JRS-, *Protection Interrupted the Dublin Regulation's Impact on Asylum Seekers Protection*, June 2013 and United States Department of State, *Country Reports on Human Rights Practices*, April 2013.

[9] Asylum Information Database (AIDA), *Country report: Italy*, May 2013, OSAR, European Network for technical cooperation of the application of the Dublin II Regulation*,* See footnote 14.

[10] The authors quote a report according to which refugees spend most of their time covering their basic needs: queuing up for meals, finding somewhere to shower and wash and a place to sleep. Under these circumstances, it is almost impossible for them to become integrated into the society, which is even more difficult for parents who have to take care of their children. OSAR, see footnote 14.

children. Italy is considered the "first country of asylum", which justifies the refusal, of the Danish authorities to grant them asylum, in accordance with section 7 (3) of the Aliens Act.

4.2 The State party further clarifies that when applying the principle of country of first asylum, the RAB requires, at a minimum, that the asylum seeker is protected against *refoulement* and that he or she is able to legally enter and take up lawful residence in the first country of asylum. According to the State party, such protection includes certain social and economic elements, as asylum seekers must be treated in accordance with basic human standards and their personal integrity must be protected. The core element of such protection is that the person(s) must enjoy personal safety, both upon entering and while staying in the country of first asylum. However, the State party considers that it is not possible to require that asylum seekers have the exact same social and living standards as nationals of the country.

4.3 In response to the complainants' allegations regarding the humanitarian situation in Italy, the State party refers to the decision of inadmissibility of the European Court of Human Rights (ECHR) in *Mohammed Hussein and Others v. the Netherlands and Italy* in 2013. In that case, taking into account reports of governmental and non-governmental organizations, the Court considered that "while the general situation and living conditions in Italy of asylum seekers, accepted refugees and aliens who have been granted a residence permit for international protection or humanitarian purposes may disclose some shortcomings, it has not been shown to disclose a systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group of people, as was the case in *M.S.S. v. Belgium and Greece*."[11] The Court found the applicant's allegations manifestly ill-founded and inadmissible and that the applicant could be returned to Italy. With regard to the present case, the State party considers that, although the authors have relied on the European Court's finding in *M.S.S. v. Belgium and Greece* (2011), the Court's decision in the *Mohammed Hussein* case (2013) is more recent and specifically addresses the conditions in Italy. The State party further submits that as the Court noted, a person granted subsidiary protection in Italy would be provided with a three-year renewable residence permit that allowed the holder to work, obtain a travel document for aliens, family reunification and benefit from the general schemes for social assistance, health care, social housing and education.

4.4 The State party further refers to the 2013 AIDA country report on Italy quoted by the authors according to which some asylum seekers who did not have access to asylum centres were obliged to live in "self-organized settlements", which are often overcrowded (see p. 36). The State party submits that the November 2013 update of that country report indicates that those were the reception conditions in Italy for asylum seekers and not for aliens who, like the authors, had already been issued residence permits. Concerning the authors' son's heart condition and their claims that he will need medical assistance and follow up which will not be available in Italy, the State party submits that the child's treatment has been successfully completed following a surgery carried out in Denmark.[12] It further considers that, according to available background information, the authors' son will have access to medical treatment in Italy.

[11] See *Mohammed Hussein and Others v. the Netherlands and Italy*, para.78.

[12] The State party refers to a medical report according to which follow up examination would be needed in around five years, but since the patient and his family are refugees who are going to be expelled from Denmark, this will most likely not happen.

4.5 In addition, the State party refers to another decision of the ECHR, *Tarakhel v. Switzerland,*[13] in which the Court found that the return of an Afghan family from Switzerland to Italy would constitute a breach of article 3 of the European Convention on Human Rights (prohibition of inhuman or degrading treatment), if the Swiss authorities were to send the asylum seekers back to Italy under the Dublin Regulation without having first obtained individual guarantees from the Italian authorities that the applicants would be taken in charge in a manner adapted to the age of their children and that the family would be kept together. The State party considers that *Tarakhel v. Switzerland* does not deviate from the Court's jurisprudence regarding individuals and families with residence permits for Italy,[14] as it concerns a case of asylum seekers. It submits that States parties cannot be expected to obtain individual guarantees from the Italian authorities before returning individuals or families in need of protection who have already been granted residence in Italy.

4.6 The State party concludes that the authors have failed to substantiate that they would be at risk of irreparable harm in Italy, and that deporting the authors and their children back to Italy would not amount to a violation of article 7.

Authors' comments on the State party's observations

5.1 On 28 January 2015, the authors submitted their comments on the State party's observations. They assert that the living conditions in Italy for asylum seekers *and* beneficiaries of international (subsidiary) protection are similar, since there is no effective integration scheme in place. Asylum seekers and recipients of subsidiary protection thus often face the same severe difficulties in Italy finding basic shelter, access to sanitary facilities, and food.[15] The authors refer to the 2013 Jesuit Refugee Service report which states that the real problem concerns those who are sent back to Italy and who were already granted some kind of protection; they may have already stayed in at least one of the accommodation options available upon initial arrival, but, if they left the centre voluntarily before the established time, they are no longer entitled to accommodation in the Government reception centres for asylum seekers (CARAs).[16] Most people occupying abandoned buildings in Rome fall in this last category. The findings show that the lack of places to stay is a big problem especially for returnees who are, in most cases, holders of international or humanitarian protection.[17]

5.2 The authors also dispute the interpretation of the ECHR jurisprudence referred to by the State party. They contend that the *Hussein* decision was based on an assumption that the Italian authorities would prepare a suitable solution for the arrival of the applicant's family in Italy.[18] The authors contend that there is no basis for assuming that the Italian authorities will prepare for their return in accordance with basic human rights standards.

[13] European Court of Human Rights, *Tarakhel v. Switzerland,* application No. 29217/12, judgment adopted on 10 September 2014.

[14] As established in *Mohammed Hussein and Others v. the Netherlands and Italy*.

[15] The authors reference their complaint and the various sources cited therein.

[16] Jesuit Refugee Service, *Protection Interrupted – The Dublin Regulation's Impact on Asylum Seekers' Protection*, June 2013, p. 152.

[17] Ibid., p. 161. In addition, the authors quote another report indicating that persons with protection status have no access to the European Fund for Refugees (FER) accommodation either, because they are only for asylum seekers. Therefore, according to this report, it is extremely difficult for people who have been granted protection status who are returned to Italy to find accommodation. OSAR, see footnote 13.

[18] The author cites para. 77 of the *Samsam Mohammed Hussein* decision (paras. 77-78).

5.3 The authors consider that, contrary to the State party's interpretation, the ECHR's case law more relevant for the present case is *Tarakhel v. Switzerland,* taking into account that, as stated above, the living conditions and difficulties in finding shelter, health assistance and food are similar for asylum seekers and persons who have already been granted protection. The authors note that in *Tarakhel*, the ECHR stated that the presumption that a State participating in the Dublin system will respect the fundamental rights in the European Convention on Human Rights is not irrebuttable. The ECHR further found that, in the current situation in Italy, "the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, cannot be dismissed as unfounded."[19] The ECHR required Switzerland to obtain assurances from its Italian counterparts that the applicants (a family) would be received in facilities and conditions adapted to the age of the children; if such assurances were not made, Switzerland would be violating article 3 of the European Convention by transferring them to Italy. The authors argue that in the light of this finding, the harsh conditions faced by recipients of subsidiary protection returning to Italy would fall within the scope of article 3 of the European Convention on Human Rights and article 7 of the Covenant. Accordingly, they reiterate that their deportation to Italy would constitute a violation of article 7 of the Covenant.[20]

Issues and proceedings before the Committee

Consideration of admissibility

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

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

6.3 The Committee notes the authors' claim that they have exhausted all effective domestic remedies available to them. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee notes the State party's challenge to the admissibility of the communication on the ground that the authors' claims under article 7 of the Covenant are manifestly ill-founded. The Committee however considers that the inadmissibility argument adduced by the State party is intimately linked to the merits and should thus be considered at that stage.

6.5 The Committee declares the communication admissible insofar as it appears to raise issues under article 7 of the Covenant, and proceeds to their consideration on the merits.

[19] *Tarakhel v. Switzerland, para. 115.*

[20] The authors quote the ECHR which in *Tarakhel* indicated that if not proper reception facilities adapted to children are available "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". *Tarakhel v. Switzerland,* para. 119.

Consideration on the merits

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

7.2 The Committee notes the authors' claim that deporting them and their two minor children to Italy, based on the Dublin Regulation principle of "first country of asylum", would expose them to the risk of irreparable harm, in violation of article 7 of the Covenant. The authors base their arguments on, *inter alia*, the actual treatment they received after they were granted residence permits in Italy, and on the general conditions of reception for asylum seekers and refugees entering Italy, as found in various reports.

7.3 The Committee recalls its general comment No. 31,[21] 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 7 of the Covenant which prohibits cruel, inhuman or degrading treatment. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.[22] 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,[23] unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.[24]

7.4 The Committee notes that, according to the uncontested submissions by the authors, they lived in a reception centre between June 2011 and January 2012, when they were asked to leave without being provided with an alternative accommodation, with their recently born son (on 21 December 2011). Subsequently they lived in the streets and in railway stations, and were dependent on food provided by churches. They were thus left without shelter and means of subsistence. The Committee also notes the authors' submissions that their new-born son did not receive the medical attention he needed at his birth, despite their requests to the competent authorities. Fearing of being unable to provide for their child and in the absence of a prospect in finding a humanitarian solution to their situation in Italy, the authors left Italy and went to Denmark where they requested asylum in June 2012. Today, the authors, asylum seekers with two minor children,[25] find themselves in a situation of great vulnerability.

7.5 The Committee notes the various reports submitted by the authors highlighting the lack of available places in the reception facilities in Italy for asylum seekers and returnees under the Dublin Regulations. The Committee notes in particular the authors' submission that returnees, like themselves, who had already been granted a form of protection and

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

[22] See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 692/1996, *A.R.J. v. Australia,* Views adopted on 28 July 1997, para. 6.6; and No. 1833/2008*, X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

[23] See communication No. 1957/2010, *Lin* v. *Australia*, Views adopted on 21 March 2013, para. 9.3.

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

[25] See para. 2.5.

benefited from the reception facilities when they were in Italy, are in fact not entitled to accommodation in the CARAs.[26]

7.6 The Committee notes the finding of the RAB that Italy should be considered the "first country of asylum" in the present case and the position of the State party that the first country of asylum is obliged to provide asylum seekers with basic human standards, although it is not required that such persons have the same social and living standards as nationals of the country (see para. 4.2 above). The Committee further notes the reference made by the State party to a decision of the European Court of Human Rights according to which, although the situation in Italy had shortcomings, it had not disclosed "a systemic failure to provide support or facilities catering for asylum seekers".[27]

7.7 However, the Committee considers that the State party's conclusion did not adequately take into account the information provided by the authors, based on their own personal experience that, despite being granted a residence permit in Italy, they faced intolerable living conditions there. In this connection, the Committee notes that the State party does not explain how, in case of return to Italy, the residence permits would actually protect them and their two minor children, one of whom needs follow-up medical attention, from exceptional hardship and destitution, which they had already experienced in Italy.[28]

7.8 The Committee recalls that States parties should give sufficient weight to the real and personal risk a person might face if deported[29] and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the authors would face in Italy, rather than rely on general reports and on the assumption that, as they had benefited from subsidiary protection in the past, they would, in principle, be entitled to the same subsidiary protection today. The Committee considers that the State party failed to take into due consideration the special vulnerability of the authors who, notwithstanding their entitlement to subsidiary protection, faced homelessness and were not able to provide for themselves in the absence of any assistance from the Italian authorities, including the lack of medical assistance needed for their new-born son. It has also failed to seek proper assurances from the Italian authorities that the authors and their two minor children would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7 of the Covenant, by requesting that Italy undertake (a) to reissue or renew their residents permits,[30] and to issue residents permits to their children and not to deport them from Italy; and (b) to receive the authors and their children in conditions adapted to the children's age and the family's vulnerable status, which would enable them to remain in Italy.[31]

7.9 Consequently, the Committee considers that, under the circumstances, the removal of the authors and their two minor children to Italy on the basis of the decision of the Danish Refugee Appeals Board would be in violation of article 7 of the Covenant.

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the deportation

[26] See AIDA, *Country report: Italy*, January 2015, p. 54-55, available at www.asylumineurope.org/sites/default/files/report-download/aida_italy_thirdupdate_final_0.pdf .

[27] See *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, para.78.

[28] See communication No. 2360/2014, *Warda Osman Jasin v. Denmark*, Views adopted on 22 July 2015, para. 8.8.

[29] See for example, communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, paras.11.2 and 11.4.

[30] Taking into account the authors' claim that they lost their residence permits (see para. 2.3).

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

of the authors and their two children to Italy would violate their rights under article 7 of the International Covenant on Civil and Political Rights.

9. In accordance with article 2 (1) of the Covenant which establishes that States Parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including full reconsideration of their claim taking into account the State party's obligations under the Covenant, the Committee's present Views and the need for assurances from Italy, as set out in paragraph 7.8 above, if necessary. The State party is also requested to refrain from expelling the authors to Italy while their request for asylum is being reconsidered.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them translated into the official language of the State party and widely distributed.

Appendix I

Individual opinion of Committee members Yuval Shany, Konstantine Vardzelashvili and Sir Nigel Rodley (dissenting)

1. We disagree with the Committee's conclusion that the facts in the present case suggest a violation of article 7 of the Covenant by Denmark, should the authors and their two children be deported to Italy.

2. According to the well-established case law of the Committee, State parties are obliged not to deport persons from their territory "where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed."[a] Not every exposure to personal hardship in the country of removal would, however, fall within the scope of the removing State's non-refoulement obligations.[b]

3. Individuals who are likely to find themselves, after being deported, facing economic destitution and inadequate living conditions, may have legitimate claims from the country of removal under the International Covenant on Economic, Social and Cultural Rights, and possibly also under the International Covenant on Civil and Political Rights. Still, with the possible exceptions of those individuals who face special hardships due to their particular vulnerabilities which render their plight exceptionally harsh and irreparable in nature, non-availability of social assistance does not constitute grounds for non-refoulement. A contrary interpretation, recognising all economically destitute individuals as potential victims of article 7 of the Covenant, has no support in the caselaw of the Committee or in State practice, and would extend the protections of article 7 and the non-refoulement principle (which are absolute in nature) beyond a breaking point.

4. Although we supported the Views adopted by the Committee in Jasin v Denmark,[c] the facts in that case were significantly different than the facts of the present case, and do not warrant the same legal conclusion. In Jasin, the author was in a particularly vulnerable situation, which made it nearly impossible for her to confront the exceptional hardships expected were she to be deported to Italy: a single mother of three small children, having to contend with her own health problems, who has lost her immigration status in Italy, and whom the Italian welfare system has demonstrably failed to assist. Under these exceptional circumstances, we were of the view that, without specific assurances of social assistance, Italy cannot be considered a 'safe country' of removal for the author and her children (raising, as a result, the possibility of de facto refoulement from Italy to her country of origin).

5. In the present case, the two authors are able-bodied adults, who may, pursuant to their subsidiary protection status in Italy, lawfully work and support themselves and their two minor children. The facts of the case also suggest that the Italian authorities have responded in the past, at least partly, to the social needs of the authors, and that they resided in an asylum centre for several months. Although one of the authors' children suffered in the past from a congenital heart problem (Atrial Septal Defect), the record before us suggests that the operation he underwent in Denmark was successful, that the medical

[a] General Comment 31 (2004), para. 12.

[b] *Cf. Vuolanne v. Finland,* Comm. No. 265/87, Views adopted on 7 April 1989.

[c] *Jasin v. Denmark*, Comm. No. 2360/2014, Views adopted on 22 July 2015.

problem has been fully cured and that he does not require any further medical treatment; nor does he require close monitoring of his condition (other than one follow-up examination, five years after the operation). While deportation to Italy may put the authors in a more difficult situation, we do not have before us information suggesting that their plight is expected to reach the exceptional level of harshness and irreparability that would result in a violation of article 7.

6. Under these circumstances, we cannot conclude that the decision of the Danish authorities to deport the authors to Italy was manifestly arbitrary and would entail a violation of article 7 of the Covenant by Denmark.

Appendix II

Individual opinion of Committee member Photini Pazartzis (dissenting)

1. I find myself in disagreement with the Committee's view that the facts in this case amount to a violation of article 7 of the Covenant, were the authors and their two children to be deported to Italy.

2. In its conclusions, the Committee recalls (para.7.3 of the view) the obligation of States parties not to remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, which prohibits cruel, inhuman or degrading treatment.[a] The Committee further recalls its established 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 review and evaluate facts and evidence in order to determine whether such real risk exists, unless it finds that the evaluation was clearly arbitrary and amounted to a denial of justice. Such does not appear to be the present case. In its decision of 7 October 2013, the Danish Refugee Appeals Board confirmed the need of subsidiary protection (which has already been granted to the authors by Italy) and took into account all the information provided by the authors in concluding that there were no substantial grounds that the authors would suffer irreparable harm if returned to Italy.

3. Notwithstanding the dire situation of vulnerability in which asylum-seekers may find themselves, the assessment of risk of a personal and irreparable harm depends on the particular factual circumstances of each case. In the present case, the authors, spouses and their two children, had already been granted subsidiary protection and working permits by the Italian authorities. In Denmark, the son underwent heart surgery for a congenital heart defect, and the child's treatment has been successfully completed. The present case is thus different from *Jasin v. Denmark*, where the Committee arrived at a different conclusion, due to the exceptional situation of the author, a single mother, facing health problems, with three children.[b]

4. The prospect that the authors might face difficulties in finding housing or work if returned to Italy does not, in my opinion, tantamount to a real risk of hardship severe enough to constitute torture, or cruel, inhuman or degrading treatment and to fall within the scope of article 7 of the Covenant.

[a] See General Comment No. 31 (2004), para. 12.

[b] *Warda Osman Jasin v. Denmark*, Communication no. 2360/2014, Views adopted on 22 July 2015, see also Individual Opinion of Committee members Yuval Shany and Konstantine Vardelashvili (concurring).

Appendix III

Individual opinion of Committee members Anja Seibert-Fohr joined by Yuji Iwasawa (dissenting)

1. We deplore the precarious living conditions in which many refugees entitled to subsidiary protection are left under a regulatory regime which was adopted by a union of states that is founded on the indivisible, universal value of human dignity, freedom, equality and solidarity.[a] We also recognize a need for action by the union in order to fulfil this commitment.

2. However, on the basis of the International Covenant on Civil and Political Rights and for reasons that will be explained below, we are unable to agree with the majority of the Committee in the present case that Denmark would violate its obligation not to subject the authors to cruel, inhuman or degrading treatment pursuant to article 7 if it deported them to Italy.

3. According to the Committee's standing jurisprudence, States parties are under an obligation "not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that *contemplated by articles 6 and 7 of the Covenant"*.[b] In para.7.3 of the views, the Committee reaffirms this principle, stressing in addition that this risk must be personal and that the threshold for providing substantial grounds is high.

4. The existence of a risk under article 7 must be determined on a case by case basis. It is for the authors of a communication to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being subjected to treatment contrary to article 7.

5. In the present case, we believe that the authors have failed to sufficiently substantiate their claim under article 7.

6. Before they left to Denmark, both authors had been granted subsidiary protection in Italy and had received a temporary residence permit which, according to the uncontested submission by the State party, allowed them to work and to benefit from the general schemes for social assistance, health care, social housing and education. There is no indication that they would not be able to renew their residence permits when they return to Italy.

7. The authors claim that they may face homelessness, destitution and very limited access to medical care or be obliged to live in self-organized settlements (para 3.1). They base their claim under article 7 on the absence of an effective integration scheme in Italy (para 5.1) and the fact that they were not offered assistance from the Italian authorities to find housing or work in Italy (para 2.3).

8. This submission is insufficient to show a real risk of irreparable harm contemplated by article 7 of the Covenant. As a universally accepted standard of protection, this article provides that no one shall be subjected to *cruel, inhuman or degrading treatment*. The authors have failed to sufficiently substantiate that they would be exposed to a real risk of

[a] See the preamble of the Charter of Fundamental Rights of the European Union.

[b] See the Committee's General Comment No. 31 (2004), para. 12.

being subjected to such treatment in Italy. The non-availability of social assistance as such does not amount to a violation of article 7.[c] The level of hardship and destitution claimed by the authors do not rise to a level that would render their deportation cruel, inhuman or degrading. The facts in the present case where both authors are entitled and capable to work are substantially different from the facts in *Jasin v. Denmark,* because as a single mother of three small children, whose residence permit had expired while in Italy and who was suffering from health problems, the author would have been left upon deportation in a situation threatening her and her children's existence. [d] In contrast, in the present case, the legal status of the authors as recipients of subsidiary protection which permits them to work and their situation as a family with two healthy adults fit for work do not warrant the sweeping conclusion of the majority of the Committee that they cannot provide for themselves.

9. Neither have the authors substantiated their claim that their deportation would expose their older son to the risk of not receiving adequate medical treatment to his heart disease in Italy, since it is uncontested that their son's treatment has been successfully completed following the surgery carried out in Denmark.

10. For these reasons, we believe that the authors have failed to demonstrate that their future prospects if returned to Italy, disclose a real risk of harm severe enough to fall within the scope of Article 7. In the absence of sufficient substantiation of their claims, Denmark cannot be reproached for having failed to adequately take into account the information provided by the authors.

[c] See Comm. No. 2402/2014, Views adopted on 29 March 2016, para 6.6.

[d] Jasin v. Denmark, Comm. No. 2360/2014, Views adopted on 22 July 2015. In this case the Committee ultimately found a violation of article 7 because the State party had failed to take the author's particular **situation** of extreme precarity into account in an individualized risk assessment.