

**International Covenant on  
Civil and Political Rights**

Advance unedited version

Distr.: General  
3 September 2015

Original: English

---

**Human Rights Committee****Communication No. 2343/2014****Views adopted by the Committee at its 114th Session  
(29 June – 24 July 2015)**

<i>Submitted by:</i>	[o] (Represented by counsel, Ms. Anna Akuo Bakmand Bernthsen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	26 January 2014 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92 and rule 97 decision, transmitted to the State party on 6 February 2014 (not issued in a document form)
<i>Date of adoption of Views:</i>	23 July 2015
<i>Subject matter:</i>	Deportation to Egypt
<i>Procedural issues:</i>	Admissibility – <i>ratione materiae</i> , admissibility – incompatibility, level of substantiation of claims
<i>Substantive issues:</i>	Non-discrimination; risk of torture and ill-treatment; arbitrary arrest and detention; freedom of expression.
<i>Articles of the Covenant:</i>	1, 2, 7, 9 and 19
<i>Articles of the Optional Protocol:</i>	1; 2; 3

## 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. 2343/2014\***

*Submitted by:* H.E.A.K. (Represented by counsel, Ms. Anna Akuo Bakmand Bernthsen)

*Alleged victim:* The author

*State party:* Denmark

*Date of communication:* 26 January 2014 (initial submission)

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

*Meeting on 23 July 2015,*

*Having concluded* its consideration of communication No. 2343/2014, submitted to the Human Rights Committee 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 is Mr. H.E.A.K., an Egyptian national born in 1984. He unsuccessfully sought asylum in Denmark and on [winter] 2013, he was requested to leave the country within 15 days, as per the decision of the Danish Refugee Appeals Board (the Board). [In the beginning of] 2014, the author requested that the Board reopen the asylum proceedings. [A month and four days later], the Board refused to reopen the asylum proceedings and reaffirmed its decision of [winter] 2013. As the author did not comply with the order to leave the country, he was about to be deported to Egypt on [the beginning of] 2014. The author claims that if Denmark proceeds with his deportation, this would amount to a violation of his rights under articles 1, 2, 7, 9 and 19 of the International Covenant on Civil and Political Rights. The author is represented by counsel, Ms. Anna

---

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

Akuo Bakmand Bernthsen. The Optional Protocol entered into force for Denmark on 23 March 1976.

1.2 On 6 February 2014, when registering the communication, and pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party to refrain from deporting the author, while his case is under consideration by the Committee. By Note verbale of 6 August 2014, the State party requested the Committee to review its request for interim measures, and informed the Committee that the Board on 14 February 2014 suspended the time limit for the author's deportation until further notice. On 3 September 2014, counsel provided comments thereon. On 30 September 2014, the Committee denied the State party's request to lift its initial interim measures request. The author currently remains in Denmark.

### **The facts as presented by the author**

2.1 The author was born and raised in Cairo by his mother. He worked in Cairo from 2007 to 2012 as an IT manager, and, in parallel, from 2010 to 2012, as an IT customer supporter in a company based in London. From October 2012 until January 2014, he was unemployed and did volunteer work as social media officer and webmaster in Cairo and as social media officer for [an online newspaper] a project run by [a Danish NGO].

2.2 [In the fall of 2012], he went to Denmark to visit his half-brother (son of his father), on a valid tourist visa.<sup>1</sup> [In the beginning of] 2013, in the light of the political turmoil in December 2012 in Egypt, and upon advice of his half-brother, he applied for asylum. [Seventeen and eighteen days later in 2013], he submitted the necessary documentation and was interviewed by the police. [In the spring of] 2013, he was interviewed by the Danish Immigration Service, which rejected his asylum request [later on in the spring of] 2013. His appeal to the Board was rejected [in the winter of] 2013 and a decision made by the Danish Immigration Service refusing his application for a residence permit was upheld. At the same time, he was ordered to leave the country within 15 days from the date of the decision.

2.3 The author states that back in 2007, together with two friends, he founded a soccer fan club called [the club] – for peaceful soccer fans. It became one of the main sport fan clubs in the country, with almost one million of members and supporters. Although initially it was only a sport club, [the club] eventually took a political approach, having participated actively in all major occasions during the Egyptian revolution, and played an important role at the Camel Battle Day when 18 million people in Egypt demonstrated. The author was solely responsible for the IT and communication of this club, including the administration of its Facebook page and Twitter account, due to which his name was known by the authorities as well as by most political organizations in the country. Inspired by the Tunisian revolution, he was reportedly one of the first to call through online media for a revolution in Egypt, as soon as [the start of] 2011. After the Government started to kill demonstrators in an attempt to stay in power, the author announced on the website of the club, that the [club] would take part in the revolution. Thus, the [club] members became significantly involved in the revolution, even if the club did not have a direct and official political agenda besides a general combat against corruption in Egypt. The author explains that his involvement was mainly through the mobilisation of the hundreds of thousands of people through the internet media and the organisation of large meetings and demonstrations. He himself directly participated only in a few non-violent demonstrations.

---

<sup>1</sup> His visa expired [in the beginning of] 2013.

2.4 The author adds that, together with the [club], he helped to organize the electoral campaign of [person] from the [...] opposition party during the presidential elections. However, the club is not directly against the current government, even if it does not approve its authoritarian methods, and it is not agreeing either with the agenda of the main opposition party, [...]. Nevertheless, the club has experienced several confrontations with the Egyptian authorities. The author also refers to the Port Said massacre of 1 February 2012 during which 70 [club] members were killed by members of another fan club on the occasion of a football match.<sup>2</sup> The author claims that the police watched passively what was going on, demonstrating that this massacre had taken a political dimension.<sup>3</sup>

2.5 The author further informs that the [club] members were a target of the Muslim Brotherhood regime, which kidnapped, tortured and killed some members in December 2012.<sup>4</sup> They are increasingly harassed and followed closely by the police of the current military regime. One of the local club leaders has been killed recently by the police<sup>5</sup> and another local leader was arrested and accused of having participated in the Port Said massacre, but was released the following day. The author further states that all the communication means of the Club seem to have been monitored and/or interfered with, including a closure of the group's webpage and hacking of the administrator's password by the Egyptian authorities, who are well aware of his identity and role as the IT and communication manager of the Club. He maintains that the Egyptian Government considered all expressions of opposition and dissent as acts of terror, linking those to the activities of the Muslim Brotherhood.

2.6 The author explains that the Board wrongly concluded that he was only "at risk" if returned to Egypt but not at "high risk". In this regard, he explains that he applied for asylum when the Muslim Brotherhood began to kill and target journalists and Facebook administrators who were against their regime, as well as supporters of [person] from the [...] opposition party. He notes that at that time, some administrators of fan clubs' pages with a far more limited audience than the author's page were killed. Thus he was already at high risk when he applied for asylum. Since then, the new military regime has enacted new legislation granting to the authorities the full power and the ability to arrest anyone for any reason. Thus, the author is still at high risk because of his capacity to reach and mobilise a large number of people for political reasons against the authorities through internet, as proven by his intense activity on political and social media during the revolution.

2.7 The author stresses that following the Board's negative decision with regard to his asylum application, he published [in the end of] 2013 on his Facebook page that he would return to Egypt shortly. Immediately afterwards, the police went to the house of the author's mother to look for him and returned five more times thereafter, while the author does not have any previous police, judicial or other official records. During one of the visits, the author's mother was attacked and received a death threat from a police officer for taking a photograph of the house search. Further to that, the author's mother received a written death threat addressed to the author.<sup>6</sup>

---

<sup>2</sup> At that time, the transitional government established by the Army was in power (from February 2011 to June 2012).

<sup>3</sup> The author states that some officers took part in the massacre. On 26 January 2013, 21 persons were sentenced to death in connection with this event.

<sup>4</sup> Mr. Mohamed Morsi from the Muslim Brotherhood was President of Egypt from June 2012 to July 2013.

<sup>5</sup> The author does not specify the circumstances.

<sup>6</sup> A copy of the note in Arabic was submitted which contained a death threat as the author was qualified as « Traitor ».

2.8 The author considers that as no judicial review of the Board decision is available all domestic remedies have been exhausted. The author's communication is not being examined under another procedure of international investigation or settlement.

### **The complaint**

3.1 The author claims that by forcibly returning him to Egypt, Denmark would violate his rights under articles 1, 2, 7, 9 and 19 of the Covenant. He claims that he fears facing a considerable risk of being arrested, kidnapped, tortured and even killed as he is a well-known member and founder of the [...] club, and also due to the club's political agenda. The author's fears are linked to the fact that he has personally campaigned for a different political party than the current Government and has been expressing opinions against the current Government's authoritarian methods, which are widely disseminated in various on-line media/social networks. He adds that his capacity to mobilise people against the authorities has been considered as a threat by all the regimes, including by the current one.

3.2 He also alleges that in the light of the human rights situation in Egypt, he cannot seek protection from the authorities there against the risk of being arrested without a proper reason, kidnapped, tortured or even killed for his opposing political opinions by the State party's security forces upon his arrival, contrary to the relevant provisions of the Covenant. In particular, the author refers to international NGO reports on the situation in Egypt, where it was noted that the Egyptian police and military have used excessive lethal force and killed and arrested thousands of political opponents to the government and military and that the current authorities are using all possible means to silence political opposition.

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

4.1 On 6 August 2014, the State party submitted its observations on admissibility and merits of the communication. It considers that the author has failed to substantiate a risk of irreparable harm if returned to Egypt, and for the same reasons considers the communication inadmissible as manifestly ill-founded due to a lack of substantiation.

4.2 Regarding his claims under articles 1 and 2, the State party submits that the author "has not elaborated in any way on the circumstances on which this part of the communication is based." Regarding his claims under articles 7 and 9, it is the State party's views that the author is trying to use the Committee as an appellate body to re-evaluate the facts and circumstances of the asylum claim that was adjudicated by national authorities. The State party requests that the Committee give considerable weight to the factual findings of the Board, which found that the author had failed to substantiate that he would risk persecution by the Muslim Brotherhood, or that he would be in a position of conflict relevant under asylum law vis-à-vis the military, police security forces or other authorities in case of his return to Egypt. Furthermore, the State party pointed out that the Board considered that neither the author nor his family had been contacted by the authorities. Moreover, the information on the arrests of other members of [the club] in connection with disturbances at an airport was also, in itself, found not to indicate any risk of persecution of the author. Accordingly, the Board found no basis for giving the applicant Convention status under section 7(1) of the Aliens Act or protection status under section 7(2) of the Aliens Act.

4.3 The State party adds that the Board found that the author had not been able either to support by evidence the information about the Egyptian authorities having turned up at his mother's home, or to substantiate why the authorities would visit his mother to look for him. In this regard, the Board also observed that the author had left Egypt legally [in the fall of] 2012 and did not return there since. The Board also observed that the general reports and articles produced by the author did not contain information substantiating the allegation that he was personally persecuted by the authorities or anyone else in his country of origin.

As a result, the Board found that he did not meet the conditions for being granted a residence permit under section 7 of the Aliens Act. Although the Board accepted the author's information that he had been one of the founders of [the club] and that he had been in charge of the group's IT, it did not and still does not find that, solely by being one of the founders of [the club] and in charge of the group's IT, considering that the group was originally an apolitical fan club which later developed into one with a political objective, the author has become a high-profile figure to the extent that he will be at risk of persecution. In this connection, the Board referred to the statement of the author that he had neither been present during the Port Said incident nor during any of the other clashes between the authorities and demonstrators.

4.4 The State party further notes that the Board referred to the author's statement that prior to his lawful departure from Egypt, he had not had any conflicts with the government or other groupings in Egypt. Moreover, the Board did not accept as a fact the author's information about the Egyptian authorities having turned up at his mother's home because this information was not supported by evidence. As regards the author's statement that the Board's background material on the situation in Egypt had not been updated since 26 June 2013, the State party observes that Egypt is one of the countries in "Group II", and that the background material is only updated when a person from that country applies for asylum in Denmark.<sup>7</sup> Before its decision, the Board had updated its background material on Egypt and was therefore aware of the most recent developments in the country, including the fact that the Muslim Brotherhood lost power in July 2013.<sup>8</sup>

4.5 As regards the author's statement that a member of [the club] had been killed by the police while another member of the group had been arrested and charged with having participated in the Port Said massacre, the State party observes that this information has not been supported by evidence. This finding is supported by the author's own statement that he and the other founders were not well-known figures. According to the State party, none of the current background information on Egypt gives any basis for assuming that members of [the club] are generally at any particular risk of being subjected to abuse from the authorities or from supporters of the Muslim Brotherhood. The Board included all relevant information in its decisions, and the communication has not brought to light any information substantiating that the author will risk persecution or asylum-relevant abuse upon return to Egypt. The State party informs that [in the beginning of] 2014 the author submitted an e-mail request that the Board reopen the asylum proceedings. As a reason for his request, the author referred to, *inter alia*, his fears that, as a co-founder of [the club], he would be killed or imprisoned by the Egyptian authorities if he returned to Egypt. The author also referred to the fact that his mother had been contacted at her home by the police and the military who had asked for the author and searched her home, and presented several general articles and reports from the internet as well as a printout of his Facebook profile where he had posted that he would be returned to Egypt [in the beginning of] 2014. [One month and four days later], the Board dismissed the request to reopen the asylum proceedings stating, *inter alia*, that it had not found any grounds for re-opening the case or

---

<sup>7</sup> The State party explains that background material on countries from which Denmark receives asylum seekers are divided into Groups I and II. The countries in Group I are those from which Denmark receives or has received a considerable number of asylum seekers. This background material is continually updated and supplemented. The countries in Group II are those from which Denmark receives or has received only a few asylum seekers. This material is updated only if a person from one of them applies for asylum in Denmark. Consequently, some time may pass between updates. The Refugee Appeals Board (the Board) considers it very important that the background material is of a high quality and that the material enables the Board to form a correct and objective impression of conditions in the individual countries.

<sup>8</sup> The State party does not provide further information on this.

extending the time limit for the author's departure. The Board took into consideration that no substantial new information or views beyond the information available at the original hearing by the Board had been submitted. The Board thus relied on its decision of [the winter of] 2013 and observed that the author had not been able either to support by evidence the information about the Egyptian authorities having turned up at his mother's home or to substantiate why the authorities would visit his mother to look for him. The Board also observed that the author had departed from his country of origin legally [in the fall of] 2012. The Board additionally observed that the general reports and articles produced by the author did not contain information substantiating the allegation that the author was personally persecuted by the authorities or anyone else in his country of origin. Accordingly, the Board found that the author did not meet the conditions for being granted a residence permit under section 7 of the Aliens Act.

4.6 Concerning article 19, the State party considers that the author's claim is insufficiently substantiated because he submitted that he had not previously had any conflicts with the Egyptian authorities, and that he had only availed himself of his right to freedom of expression. The State party further considers that the author's claim under article 19 is inadmissible as incompatible with the provisions of the Covenant because article 19 does not have extraterritorial application. The author's allegations of a violation of this provision do not rest on any treatment that he has suffered in Denmark, but rather on consequences that he will allegedly suffer if returned to Egypt. The European Court of Human Rights has clearly stressed the exceptional character of the right of extraterritorial protection contained in the European Convention on Human Rights.<sup>9</sup> The State party in this regard argues that the Committee has never considered a complaint on its merits regarding the deportation of a person who feared violation of other provisions than articles 6 and 7 of the Covenant in the receiving state.

4.7 For the foregoing reasons, the State party considers that the communication is also without merit.

#### **Author's comments on the State party's observations**

5.1 On 3 September 2014, the author submitted his comments on the State party's observations. He maintains that his claims under articles 1 and 2 of the Covenant are well-substantiated with a vast amount of documentation relating to his activities with the [club] - both presenting his status and function in the group, and the group's opinions and work. He stresses that although the State party has noted that the author stated he was not a member of any political party or organisation, he thereafter pointed out that he is the "brain" behind [the club] together with three other friends, and explained how this group developed from only focusing on sport to later include participation in political activities. The author argues that the State party does not understand how a group that was initially cultural could later become political without affiliating itself with any political organisations. He maintains that [the club] is "mainly a sport fan club, but that it also fights against corruption and stands for freedom of speech, which are typical political views. It is these political views, together with the group's power of gathering thousands of people, that makes [the group] unwanted and hunted by both the Egyptian authorities and the opposition (the Muslim Brotherhood)". The author asserts that he cannot seek protection anywhere in Egypt, freely determine his political status or freely pursue the social and cultural development of [the club] in Egypt without risking persecution.

5.2 With regard to his claims under articles 7 and 9 of the Covenant, the author asserts that he presented evidence to substantiate his allegations: a threatening letter sent to his

---

<sup>9</sup> The State party cites, inter alia, *Soering v. the United Kingdom*, application No. 14038/88.

mother's house, pictures of Egyptians who have been killed and tortured and who have been similarly active political opponents, and various articles explaining how the current regime enacts laws giving them the power to control social media for [the club]. The author reiterates that the authorities have searched his mother's house several times after he was ordered to return to Egypt. He adds that although the State party claims that the Board is better placed to assess the factual circumstances of his case, it does not explain why the Board's background material on Egypt - the database from Group II countries, was still not updated in January 2014. He maintains that the Board's background material available online today, which is updated, supports his claims. He argues that the 2014 Freedom House Report and the 2014 Human Rights Watch World Report on Egypt both clearly indicate that there is widespread torture and inhumane treatment in Egypt, and that there are clashes between different political groups and the current regime. In the view of the author, the Board's database contains no information about the [club]. Since individuals who occupied the same or lower hierarchical positions in [the club] have been kidnapped, tortured, or killed, the author asserts that he risks similar fate if returned to Egypt.

5.3 Regarding his claim under article 19 of the Covenant, the author considers that because the Egyptian authorities have recently enacted laws limiting freedom of expression, they are able to arrest anyone who is politically against the regime and thus he may risk persecution on these grounds.

5.4 The author presents new evidence in the form of an Arabic-language online video purporting to depict [a former member of] the Egyptian Football Association.<sup>10</sup> The author asserts that [the former member] has high-level political connections, and that he stated [in the beginning of] 2014 that "[The former member] swears to God multiple times that [the club] is a terrorist group". The author provides a detailed description of the contents of the video in English, alleging that [the former member] states that [the club] should be banned, that it was an ally in terrorism with the Muslim Brotherhood, and that the Egyptian government should stop [the club].

5.5 The author asserts that he had interpretation problems during "the interview".<sup>11</sup> He states that the interpreter was unable to properly translate computer (IT) related issues, and was therefore unable to convey the author's explanation about how he knows with certainty that the Egyptian authorities have tried to hack [the clubs] Facebook page and shut down the webpage. He asserts that his argument was based on computer science knowledge and was not translated by the interpreter. The author further maintains that contrary to the State party's assertion, he never stated that the purpose of [the club] was to support [person's] party, [...]. Finally, he argues that he was not allowed to present his evidence as he had planned at any of his interviews with the Danish authorities, although he was very well-prepared.

#### **State party's additional observations**

6.1 On 30 June 2015, the State party submitted additional observations, in which it reiterated its main observations on the admissibility and merits of the communication of 6 August 2014. The State party maintains that the author has failed to establish a *prima facie* case for the purpose of admissibility of his communication under articles 1, 2, 7, 9 and 19 of the Covenant, and that the communication is therefore manifestly unfounded and should be considered inadmissible. Furthermore, the State party maintains that the part of the communication referring to article 19 should be rejected as inadmissible *ratione loci* and *ratione materiae*, pursuant to article 2 of the Optional Protocol to the Covenant. The State

---

<sup>10</sup> [Link]

<sup>11</sup> The author does not specify which interview is at issue.

party also submits that, in case the Committee were to find the communication admissible, it had not been established that there were substantial grounds for believing that the return of the author to Egypt would constitute a violation of articles 1, 2, 7, 9 and 19 of the Covenant.

6.2 In the observations, the State party responds to the author's comments of 3 September 2014, and adds that the author has maintained that article 1 of the Covenant would be violated if the author is returned to Egypt as "he cannot seek protection from any parts in Egypt, freely determine his political status or freely pursue his social and cultural development of [the club] in Egypt without risking persecution, torture and/or assassination". The State party observes on this matter that the risk of persecution or other abuse justifying asylum falls within the ambit of article 7 of the Covenant and not article 1. As regards article 1 of the Covenant, the State party submits that the author is seeking to apply the obligations under article 1 in an extraterritorial manner in his communication. The author's allegations of a violation of article 1 of the Covenant do not rest on any treatment that he has suffered in Denmark or in an area where Danish authorities are in effective control, or due to the conduct of Danish authorities, but rather on consequences that he will allegedly suffer if returned to Egypt. The State party thereby claims that the Committee accordingly lacks jurisdiction over the relevant violation in respect of Denmark, and this part of the communication is accordingly incompatible with the provisions of the Covenant. In the State party's view, extraditing, deporting, expelling or otherwise removing a person in fear of having his rights under, *e.g.*, article 1 of the Covenant violated by another State party will therefore not cause such irreparable harm as is contemplated by articles 6 and 7 of the Covenant. For those reasons, the State party submits that also this part of the communication should be rejected as inadmissible *ratione loci* and *ratione materiae*, pursuant to article 2 of the Optional Protocol to the Covenant.

6.3 As regards the author's submission, in relation to articles 7 and 9 of the Covenant, that the background material of the Board on Egypt had not been updated, the State party reiterates its observations of 6 August 2014. Accordingly, the State party maintains that it is not correct that the background material was not sufficiently updated when the Board made its decision.

6.4 As the information provided by the author on other named individuals who had been involved in other fan clubs in Egypt are concerned, the State party submits that the Board makes an individual and specific assessment in all asylum proceedings. Furthermore, it claims that the author's information on other named individuals is of no significance to the author's application for asylum as the author has failed to substantiate that he has been or will be subjected to abuse that would justify asylum in case of his return to Egypt. As regards the author's submission concerning interpretation, the State party observes that, when interviewed by the Danish Immigration Service, the author was guided about his duty to speak out if he experienced any interpreting problems. The report was also read out to the author after the interview, and the author made comments on the report and confirmed that he had understood everything said by the interpreter during the interview. The State party also observes that the author and the interpreter confirmed at the beginning of the hearing before the Board [in the winter of] 2013 that they understood each other. Finally, the State party submits that the two issues mentioned by the author in relation to interpretation appear not to have had any impact on the assessment made by the Board that the author had not substantiated that he risked persecution in case of his return to Egypt that would justify asylum. The State party thereby maintains that there is no basis for doubting, let alone setting aside, the assessment made by the Board in its decisions of [the winter of] 2013 and [the beginning of] 2014 in the author's case.

6.5 The State party also requests that the Committee review its request for interim measures in the present case.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

7.1 Before considering any 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. It also notes that it is undisputed that the author has exhausted all available domestic remedies, as required by article 5, paragraph 2 (b), of the Optional Protocol.

7.3 The Committee notes the author's claim that his rights under article 1 of the Covenant have been violated. In this regard, the State party submits that the author "has not elaborated in any way on the circumstances on which this part of the communication is based" and that this part of the communication should be rejected as inadmissible *ratione loci* and *ratione materiae*. The Committee recalls that it does not have competence under the Optional Protocol to consider claims alleging a violation of the right to self-determination protected in article 1 of the Covenant.<sup>12</sup> It reiterates that the Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated, and recalls that these rights are set out in part III (articles 6 to 27) of the Covenant.<sup>13</sup> It follows that this part of the communication is inadmissible under article 1 of the Optional Protocol.<sup>14</sup>

7.4 The Committee further notes, regarding the author's claim under article 2 of the Covenant in relation to the decision on forced return, that the State party submits that the author "has not elaborated in any way on the circumstances on which this part of the communication is based". The Committee recalls its jurisprudence, which indicates that the provisions of article 2 of the Convention lay down general obligations for State parties and they cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.<sup>15</sup> The Committee thus considers that the author's claims in that regard are incompatible with article 2 of the Covenant, and inadmissible under article 3 of the Optional Protocol.

7.5 The Committee further notes the State party's objections to the admissibility of the communication as regards the author's claims under article 9 as he reportedly tried to use the Committee as an appellate body to re-evaluate the facts and circumstances of the asylum claim that was adjudicated by national authorities. The State party also submits, as regards the author's statement that one member of [the club] had been killed by the police while another member of the group had been arrested and charged with having participated in the Port Said massacre, that this information has not been supported by evidence. The Committee notes that according to the State party, the author's claim that he would risk an arrest is contradicted by the author's own statement that he and the other founders were not

---

<sup>12</sup> See, for example communication No. 932/2000, *Gillot v. France*, Views adopted on 15 July 2002, at para. 13.4.

<sup>13</sup> See, for example communication No. 167/1984, *Bernard Ominayak et al. v. Canada*, Views adopted on 26 March 1990, at para. 32.1.

<sup>14</sup> See communication No. 1134/2002, *Fongum Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, at para. 4.4.

<sup>15</sup> See, for example, communications No. 2202/2012, *Castaneda v. Mexico*, decision adopted on 29 August 2013, para. 6.8; No. 1834/2008, *A.P. v. Ukraine*, decision adopted on 23 July 2012, para. 8.5; and No. 1887/2009, *Peirano Basso v. Uruguay*, Views adopted on 19 October 2010, para. 9.4.

well-known figures. The Committee also notes the State party's argument that none of the current information on Egypt gives any basis for assuming that members of [the club] are generally at any particular risk of being subjected to abuse from the authorities or from supporters of the Muslim Brotherhood. The Committee further notes that the State party's Board found that the information on the arrests of other members of [the club] in connection with disturbances at an airport does not indicate any risk of persecution of the author, personally. In these circumstances, and in the absence of any other pertinent information on file, the Committee considers that the author has not sufficiently substantiated his claim and consequently finds that this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.6 Concerning the author's claim under article 19, the Committee notes the State party's argument that the author's claim is insufficiently substantiated because he submitted that he had not previously had any conflicts with the Egyptian authorities, and that he had only availed himself of his right to freedom of expression. In this connection, the Committee notes that the State party has argued that author's claim under article 19 is inadmissible *ratione loci* and *ratione materiae* as incompatible with the provisions of the Covenant because article 19 does not have extraterritorial application, and that the author's allegations of a violation of this provision do not rest on any treatment that he has suffered in Denmark, but rather on consequences that he will allegedly suffer if returned to Egypt. The Committee also notes that the author has not provided further information to substantiate his claim, and therefore it considers that the author has failed to sufficiently substantiate his claim for purposes of admissibility, and that, accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

7.7 The Committee notes the State party's argument that the author's claim under article 7 of the Covenant should be held inadmissible owing to insufficient substantiation. However, the Committee considers that the author has adequately explained the reasons why he fears that forcible return to Egypt would result in a risk of treatment incompatible with article 7 of the Covenant. The Committee is therefore of the opinion that this part of the communication, raising issues under article 7 of the Covenant, has been sufficiently substantiated for purposes of admissibility.

7.8 In the light of the foregoing, the Committee considers that the communication is admissible insofar as it raises issues under article 7 of the Covenant and proceeds with its examination on the merits.

#### *Consideration of the merits*

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

8.2 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 when 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.<sup>16</sup> The Committee has also indicated that the risk must be personal<sup>17</sup> and that there is a high

<sup>16</sup> See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

<sup>17</sup> See, for example, communications no. 2007/2010, *J.J. M. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A.*

threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>18</sup> Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>19</sup>

8.3 The Committee recalls its jurisprudence that important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice,<sup>20</sup> and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists.<sup>21</sup> The Committee notes the assessment made by the State party's authorities – the Board - including the information by the author that he had been one of the founders of [the club] and that he had been in charge of the group's IT. The Committee however notes that the State party has not found that, solely by being one of the founders of [the club] and in charge of the group's IT, considering that the group was originally an apolitical fan club which later developed into one with a political objective, the author has developed such a high-profile as to be placed at personal risk of persecution in case of return to Egypt. In this connection, the State party referred to the statement of the author that he had neither been present during the Port Said incident nor during any of the other clashes between the authorities and demonstrators, therefore considering that the author did not face personal risk if returned to Egypt. The State party based its assessment on the author's failure to present evidence that he would risk persecution by the Muslim Brotherhood, that he would be in a position of conflict relevant under asylum law vis-à-vis the military, police security forces or other authorities in case of his return to Egypt, or that the author or his mother had been contacted by the Egyptian authorities to look for the author.

8.4 The Committee notes the author's assertions of evidence presented to substantiate his allegations: a threatening letter sent to his mother's house, pictures of Egyptians who have been killed and tortured for the free determination of political status and pursuit of the social and cultural development of [the club] in Egypt without risking persecution, and various articles explaining how the current regime enacts laws empowering the authorities to control social media for [the club], including by attempts to hack the group's Facebook page and shutting down its webpage. The Committee further notes the author's assertions that the Egyptian authorities have searched his mother's house several times after he was ordered to return to Egypt. The State party dismissed the allegations that the Egyptian authorities have turned up at the author's home for lack of evidence and for lack of substantiation as to the reason why the authorities would visit the author's mother to look for him. The Committee also notes the persistent reports raising serious concerns about the general human rights situation in Egypt and takes note in particular of the reported cases of marginalization of the opposition to suppress all dissent, state surveillance of electronic communications, mass arrests of suspected supporters of the Muslim Brotherhood, torture and ill-treatment of those arrested and detained, killing of protesters, widespread death sentences, clamp-down on freedom of expression and violations of rights of refugees, asylum seekers and migrants, according to the UN human rights mechanisms' and the

---

v. *Switzerland*, decision adopted on 12 November 2010. No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6.

<sup>18</sup> See, for example, communications no. 2007/2010, *J.J. M. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; no. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>19</sup> *Ibid.*

<sup>20</sup> See, inter alia, *ibid.* and communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2.

<sup>21</sup> See communications No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 11.4 and No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

international non-governmental organisations' reports on Egypt,<sup>22</sup> as well as incidents of kidnapping, torture or killing of individuals who occupied the identical or lower hierarchical positions in [the club] as compared to and alleged by the author, based on which he asserts that he risks similar fate if returned to Egypt.

8.5 The Committee also notes the new evidence by the author in the form of an Arabic-language online video purporting to depict [a former member of] the Egyptian Football Association in which he stated [in the beginning of] 2014 that "[The former member] swears to God multiple times that [the club] is a terrorist group", contemplating that [the club] should be banned, as it was purportedly an ally in terrorism with the Muslim Brotherhood, and that the Egyptian government should stop the [club]. The Committee also notes that the designation of [the club] as a terrorist group has not been contested by the State party, and that the State party failed to address in its replies the impact of such designation on the risk for the author upon his return to Egypt. Since the author reliably indicated that he could be perceived as having a close link with the [club] group, which he co-founded, and on which activities the Egyptian government repeatedly tried to clamp down, the Committee considers that the author has sufficiently substantiated his claim that the State party's authorities have failed in the duty to duly assess the risk faced by him in case of return to Egypt, and thus the initial risk assessment by the State party is to be considered unreasonable. The Committee therefore considers that, in the specific circumstances of the case, the facts as submitted, and in particular in light of the involvement of the author in the work of the [club] group, reveal the existence, for the author, of a personal risk to be subjected to torture or ill-treatment if removed to Egypt, in violation of his rights under article 7 of the Covenant.

9. The 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 removal of the author to Egypt, would violate his rights under article 7 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under the obligation to provide the author with an effective remedy by proceeding to a review of the decision to forcibly remove him to Egypt, taking into account the State party's obligations under the Covenant. The State party is also under an obligation to take steps to prevent similar violations in the future.

11. By becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant. In addition, pursuant to article 2 of the Covenant, the State party has undertaken to guarantee to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy where it has been determined that a violation has occurred. The Committee therefore requests the State party to provide, 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, to have them translated into the official language of the State party, and to ensure that they are widely disseminated.

---

<sup>22</sup> See e.g. the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez - Addendum - Observations on communications transmitted to Governments and replies received (A/HRC/19/61/Add.4) of 29 February 2012 (paragraphs 47-52), the 2015 Freedom House Report 'Freedom in the World 2015' (page 9) - [www.freedomhouse.org/report/freedom-world/freedom-world-2015](http://www.freedomhouse.org/report/freedom-world/freedom-world-2015), and the 2015 Human Rights Watch Report on Egypt (pages 201, 203, 204, 205, 207, 210) - [http://www.hrw.org/sites/default/files/wr2015\\_web.pdf](http://www.hrw.org/sites/default/files/wr2015_web.pdf).

\_\_\_\_\_