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Human Rights Committee

Communication No. 2389/2014

Views adopted by the Committee at its 114th session (29 June–24 July 2015)

Submitted by:	X (represented by Ms. Helle Holm Thomsen)
Alleged victim:	The author
State Party:	Denmark
Date of communication:	12 May 2014
Document references:	Special Rapporteur's rules 92 and 97 decision, transmitted to the State party on 16 May 2014 (not issued in document form)
Date of adoption of Views:	22 July 2015
Subject matter:	Expulsion of the author to Iran
Procedural issues:	Admissibility - manifestly ill-founded
Substantive issues:	Expulsion, torture, cruel, inhuman or degrading treatment or punishment, prohibition of discrimination and equal protection of the law
Articles of the Covenant:	7 and 26
Articles of the Optional Protocol:	2, 5.1, 5.2, 5.4

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (114th session)

concerning

Communication No. 2389/2014*

Submitted by:	X[1] (represented by Ms. Helle Holm Thomsen)
Alleged victim:	The author
State Party:	Denmark
Date of communication:	12 May 2014

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 22 July 2015,

Having concluded its consideration of communication No. 2389/2014, submitted to the Human Rights Committee by Mr. X under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication, dated 12 May 2014, is Mr. X, an Iranian national, ethnic Kurd, Sunni Muslim born in Northern Iraq on 7 July 1992. He claims that his deportation to Iran by the State party would violate articles 7 and 26 of the Covenant[2]. The author is represented by counsel.

1.2 On 16 May 2014, the Committee, in accordance with rule 92 of its Rules of Procedure, acting through its Special Rapporteur for new communications and interim measures, requested the State party to refrain from deporting the author to Iran while his communication was being examined by the Committee. On that same date, the State party suspended the execution of the deportation order against the author.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelic, Duncan Muhumuza Laki, Photini Pazartzis, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. The text of an individual opinion of Committee members Yuval Shany, Yuji Iwasawa and Konstantine Vardzelashvili (dissenting) is appended to the present Views.

1 The author requested that his name be kept confidential.

2 The Covenant and the Optional Protocol entered into force for the State party on 23 March 1976.

Factual background

2.1 The author was born to a Muslim Iranian family of Kurdish origin in Al-Tash refugee camp in Iraq in 1992. Since 2003, he and his family (parents and six siblings) resided in Barika refugee Camp in Northern Iraq. The author remained in Barika until he left to Denmark in July 2013. The author has never lived in Iran, and does not know of any family members living there. The author and his family were granted refugee status by UNHCR in Iraq.[3] The author claims that he gave up his refugee status and cannot return to Iraq.[4]

2.2 The author arrived in Denmark on 28 July 2013 and applied for asylum on 31 July 2013. On 23 August 2013, he was interviewed by the Danish Immigration Service (DIS) about his identity, travel route and grounds for seeking asylum. The author stated that the refugees in Barika camp are considered by the Iranian authorities to belong to political opposition and that in general, Iranians who fled to Iraq have been labeled as political refugees, even if they did not have a political affiliation. He also informed that, as member of the Democratic Party of Iranian Kurdistan (PDKI), his father has been politically active. The author himself attended PDKI cultural celebrations, as well as cultural activities organized by the party Komala, and is a member of the Kurdistan Freedom Party (PAK).[5] He specified that he initially acquired his membership to the party as an opportunity to practice sports, rather than on the basis of political convictions, but that he participated in the party's conferences. He further explained that he had become member of the party three or four months before his departure from Iraq, but that he had been a supporter of the party for about one year beforehand. He explained that he fears expulsion to Iran because he would face execution by authorities due to his previous status as political refugee and due to his membership to PAK. The author also indicated that he left Iraq because he did not have any rights as a refugee there: he was discriminated against for being a Kurd, and that he did not even have an Identity Document, situation which affected his daily life, including access to employment and the exercise of his political rights. The author provided the Danish authorities with a UNHCR Refugee Certificate issued in November 2011. He also informed that his brother was a refugee in Denmark (asylum granted on 27 August 2010).

2.3 On 31 October 2013, the DIS rejected the author's application for asylum having considered that his political activities were too limited. The DIS also considered that the author's father was not politically active anymore, and that he had started his political activities only when he arrived to Iraq.

2.4 The author appealed to the Danish Refugee Appeals Board (RAB). He claimed that Denmark used to give residence permit to people from Al-Tash refugee camp recognized as refugees by UNHCR, and that the change of practice from 2011 amounted to discrimination. In this connection, the author explained that, under section 7 (1) of the Danish Alien Act, the established practice was to grant residence permits to UNHCHR Iranian refugees from Al-Tash refugee camp, including those who did not carry out any political activities. This practice changed in 2011 when it was decided that Iraq could be considered as first country of asylum of Iranian refugees from Al-Tash refugee camp,

[3] The author attached to his complaint a certificate issued by UNHCR indicating that his parents, three siblings and himself were granted refugee status in November 2011. The certificate expired in November 2013. In a later submission, the author indicated that his family has been granted refugee status by UNHCR since late 1970's/early 1980's and that after November 2013, his remaining family in Iraq obtained a renewal of the refugee status' certificate.

[4] The author does not explain why he renounced to his refugee status in Iraq and when he did so.

[5] Danish authorities requested PAK to confirm that the author was member. A copy of the author's PAK membership card was included in one of the annexes presented by the author to the Committee.

because they had lived in Iraq for many years. However Iraq would not accept non-Iraqi citizens and Danish authorities continued to grant them residence permits under Section 7(1) of the Danish Alien Act. In 2013, the DIS started to refuse asylum claims from people coming from Al-Tash refugee camp; however some still received residence permits following RAB's decisions.[6] The author considers that in order to be able to change the established practice, the State party should carry the burden of proof to demonstrate that the conditions in Iran had improved. He also claimed that the facts that he was not registered in Iran, does not speak Farsi, and has no identity documents increased the risk for him to become a "person of interest" for the Iranian authorities if returned. The author also stated that he would not be able to pursue any political activity in Iran and that no one should have to interrupt his or her political activities to avoid persecution.

2.5 On 18 March 2014, the RAB refused to grant asylum to the author and gave him 15 days to leave the country. The RAB found that the author made an unclear, vague and unconvincing statement about his father political activities and membership to the PDKI. The RAB also took into account that the author's brother did not inform the Danish authorities about any political activities carried out by his family members in Iraq when he was interrogated during his own asylum proceedings.[7] It further considered that the author's involvement in political activities was not clearly established as he only became member of the PAK three months before departing Iraq with the aim to practice sports, and he only participated in some of the party's festive events. The RAB considered that the fact that the author was born and raised up in Al-Tash refugee camp was not a sufficient ground to grant him a residence permit in Denmark. The RAB concluded that the author's statements did not demonstrate that he would face a real and personal risk of persecution by the authorities if returned to Iran.

2.6. The author also indicates that he would not be able to return to Iraq, where some members of his family still live, because this country only provides identity documents to Iraqi citizens,[8] and not to refugees. The author therefore argues that he would not be entitled to identity documents, and that he would not be able to exercise his rights and to access services necessary for his daily life.[9] The author argues that not having identity documents is the reason why the Danish authorities would not deport him to Iraq, but to Iran, as they consider that it is futile to remove Iranian Kurds to Iraq either voluntarily or by force.[10]

2.7 The author notes that decisions of the Danish Refugee Appeals Board are not subject to appeal before national courts according to article 56.8 of the Danish Aliens Act, and that he therefore has exhausted all available domestic remedies.[11]

[6] The author quotes decisions from February and March 2014. See footnote 26.

[7] According to the RAB decision of 18 March 2014, the author's brother agreed that information contained in his asylum case file be used in the context of the author's asylum proceedings.

[8] The author quotes a letter sent by the Iraqi Embassy in Copenhagen to the RAB on 28 November 2012 indicating that Iraq only provides travel documents to Iraqi citizens with identity documents. .

[9] The author mentioned that, due to the lack of identity documents, he could not purchase anything in his name in Iraq. For instance, he was not able to purchase a SIM card. .

[10] The author provided a translation of a letter from the Danish National Police to the RAB dated 4 December 2012 which confirms this statement.

[11] The author refers to CERD Concluding Observations on Denmark's seventeenth periodic report, which recommended that asylum seekers be granted the right to appeal decisions of the Refugee Appeals Board. See CERD/C/DEN/CO/17, para. 13.

The complaint

3.1 The author contends that his deportation would entail a violation of article 7 of the Covenant. He claims that his deportation to Iran would put him at risk of being subject to torture or cruel, inhuman or degrading treatment or punishment given that he has always lived in refugee camps in Iraq such as Al-Tash and Barika, which are considered as affiliated to Kurdish political parties. He argues that he will be automatically perceived by Iranian authorities as a political activist and supporter of such parties for the following reasons: (a) his membership to PAK; (b) his participation in activities organized by PAK, PDKI and Komala and in Kurd festivities celebrated in Northern Iraq; (c) the fact that his father is a member of the PDKI; and (d) his own participation in PDKI's meetings. He further argues that there is an intense presence of the Iranian Intelligence Service in Iraq, and that Iranian authorities therefore know of any political activity taking place there.

3.2 Similarly, the author claims that the fact that he lived in Al-Tash and Barika refugee camps will entail a presumption by the Iranian authorities that he has information about Kurdish parties active in these camps. In compliance with their common practice, the Iranian Intelligence Service will require him to provide information, and if he refuses, he will be accused of being a spy and be persecuted.

3.3 The author adds that the fact that he is not registered in Iran, has no identification documents, and does not speak Farsi increases the risk or persecution, in violation of article 7 of the Convention. He mentions that the treatment of returning Kurds by Iranian authorities is unpredictable and that the risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment is especially high for persons who have his profile.

3.4 The author further claims that he supports the Kurd cause, fighting for an independent Kurdistan and the rights of Kurds. If returned to Iran, he will have to refrain from expressing support to the Kurd cause in order to avoid persecution, in violation of his freedom of expression.[12]

3.5 Finally, the author argues that the RAB in its decision of 18 March 2014 has violated his right to equal protection of the law under article 26 of the Covenant in so far as the RAB's decision granting asylum to his brother was solely based on the fact that he resided in Al-Tash and Barika refugee camps, as he himself did, and the conditions of his case were similar to those of his brother. The author therefore considers that the RAB should have reached the same conclusion in both cases. The author alleges that the consequences of a deportation to Iran would be very serious because, based on the legitimate expectation that he would be granted asylum in Denmark, as his brother did in 2010, he had renounced to his refugee status in Iraq and would therefore not be able to return there.

State party's observations on admissibility and merits

4.1 On 17 November 2014, the State party submitted its observations on the admissibility and merits of the communication. It considers that the communication should be held inadmissible for lack of substantiation of the author's allegations as to the risk of being subject to torture or ill treatment if returned to Iran, and as to the discriminatory character of the RAB decision of 18 March 2014.

4.2 The State party alleges that should the communication be considered admissible, the facts as presented by the author do not reveal a violation of articles 7 and 26 of the Covenant. The State party refers to the Committee's jurisprudence according to which the

[12] The author does not make reference to article 19 of the Covenant, but implicitly invokes this article in his claim.

risk of being subject to torture or ill treatment must be personal and the author must provide substantial grounds to establish that a real risk of irreparable harm exists.[13]

4.3 The State party informs that pursuant to section 7 (1) of the Danish Aliens Act, a residence permit will be issued to an alien if he or she falls within the definition of refugee under the Convention Relating to the Status of Refugees. Pursuant to section 7 (2) of the Aliens Act, a residence permit will be issued if an asylum seeker risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his or her country of origin. In addition, according to section 31 (2) of the Aliens Act, no alien may be returned to a country where he or she will face persecution in the terms established in the Convention Relating to the Status of Refugees. The State party informs that for RAB decisions to be in accordance with Denmark's international obligations, the RAB and the DIS have drafted memoranda describing the legal protection of asylum seekers afforded by international law, including the International Covenant on Civil and Political Rights.

4.4 The State party also describes the proceedings before the RAB. These proceedings are oral. The RAB may, if needed, assign a legal counsel to the asylum seeker, free of charge. The asylum seeker attends a hearing where he is allowed to make a statement and answer questions. The decisions of the RAB are based on an individual and specific assessment of the relevant case. The asylum seeker's statements regarding his grounds for asylum are assessed in the light of all relevant evidence, including what is known about conditions in their country of origin. In this connection, the State party informs that the RAB has a comprehensive collection of general background material on the situation in countries from which Denmark receives asylum seekers, including information from UNHCR, the Danish Ministry of Foreign Affairs, the Country of Origin Information Division of the DIS, the Danish Refugee Council and other reliable sources.[14] The asylum seeker should substantiate that the conditions to grant asylum are met in his or her case. The asylum seeker is guided as to this duty to provide information and as to the importance to provide details.

4.5 The State party further informs that normally, if the asylum seeker's statements appear coherent and consistent, the RBA consider them as facts. When the asylum seeker's statements are characterised by inconsistencies and changes, expansions or omissions, the RBA tries to clarify the reasons. In the case under review, the author's statements were inconsistent on crucial parts of his grounds for seeking asylum, therefore weakening his credibility. In cases where inconsistencies are found, the RBA takes into account the asylum seeker's explanations regarding the inconsistencies, his particular situation, including cultural differences, age and health, and in case of doubt about the asylum seeker's credibility, the RBA assesses to what extent the principle of the benefit of the doubt should be applied.

4.6 The State party argues that the RBA thoroughly reviewed the author's case and found that he failed to establish that there were substantial grounds for believing that he would be at risk of being subject to persecution or asylum-relevant abuse if returned to Iran. The State party further notes that the author has not provided to the Committee any new essential information or views on his circumstances beyond those already relied upon in the

[13] The State party cites the Committee's views in Communication No. 2007/2010, *JJM v Denmark*, Views adopted on 26 March 2014, para 9.2.

[14] The State party indicates that such sources are Amnesty International, Human Rights Watch, the U.S. Department of State country reports, the British Home Office, the Immigration and Refugee Board from Canada, the Norwegian Country of Origin Information centre, Council of Europe reports, and to some extent, articles from identifiable international journals.

RAB's decision of 18 March 2014. The State party considers that the author is 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.

4.7 The State party notes that there are no grounds for doubting the assessment made by the RAB that there is no available information that the author will be at risk of abuse constituting breach of article 7 of the CCPR if he is returned to Iran. The State party refers to two reports[15] according to which formerly active opponents of the Iranian regime, including members of the Mujaheedine-Khalq Organisation (MKO) have voluntarily returned from Iraq to Iran. The State party cites other sources quoted in these reports indicating that Iranian Kurd political activists who used to live in Kurdish Northern Iraq went back to Iran, and that in most of the cases, after a period of investigation by the Iranian authorities, including sometimes imprisonment, they were able to have a normal life. Further, a small group of children of refugees who stayed in the Kurdish Region in Iraq (KRI) for three decades and went back to Iran were registered without problems and without being exposed to any risk. At the same time, sources also indicated that refugees from Al-Tash with political affiliations who return to Iran should expect problems. The State party informs the Committee that the RAB was aware that several sources in the available background information refer to the fact that Iranian nationals from Al-Tash and Barika refugee camps may expect to become object of general attention of the Iranian authorities in case of return to Iran. However, the State party considers that becoming the object of general attention of the Iranian authorities is not sufficient to substantiate a real risk of being subject to torture or ill treatment.

4.8 Based on an overall assessment of the author's specific circumstances and the relevant background material, the State party concludes that the fact that the author was born and raised in Al-Tash refugee camp and that he later stayed at Barika refugee camp, does not by itself entail that the author will be at a particular risk of being subject to treatment contrary to article 7 of the Covenant. This applies even if the author may become an object of general attention by the authorities in case of return to Iran. The State party further notes that there is no available information that Iranian nationals from the Al-Tash or Barika refugee camps have been subjected to abuse by the Iranian authorities after their return to Iran.

4.9 The State party considers that the author has not been politically active, even to a modest extent. He became member of the PAK three or four months before departing Iraq and his motivation was not political, but rather linked to his interest to play football in the party's sports section. Further, the author only provided practical assistance in the organization of PAK's meetings. Therefore, the State rejects the author's claim that he will be forced to hide his political beliefs if he is returned to Iran. The State party further notes that it does not find as a fact that the father's author was a member of the PDKI due to the author's divergent statements regarding his father's political activities, combined with the fact that his brother did not mention that his father was a member of the PDKI during his asylum proceedings.

4.10 The State concludes, in line with the RAB, that the author has failed to render probable his claim that his father had been actively involved in politics in Iran or that the family's combined activities in the refugee camps in Iraq had been of such a nature and

[15] Danish Immigration Service, *Landinfo* and the Danish Refugee Council, *Iran: On Conversion to Christianity, Issues concerning Kurds and post-2009 election protestors as well as legal issues and exit procedures*, 2013; and Danish Immigration Services and the Danish Refugee Council, *Iranian Kurds: On conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran, 30 May to 9 June 2013*.

intensity that he would be at risk to be subjected to treatments contrary to article 7 of the Covenant. The State party therefore considers that the author's return to Iran will not constitute a violation of article 7.[16]

4.11 With respect to the author's claim regarding the violation of article 26 of the Covenant, the State party notes that the RAB bases its decisions on a concrete and individual assessment of each case, taking into consideration the relevant background material available at the moment when the decision is made. The State party further refers to the leading decision made by the RBA in December 2012 which changed the RAB's practice regarding asylum seekers born and raised in Al-Tash refugee camp. The decision established that regardless of the fact that the asylum seeker was born and raised in Al-Tash refugee camp, he failed to demonstrate that he would be at risk of persecution falling within the definition of section 7 (2) of the Aliens Act, if returned to Iran. The State party notes that the referred decision has been published on the RAB's website and has also been mentioned in the RAB's 2012 report of activities. The State party further indicates that in 2014, the RAB reviewed seven cases of asylum seekers born and raised in Al-Tash refugee camp and that in all of them, the RAB considered that this fact could not by itself justify granting the asylum. The State party concludes that the author was not discriminated against by the RAB's decision of 18 March 2014, as it reached a different conclusion from the one reached in his brother's case, based on an individual and concrete assessment of the author's situation made in compliance with the RAB's practice.

4.12 The State party notes that, on 16 May 2014, the RAB suspended the time limit for the author's departure from Denmark until further notice, in compliance with the Committee's request. Considering that the author has failed to render probable that, if returned to Iran, he will be at risk of suffering irreparable damage, the State party calls on the Committee to lift its request for interim measures.

4.13 On 22 July 2015, the State party provided additional observations reiterating that the complaint was ill-founded and that the author did not substantiate violations of articles 7 and 26 of the Covenant. Further, the State party stated that the author's father KDPI membership card did not prove his militancy in such party, as the copy provided by the author in January 2015 was issued on 5 January 2015, after the final decision of the Refugee Appeals Board.

Author's comments on the State party's observations

5.1 On 8 December 2014 and 26 January 2015, the author submitted his comments on the State party's observations. The author claims that he and his family had been granted the status of refugees by UNHCR for several years (since late 1970's/early 1980's) and that the fact that the author had his refugee certificate renewed in 2011 and that his remaining family in Iraq had obtained another renewal in 2013, means that UNHCR has not found any grounds to suspend their protection.

5.2. The author further indicates that in recent years, there have not been known cases of Iranian Kurds who had returned to Iran from refugee camps in KRI, even though they live under very bad conditions in Iraq. The author considers that this is due to their fear to be prosecuted upon their return to Iran. Also, residents of Al-Tash and Barika refugee camps are assimilated to Kurdish opposition groups as there is a general supposition that they are somehow affiliated to these groups.

[16] The State party refers to the Committee's views in Communication No. 2186/2012, *Mr. X and Mrs. X v. Denmark*, Views adopted on 22 October 2014, para. 7.5.

5.3 The author questions the State party's affirmation that he failed to demonstrate that he would be subject to torture or ill treatment if returned to Iran, as the reports quoted by the State party itself[17] consistently establish that refugees from Al-Tash and Barika camps would be at such risk if returned to Iran. For instance, these reports clearly state that all refugee camps in KRI have connections to the political parties that are somehow active in the camps, and that people from these camps will be looked at with suspicion if they return to Iran.[18] According to another source included in the reports referred to by the State party and quoted by the author, if an Iranian Kurd with links to the Al-Tash camp and who lived in Northern Iraq for many years returned to Iran, he or she would come under enormous suspicions by the Iranian authorities. Besides, if such a person wished to return and had a family member who had been a Kurdish activist at some point, he or she could become a person of interest for the Iranian authorities.[19] The author further claims that the observations of the State party quoted passages of the referred reports that are not applicable to the case before the Committee, since they were related to ex-MKO and other refugees who had a different history and different political views from those of the refugees from Al-Tash refugee camp.

5.4 The author challenges the State party's statement that the author or his family had not been involved in political activities to an extent that would put him at risk of being subject to torture or ill treatment if returned to Iran. The author notes that he is a member of PAK, that his father became a member of the PDKI when he arrived to Iraq, and that he is still a member of that party.[20] In addition, the author notes that two of his uncles, one aunt and his two grand-parents on his mother's side have been recognized as political refugees in Sweden. Therefore, for the author it is clear that he and his family would be considered as politically active by Iranian authorities and consequently, they would be at risk of persecution in Iran.

5.5 The author considers that the issue at stake is not whether the State party considers the author or his family to be politically active, but whether the Iranian authorities will perceive the author as such. The Iranian authorities take the Kurdish separatism very seriously and according to available background information, their reaction is difficult to predict. In addition, it is known that Iranian authorities use torture in the context of imprisonment. Therefore, the author considers that the "benefit of the doubt" should apply in his case, in line with UNHCHR's guidelines, as the foreseeable consequences of his deportation to Iran would be extremely severe.

5.6 The author concludes that he has sufficiently substantiated his allegations as to his risk of being subjected to torture or ill-treatment if returned to Iran, and he requests that interim measures be maintained.

5.7 With regard the alleged violation of article 26, the author states that the decision referred to by the State party as the RAB's decision that determined the change of practice regarding the asylum seekers born and raised in Al-Tash refugee camp, in fact did not concern an asylum seeker from Al-Tash refugee camp, as the person concerned was not able to prove that he was from this refugee camp. According to the author, in this case, the DIS argued that if the RAB had considered the asylum seeker to be a former resident of Al-

[17] See footnote 19.

[18] Danish Immigration Services and the Danish Refugee Council, *Iranian Kurds: On conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran, 30 May to 9 June 2013,* p. 73.

[19] Danish Immigration Service, *Landinfo* and the Danish Refugee Council, *Iran: On Conversion to Christianity, Issues concerning Kurds and post-2009 election protestors as well as legal issues and exit procedures,*2013, p. 46.

[20] The author submitted a copy of his father's PDKI membership card.

Tash, he would had been recognized as a refugee based on section 7 (1) of the Aliens Act. However, as it was not the case and the person concerned had spent years in Iraq, it was considered that he would be able to seek protection in Iraq as his first country of asylum, pursuant to section 7 (3) of the Aliens Act. The author therefore alleges that his case was the first one in which the RAB decided to change its practice of granting asylum to all former residents of Al-Tash refugee camp who had been recognized as refugees by UNHCR. The author further claims that from the RAB's decision of December 2012 to the decision adopted in his case on 18 March 2014, the Danish authorities did not adopt any decision denying asylum to former residents of Al-Tash refugee camp recognized as refugees by UNHCR.

5.8 The author also contests the statement that the RAB's decision of 18 March 2014 considered new available background information, in contrast to the information available at the moment when the asylum proceedings of the author's brother were decided, in 2010. The author argues that there was no objective reason to reach different conclusions in his case and his brother's case, that he has not had an equal protection of the law under similar circumstances, and that he has therefore been treated in a discriminatory way by the State party. The author therefore considers that he has sufficiently substantiated his allegations as to the violation of article 26 of the Covenant by the State party.

5.9 Finally, the author contests the State party's affirmation that he is trying to use the Committee as an appellate body. He considers that he has sufficiently substantiated that he would be at risk of being subjected to torture or ill treatment if returned to Iran, conclusion that can be reached based on the information provided to the Committee by the parties, including the reports quoted by the State party as background information.

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 further notes the author's statement that decisions by the Danish Refugee Appeals Board are not subject to appeal and that domestic remedies have therefore been exhausted. This assertion has not been challenged by the State party. Therefore, the Committee considers that domestic remedies have been exhausted as required by article 5, paragraph 2 (b) of the Optional Protocol.

6.4 The Committee also notes the author's claim that the RAB's decision of 18 March 2014 which denied his asylum application was discriminatory in violation of article 26 of the Covenant in so far as, his brother was granted refugee status under similar circumstances. In this connection, the Committee notes that the author has failed to demonstrate that the decision rejecting his refugee status was discriminatory in that it was based on a ground prohibited under article 26 of the Covenant.[21] The Committee is therefore of the opinion that this allegation is not substantiated and is inadmissible under article 2 of the Optional Protocol.

[21] See Communication 1547/2007, *Hamida v. Canada*, Views adopted on 18 March 2010, para.7.4

6.5 With respect to the State party's challenge to the admissibility of the author's allegation under article 7, on the basis that the author has failed to substantiate that he would be at personal risk of being subjected to torture or ill treatment if returned to Iran, the Committee notes that the author bases his allegations on the fact that he was born and raised in refugee camps in Iraq known to be linked to Kurdish opposition groups, that he is a member of the PAK, and that his father is member of the PDKI. The Committee also notes that the author alleges that he has no ID documents and does not speak Farsi, which would put him at risk of persecution by the Iranian authorities. The Committee therefore considers that the author has sufficiently substantiated, for purposes of admissibility, that the facts in the communication raise issues under article 7 of the Covenant that should be considered on their merits.

Consideration of the merits

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

7.2 The Committee considers it necessary to bear in mind the State party's obligation under article 2 of the Covenant to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, including in the application of its processes for the expulsion of non-citizens.[22] The Committee recalls that it is generally for the organs of States parties to the Covenant to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice[23]

7.3 The Committee recalls its General Comment No. 31 in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm. The Committee also recalls that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.[24] Therefore, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.[25]

7.4 In the present case, the Committee notes the State party's argument that the RAB did take into account all relevant background information, combined with the author's specific circumstances, and that the author failed to establish that there were substantial grounds for believing that he would be at risk of being subject to persecution or asylum-relevant abuse if returned to Iran. In this connection, the Committee notes the State party's argument that the fact that the author was born in Al-Tash refugee camp, and later lived in Barika refugee Camp only put him at risk of becoming the object of "general attention" of the Iranian authorities in case of return to Iran, which is not enough to substantiate a real risk of being subject to torture or ill treatment. The Committee further notes the State party's argument that the author failed to render probable his claim that his father had been actively involved in politics in Iran. It also notes that the State party recognized the author's membership to the PAK, but considered that he had not been "politically active" because he had only been a member for a few months before his departure from Iraq, and his motivation to join the

[22] See General Comment No. 20 of the Committee, paragraph 9.

[23] See Communication No. 1763/2008, *Ernest Sigman Pillai et al. v. Canada*, Views adopted on 25 March 2011, para.11.2.

[24] See communication No. 2007/2010, J.J.N v. Denmark, views adopted on 26 March 2014, para. 9.2.

[25] See communication No. 2007/2010, J.J.N v. Denmark, views adopted on 26 March 2014, para.9.2

party was not political, and that he would therefore not be exposed to a risk of torture of ill treatment if returned to Iran.

7.5 The Committee further notes the author's claim (a) that the RAB did not give sufficient weight to his membership to the PAK and to his participation in political activities; and (b) that it did not take into account some of the statements contained in several sources quoted in the reports used by the State party's immigration authorities according to which refugees involved in political activities of the Kurdish political groups active in the Kurdish Region in Iraq, including those who lived in Al-Tash and Barika camps, may be at risk of persecution if returned to Iran.

7.6 In this connection, the Committee notes that according to publicly available information, including the reports referred to by the State party,[26] as well as documents elaborated by immigration authorities from different countries and civil society organizations,[27] Kurds who can demonstrate that they are known or suspected by the Iranian authorities of being members or supporters of Kurdish political groups could be at real risk of persecution; and that failed asylum seekers may be at risk of persecution in Iran. This information has not been refuted by the State party. In the present case, the Committee considers that the author's membership to the PAK, together with his previous participation into activities of the PDKI and Komala, indeed result into a risk that the author will be considered or suspected by the Iranian authorities to be a member or supporter of Kurdish political groups, and that, as such, the author would be at risk of treatment contrary to article 7 of the Covenant in case of being removed to Iran.

7.7 The Committee further considers that the State party did not sufficiently take into account the totality of facts as exposed in paragraph 7.6. , including the potential personal risk for the author in case he is removed to Iran. In this connection, the Committee considers that the personal risk faced by the author should be assessed in the light of the combination of his political profile with other personal circumstances such as his birth in Al-Tash refugee camp, his later residence in Barika refugee Camp, and the fact that he has no identity documents, and does not speak Farsi. None of these circumstances is sufficient in itself to substantiate a real risk of being subject to torture or ill treatment in Iran. Nonetheless, the Committee considers that the State party should have considered them in their combination, together with the documented prevalence of torture in Iran[28]. The Committee therefore considers that the removal of the author to Iran would constitute a violation of article 7 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the authors' removal to Iran would, if implemented, violate his rights under article 7 of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a full reconsideration of the author's claim regarding the risk of torture, inhuman or degrading treatment or punishment, should he be returned to Iran, taking into account the State party's obligations under the Covenant.

[26] See footnote 19.

[27] See UK Border Agency, Optional Guidance Note on Iran, October 2012, p. 35, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311906/Iran_operational_guidance_2012.pdf . The Swiss Refugee Council describes the Iranian authorities' practice of dealing with returned asylum seekers as arbitrary and unpredictable. http://www.ecoi.net/file_upload/1930_1418737084_q18731-iran.pdf.

[28] See for instance paragraphs 3.3 and 5.5 above.

10. Bearing in mind that, by becoming a 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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

Appendix

[Original: English]

Individual opinion of Committee members Yuval Shany, Yuji Iwasawa and Konstantine Vardzelashvili (dissenting)

1. We regret that we are unable to join the majority on the Committee in finding that in deciding to deport the author Denmark would violate its obligations under article 7 of the Covenant.

2. In paragraph 7.2. of the Views, the Committee recalls: "that it is generally for the organs of States parties to the Covenant to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice". Yet in paragraph 7.7 it holds that "the State party did not sufficiently take into account the totality of facts as exposed in paragraph 7.6., including the potential personal risk for the author in case he is removed to Iran."

3. In past cases in which the decision of state organs to deport an individual was found by the Committee to run contrary to the Covenant, the Committee attempted to base its position on inadequacies in the domestic decision-making process, which had been taken by the domestic organs of the State party, leading to the decision to the deport. Such inadequacies consisted, at times, of serious procedural flaws in the conduct of the domestic review proceedings,[1] failure by domestic authorities to consider an important piece of information,[2] or on the inability of the State party to provide a reasonable justification for its decision.[3] In the present case, however, after reviewing the same body of evidence which was presented to the domestic organs, the Committee simply disagrees with their conclusion that, on the whole, a real risk of a serious violation was not established. It has not been persuasively claimed before the Committee that the relevant domestic organs did not assign proper weight to any specific piece of evidence presented by the author; nor was it claimed that there was any procedural flaw in their conduct. Furthermore, the Committee itself acknowledges that none of the circumstances of the case gives rise in itself to a real risk that the author be subject to torture; it is just that in evaluating the totality of the facts and evidence, the Committee would have opted for a different substantive outcome.

4. We thus find it impossible to reconcile the holding of the Committee in this case, with the applicable legal standard of deference to the organs of State parties in evaluating facts and evidence, which reflects the clear procedural advantages over the Committee that is enjoyed by local authorities, who have direct access to witnesses, in evaluating facts and evidence about direct and personal risk. We therefore dissent from the position taken by the majority on the Committee.

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[1] See e.g., Communication No. 1051/2002, Ahani v. Canada, Views adopted on 29 March 2004, para. 10.8.

[2] See e.g., Communication No. 1908/2009, X v Republic of Korea, Views adopted on 25 May 2014, para. 11.5.

[3] See e.g., Communication No. 1222/2003, Byahuranga v. Denmark, Views adopted on 1 Nov. 2004, para. 11.3-11.4.