



International Covenant on Civil and Political Rights

Distr.: General
2 August 2016

Original: English

Advance unedited version

Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2559/2015^{*,**}

<i>Submitted by:</i>	I.M.Y. (represented by counsel, Tage Gøtttsche)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	29 January 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 30 January 2015 (not issued in a document form)
<i>Date of adoption of the decision:</i>	14 July 2016
<i>Subject matter:</i>	Deportation to Somalia
<i>Procedural issue:</i>	Admissibility- manifestly ill-founded; admissibility - incompatibility
<i>Substantive issues:</i>	Non refoulement ; family rights
<i>Articles of the Covenant:</i>	7, 17
<i>Article of the Optional Protocol:</i>	2, 3

Decision on admissibility

1.1 The author of the communication is I.M.Y., a Somali national, born in 1986. He sought asylum in Denmark, but his application was rejected and at the time of submission he was scheduled to be deported to Somalia on 2 February 2015. He claimed that his deportation to Somalia would constitute a violation by Denmark, of his rights under article 7 of the International Covenant on Civil and Political Rights and of article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

* Adopted by the Committee at its 117th session (20 June-15 July 2016).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelic, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Yuval Shany and Margo Waterval.

Although the author does not explicitly invoke it in his communication, in his submissions he raises questions that also appear to invoke article 17 of the Covenant. The Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976. The author is represented by counsel.

1.2 On 30 January 2015, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, requested the State party not to deport the author to Somalia while his communication is under consideration by the Committee. On 3 February 2015, the Refugee Appeals Board suspended the time limit for the author's departure from Denmark until further notice in accordance with the Committee's request.

The facts as presented by the author

2.1 The author arrived in Denmark in 1992 with his mother when he was six years old. He was granted residence permit.

2.2 In August 2001, his mother decided to move the family back to Somalia. She, however, returned to Denmark in July 2003, and became a Danish citizen. When she returned to Denmark, she was carrying the author's passport, and it was taken by the Danish authorities. The author wanted to return to Denmark as all his siblings were there, but he was unable to travel because of the missing passport. For this reason, he lived with his uncle in Galkayo, Somalia, for five years.

2.3 The author left Somalia in 2010, after members of the militant group Al-Shabaab contacted him as they wanted him to join the group. The author submitted that refusing recruitment by Al-Shabaab means a risk of death and since he did not want to join them he had to escape from the country as fast as possible as he feared to be killed. The author submits that he left Somalia illegally through Ethiopia, where he stayed until he travelled to Denmark without holding valid travel documents. He arrived in Denmark on 15 February 2013 and applied for residence and asylum.

2.4 On 26 June 2014, the Refugee Appeals Board refused to reopen his case. Instead, the case was returned to the Immigration Service for an additional review, because there was new information regarding his fear of Al-Shabaab. On 11 November 2014, the Immigration Service refused to grant to the author residence permit pursuant to the Danish Aliens Act. On 14 January 2015, the Danish Refugee Appeals Board rejected the author's asylum and protection claim.

2.5 On 16 January 2015, the Ministry of Justice decided to reject the author's application for humanitarian residence permit pursuant to the Aliens Act section 9b, subsection 1.

2.6 The author maintained that all domestic remedies have been exhausted and that no complaint has been submitted before any other international body.

The complaint

3.1 The author submitted that he should not be returned to Somalia as there is a real risk of him being killed by the Al-Shabaab militia there. He submitted that several of his friends have been killed by Al-Shabaab for the lack of cooperation; two of his friends were killed in 2013 and another one in 2012 because they did not leave Somalia in time. The author also submitted that UNHCR in its June 2014 assessments entitled *Position on Returns to Southern and Central Somalia*¹ urged States to refrain from forcibly returning any person to

¹ UN High Commissioner for Refugees (UNHCR), *UNHCR Position on Returns to Southern and Central Somalia*, 17 June 2014, available at: <http://www.refworld.org/docid/53a04d044.html> .

areas of Southern and Central Somalia that are affected by military action and/or ensuing displacement. Although the town where the author lived is under the control of the State, the militia also terrorized this town and its surroundings, especially at night.² The author also maintains that Al-Shabaab has been increasingly targeting civilians and that people who live in Al-Shabaab areas face widespread and grave human rights abuses.³ The author, therefore, argued that his deportation would violate his rights under article 7 of the Covenant and article 3 of the European.

3.2 The author also submitted that he is closely attached to the State party, that he grew up there, that his mother, father and eight siblings are living there and that he fled to Denmark in order to be reunited with his family. He submitted that his deportation would violate his family life, protected under article 8 of the European Convention.

State party's observations on admissibility and merits

4.1 On 14 July 2015, the State party submitted that the communication should be considered inadmissible. Should the Committee find the communication admissible, the Government submitted that article 7 of the CCPR will not be violated if the author is returned to Somalia.

4.2 The State party confirmed that the author, a Somali national born [in] 1986, entered its territory on 17 December 1992 together with his mother and his siblings. On 14 May 1993, the author was granted (*de facto*) residence under section 7(2) of the then Danish Aliens Act as an accompanying child of his mother. On 8 August 2001, the author repatriated to Somalia together with his mother and six siblings. On 26 July 2003, the author's mother re-entered the State party without the author, who remained in Somalia. On 29 March 2011, the author's father forwarded a letter to the Danish embassy in Addis Ababa, Ethiopia, saying that the author was staying in Ethiopia and wanted to return to Denmark. On 19 May 2011, the author submitted an application to the Danish embassy in Addis Ababa, Ethiopia, requesting that his residence permit be deemed not to have lapsed. On 28 September 2011, the Danish Immigration Service decided that the applicant's residence permit had lapsed. On 12 July 2012, the author submitted a new application to the Danish Immigration Service requesting that his residence permit be deemed not to have lapsed. The Danish Immigration Service considered the application to be an appeal against its decision of 28 September 2011 and forwarded the appeal to the Refugee Appeals Board.

4.3 On 15 February 2013, the author re-entered Denmark without valid travel documents. On 3 June 2013, the Refugee Appeals Board decided that the author's residence permit was deemed to have lapsed. On 31 July 2013, the author requested the reopening of the application for renewal of his residence permit. On 26 June 2014, the Refugee Appeals Board refused to reopen the author's application for renewal of the residence permit, previously lapsed. The Refugee Appeals Board stated that the author's fear from Al-Shabaab constituted a new ground for asylum, which was not included in the assessment as to whether his residence permit had lapsed and forwarded a copy of the requests for reopening to the Danish Immigration Service for further action and examination as an application for asylum at first instance. The Danish Immigration Service treated the request as a new application for asylum and commenced a new procedure. On 11 November 2014, the Danish Immigration Service refused asylum to the author. On 16 January 2015, the

² The author provides an article, from a website called Sabahionline, entitled *5 Somali troops, 7 al-Shabaab fighters killed in Baidoa attack*.

³ The author refers to the briefing of 23 October 2014 of Amnesty International, entitled *Somalia: Forced returns to south and central Somalia, including to al-Shabaab areas: A blatant violation of international law*, available at <https://www.amnesty.org/en/documents/afr52/005/2014/en/>.

Ministry of Justice refused the author's application for residence on humanitarian grounds under section 9b(1) of the Aliens Act. On 19 January 2015, the Refugee Appeals Board upheld the refusal by the Danish Immigration Service of the author's application for asylum.

4.4 The author claimed in his communication that it would constitute a breach of article 7 of the Covenant and articles 3 and 8 of the European Convention to return him to Somalia. The State party noted that in its decision of 19 January 2015, the Refugee Appeals Board found that the applicant will not be at a specific and individual risk of persecution falling within section 7(1) of the Aliens Act or at a real risk of being subjected to inhuman treatment falling within section 7(2) of the Aliens Act in case of return to his country of origin. The Refugee Appeals Board upheld the decision of 11 November 2014 of the Danish Immigration Service to refuse asylum to the author.

4.5 The State party proceeds to provide a detailed description of its refugee status application proceedings, the legal basis and the functioning of the Refugee Appeals Board.⁴

4.6 The State party submitted that the author has failed to establish a *prima facie* case for the purpose of admissibility of his communication under article 7 of the Covenant and thus it has not been established that there are substantial grounds for believing that the author is in danger of being subjected to inhuman or degrading treatment or punishment if returned to Somalia. It considered this part of the communication to be manifestly unfounded and therefore inadmissible. The State party also maintained that the author's claim of an alleged violation of articles 3 and 8 of the ECHR does not concern the Covenant and therefore falls outside the scope of competence of the Committee as set out in article 3 of the Optional Protocol. Accordingly, it submitted that this part of the communication should be considered inadmissible *ratione materiae* pursuant to Rule 96 (d) of the Committee's Rules of Procedure as being incompatible with the provisions of the Covenant.

4.7 Should the Committee find the author's communication admissible, the State party submitted that the author has not sufficiently established that it would constitute a violation of article 7 of the Covenant to return him to Somalia. The State party noted that the Committee had indicated that the risk must be personal and that there is a high threshold for providing substantial grounds for establishing that a real risk of irreparable harm exists.⁵ The State party's obligations under article 7 of the Covenant are reflected in section 7(2) of the Aliens Act, under which a residence permit will be issued to an alien upon application if the alien risks the death penalty or being subjected to torture or to inhuman or degrading treatment or punishment in case of return to his country of origin.

4.8 The State party also noted that there was no new information in the author's communication to the Committee on his conflicts in his country of origin as compared with the information available on 19 January 2015 when the Refugee Appeals Board decided the appeal. The State party further observes that *UNHCR Position on Returns to Southern and Central Somalia*,⁶ and the report published by Amnesty International on 23 October 2014 *Forced returns to South and Central Somalia, including al-Shabaab areas: A blatant violation of international law*,⁷ were known to the Refugee Appeals Board when it decided

⁴ For full description see communication No 2493/2014, *A.H.A. v. Denmark*, Views adopted on XXX, paras 4.2-4.7.

⁵ See, *inter alia*, the views adopted by the Committee on 26 March 2014 in *J.J.M. v. Denmark*, para. 9.2.

⁶ See note 3.

⁷ Amnesty International Briefing, AFR 52/005/2014, 23 October 2014, available at <http://www.refworld.org/category,COI,AMNESTY,COUNTRYREP,SOM,544a20c74,0.html>.

the appeal on 19 January 2015, for which reason those reports, and several other reports on conditions in Somalia, were taken into account by the Refugee Appeals Board in its assessment of the matter. In its decision of 19 January 2015, the Refugee Appeals Board found that the author had not been subjected to any ill-treatment before he left Somalia that would independently justify asylum, and, considering the background information available, the Board also found that the author's subjective fear was not based on such objective grounds that it would justify asylum.

4.9 As regards the author's subjective fear of returning to Somalia, the Government observes that it appears from the wording of article 1 A (2) of the Refugee Convention that the author must have a well-founded fear of persecution to fall within the Convention. This entails a basic requirement that the author's fear must be justified by objective facts. The Government observes in this respect that, regardless of whether the Refugee Appeals Board may have considered as a fact the author's statement that Al-Shabaab attempted to forcibly recruit him over the phone once in 2010, the Board found that the author would not, for that reason, be at a real risk of persecution or abuse by Al-Shabaab or others if returned to Somalia. The State party noted that the author has stated in support of his case that he was contacted only this one time and that he had not previously experienced any conflicts with members of Al-Shabaab. It further noted that Al-Shabaab has not contacted the author since 2010, nor have they contacted his uncle, with whom he lived at the time of the alleged call from Al-Shabaab.

4.10 Moreover, the State party maintained that the attempt to recruit him in 2010 does not mean that the author belongs to a group of persons who would be at risk of persecution if returned to Somalia, nor does the background information available on Somalia support this allegation. It referred to the report *Security and protection in Mogadishu and South-Central Somalia*, published by Landinfo and the Danish Immigration Service on 1 March 2014, stating that: "[...] forced recruitment to Al-Shabaab is only relevant in those areas where Al-Shabaab is in full control. Recruitment mostly takes place via the elders. Some elders may support al-Shabaab while others do not." In addition, it appeared from the background information available, that the city of Galkayo, in which the author was born and has lived, is controlled by the government.⁸

4.11 As regards the general conditions in Somalia, the State party submitted that the conditions in Somalia, including the author's home city of Galkayo, are not at present of such nature that everybody returning to that area may be deemed to be at a real risk of abuse that would justify asylum solely as a result of their presence in the area. As regards the article from Sabahi Online of 2 January 2015, it submitted that the article provides information only about a blast killing one person and injuring four persons outside of an international school in Galkayo. The article includes no information on those responsible for the attack as alleged by the author. Accordingly, the State party maintained that the author's subjective fear of returning to Somalia was not based on such objective facts, including the background information available on forced recruitment and the general situation in the author's home region, that it constitutes a sufficient basis for granting asylum.

4.12 The author had stated that the decision of the Refugee Appeals Board was contrary to section 26 of the Aliens Act as section 26 provides that the Board must '[consider] whether a foreigner should be allowed to stay, if the person has a close attachment to Denmark'. The State party observes in this respect that the above is not a correct

⁸ See, in particular, page 1 of Addendum to 2010 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia, relating specifically to the city of Galkayo, published by the UNHCR on 1 March 2012.

construction of Danish law. Section 26(1) of the Aliens Act provides as follows: ‘26. (1) In deciding on expulsion under sections 25a to 25c, regard must be had to the question whether expulsion must be assumed to be particularly burdensome, in particular because of (i) the alien’s ties with the Danish society; (ii) the alien’s age, health and other personal circumstances; (iii) the alien’s ties with persons living in Denmark; (iv) the consequences of the expulsion for the alien’s close relatives living in Denmark, including the impact on family unity; (v) the alien’s slight or non-existent ties with his country of origin or any other country in which he may be expected to take up residence; and (vi) the risk that, in cases other than those mentioned in section 7(1) and (2) and section 8(1) and (2), the alien will be ill-treated in his country of origin or any other country in which he may be expected to take up residence.’

4.13 The State party maintained that section 26 of the Aliens Act applies to cases concerning expulsion from Denmark. The provision further applies to cases concerning revocation of or refusal to renew a residence permit granted under section 7 of the Aliens Act, cf. section 19(6), first sentence, of the Act. The provision does not apply to asylum cases falling within section 7 of the Aliens Act. Accordingly, the provision does not apply to the author’s case.

4.14 The State party noted that the circumstances that the author’s whole family, except for his sister, live in Denmark, that the author speaks fluent Danish and that the author has close ties with the Danish society because of his family are not relevant for asylum purposes. It further notes that the circumstance that the author will have no close family in Somalia in case of his return because his uncle has died does not independently justify asylum. The Government observes in this respect that it appears from page 4 of the report on the asylum screening interview conducted by the Danish Immigration Service on 30 October 2014 that the author, who is now a 29 year-old man in good health, has stated that he has distant clan and family relations in Galkayo and that he maintains contact with his friends in Galkayo on Facebook.

4.15 The State party maintained that the Refugee Appeals Board included all relevant information in its decision and that the communication has not brought to light any information substantiating that the author will risk persecution or abuse justifying asylum upon his return to Somalia. It referred to the Committee’s Views in *P.T. v. Denmark*,⁹ and in *Mr. X and Ms. X v. Denmark*¹⁰ and maintained that the same guarantees of due process applied to the author in the present case.

4.16 The State party submitted that the author’s communication to the Committee merely reflects the author’s disagreement with the assessment of the background information made by the Refugee Appeals Board and that he failed to identify any irregularity in the decision-making process or any risk factors that the Refugee Appeals Board has failed to take properly into account. Therefore, it maintained that the author was trying to use the Committee as an appellate body to have the factual circumstances advocated in support of his claim for asylum reassessed by the Committee. The State party submitted that the Committee must give considerable weight to the findings of fact made by the Refugee Appeals Board, which is better placed to assess the factual circumstances of the author’s case.

⁹ See communication No 2272/2013, Views of 1 April 2015, para 7.3.

¹⁰ See communication No 2186/2012, Views of 22 October 2014, para 7.5.

Author's comments on the State party's observations

5.1 On 24 September 2015, the author submitted that he had at all times "lifted the burden of proof" by describing and documenting every claim and statement that he has made. He has established that there are substantial grounds for believing that he would be at risk of being subjected to persecution and mistreatment. The author denied trying to use the Committee as an appellate body to have the factual circumstances in support of his claim for asylum reassessed by the Committee. He maintained that the Refugee Appeals Board did not take his extraordinary conditions in consideration and did not apply correctly section 26 of the Danish Aliens Act.

5.2 The author reiterated that he was closely connected with Denmark. His entire family lives here, and he speaks the language fluently. His parents and eight of his siblings live in Aarhus, Denmark. He fled from Somalia because he fears the militia Al-Shabaab, and fled to Denmark to be reunited with his relatives. He maintained that the Refugee Board failed to consider his close connection to Denmark. Pursuant to section 26 of the Danish Aliens Act, if a person has a close connection to Denmark it must be considered whether he/she should be allowed to stay. Furthermore the author does not have any relations left in Somalia. He argued that the State party violated section 26 of the Danish Aliens Act and article 8 of the European Convention.

5.3 The author submitted that after interim measures were granted by the Committee, he had started studying in a school, which offered different and versatile classes for young adults. He obtained a driving license. Most importantly, he was reunited with his family and friends. He has integrated in the Danish society and he is now no different from other Danish young adults. He maintained that if he would be deported, that would constitute a severe violation of article 8 of the European Convention. He would be returned to Somalia where he has no family and will be living in constant fear of Al-Shabaab. He maintained that the current conditions in Somalia for people, who have refused to join Al-Shabaab were of such character that there is a real risk that he would be exposed to torture. He argued that the State party had failed to establish why he should not be granted asylum and reiterated that the planned deportation would violate his rights under article 7 of the Covenant.

State party's further observations

6.1 On 28 October 2015, the State party submitted that the author's submission of 24 September 2015 does not give rise to any further comments by the State party. It reiterated that the author's claim of an alleged violation of article 8 of the European Convention does not concern the Covenant and therefore falls outside the scope of competence of the Committee as set out in article 3 of the Optional Protocol. It also reiterated that section 26 of the Danish Aliens Act does *not* apply to asylum cases falling within section 7 of the Danish Aliens Act. Accordingly, the provision does not apply to the author's case.

6.2 The State party maintained that the communication was manifestly ill-founded and should be declared inadmissible. Should the Committee find the communication admissible, the State party further maintained that the return of the author to Somalia would not constitute a violation of the provisions of the Covenant.

Issues and proceedings before the Committee*Consideration of admissibility*

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

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

7.3 The Committee further notes the author's statement that his application for asylum and application requesting that his residence permit be deemed not to have lapsed had been rejected by the Danish Immigration Service and the Refugee Appeals Board, that decisions by the Refugee Appeals Board are not subject to appeal and that therefore domestic remedies have been exhausted. This has not been challenged by the State party. The Committee also notes the State party's submission that on 16 January 2015, the Ministry of Justice refused the author's application for residence on humanitarian grounds. Therefore, the Committee considers that domestic remedies have been exhausted as required by article 5 (2) (b) of the Optional Protocol.

7.4 The Committee notes the author's allegation that his return to the Somalia would put him at risk of being subjected to torture. The author bases this allegation on the facts that in 2010 members of the militant group Al-Shabaab contacted him by telephone wanting him to join them; he left the country because he did not want to do that; and that refusing recruitment in Al-Shabaab meant a risk to be killed.

7.5 The Committee notes that the Refugee Appeals Board thoroughly examined the author's claim and considered his personal circumstances, as well as the general situation of young males who are at threat of being recruited by Al-Shabaab and concluded that the author's personal background does not place him at risk of being tortured. The Committee is aware of the existence of concerns which are expressed with respect to Al-Shabaab's continuing presence in Southern and Central Somalia.¹¹ However, the Committee notes that in examining the author's asylum request, the RAB reviewed the author's allegations making a specific and individual risk assessment.

7.6 The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of a case, unless it can be established that such an assessment was arbitrary or amounted to a manifest error or denial of justice.¹² The author has not explained why the decision by the Refugee Appeals Board would be contrary to this standard, nor has he provided substantial grounds to support his claim that his removal to Somalia would expose him to a real risk of irreparable harm in violation of article 7 of the Covenant. The Committee accordingly concludes that the author has failed to sufficiently substantiate his claim of a violation of article 7 for purposes of admissibility and finds the above claim inadmissible pursuant to article 2 of the Optional Protocol.

7.7 The Committee further notes the author's claims that he has strong ties with the State party, that he lived in the country between the age of 6 and 15 with his family, that his parents and siblings live in the State party, that he came to the country to re-join them. The Committee also notes that the author refers to a violation of his rights under article 8 of the European Convention but observes that the facts as presented by the author appear to raise issues under article 17 of the Covenant and that the wording of article 8 of the European Convention bears similarity with article 17 of the Covenant.

¹¹ See for example UNHCR Position on Southern and Central Somalia (Update 1), UNHCR May 2016, para.6

¹² See communications Nos. 1616/2007, *Manzano et al. v. Colombia*, decision adopted on 19 March 2010, para. 6.4, 1622/2007, *L.D.L.P v. Spain*, decision adopted on 26 July 2011, para. 6.3; and 2070/2011, *Cañada Mora v. Spain*, decision adopted on 28 October 2014, para. 4.3.

7.8 The Committee recalls its general comment No.16, whereby the concept of the family is to be interpreted broadly.¹³ The Committee, however, notes that the author has failed to provide sufficient information indicating his strong ties with his parents and siblings between 2003 and 2013, as well as after arriving to the State party in 2013, other than making general statements that he came to the State party in order to be reunited with them. In view of the circumstances of the present case, the Committee considers that the author's allegations remain general and that he has failed to explain before the Committee why his removal to his country of origin would be a disproportionate measure, resulting in arbitrary interference with his family rights under article 17. Accordingly, the Committee considers that the author has failed to sufficiently substantiate his claims of violation of his family rights for the purposes of admissibility and finds them inadmissible pursuant to article 2 of the Optional Protocol.¹⁴

8. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible pursuant to article 2 of the Optional Protocol;
- (b) That the decision shall be transmitted to the author and to the State party.

¹³ See general comment No. 16 (see footnote 14), para. 5. See also communication No. 1959/2010, *Warsame v. Canada*, Views adopted on 21 July 2011, para. 8.7.

¹⁴ See communication No2050/2011, *E.L.K. v. the Netherlands*, Decision on admissibility of 30 March 2015, para 6.3.