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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2402/2014[*,**]

Submitted by:	A.A.I. and A.H.A. (represented by the Danish Refugee Council)
Alleged victim:	The authors and their two children
State Party:	Denmark
Date of communication:	27 May 2014
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 27 May 2014 (not issued in document form)
Date of adoption of decision:	29 March 2016
Subject matter:	Deportation from Denmark to Italy
Procedural issues:	Insufficient substantiation
Substantive issues:	Risk of being exposed to inhuman or degrading treatment
Articles of the Covenant:	7
Articles of the Optional Protocol:	2

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

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

1.1 The authors of the communication are A.A.I. and A.H.A., born [in] 1986 and [in] 1989 respectively, in Somalia. They submit the communication also on behalf of their minor children A.A. and A.I., born in 2013 and 2014 respectively. The authors are Somali nationals seeking asylum in Denmark and subject to deportation to Italy following the Danish authorities' rejection of their application for refugee status in Denmark. The authors claim that by forcibly deporting them and their children to Italy, Denmark would violate their rights under article 7 of the International Covenant on Civil and Political Rights. The authors are represented. The Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976.

1.2 On 27 May 2014, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the authors to Italy while their case was under consideration by the Committee. [In the summer of] 2014 the Refugee Appeals Board suspended the time limit for the authors' departure from Denmark until further notice, in accordance with the Committee's request.

1.3 On 23 February 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request to lift the interim measures.

Factual background

2.1 The authors were born on [in] 1986, and [in] 1989, respectively, in Mogadishu, Somalia. They belong to the Gaaljecel clan, and are Muslim. They married in [spring] 2012 in Italy and have two children: A.A. and A.I., born in Denmark in 2013 and 2014 respectively.

2.2 The first author fled Somalia in [early] 2009 after having been forcefully recruited by the Al-Shabab militia. He fears being killed by the militia members if returned to Somalia. He also refers to an incident that occurred during his forced recruitment by the militia, in which a boy from the Biyomaal clan was killed by Al-Shabab militia and of which the first author was accused although he did not commit. He thus fears being killed by Biyomaal clan members in revenge if returned to Somalia.

2.3 [In the summer of] 2011 he arrived to Lampeduza, Italy, and from there he was transferred to Turin by the Italian police where he applied for asylum. In Turin he was housed in a reception center. In [the fall of] 2012 the first author was granted subsidiary protection and was issued a residence permit valid for three years (until [fall] 2015).

2.4 The second author fled Somalia in [fall] 2007 after she had been assaulted by three armed uniformed Somali officials who searched her home and tried to rape her. After her departure from Somalia, her home was searched again by officials who were looking for her for crimes she had not committed. The second author fears being killed by the authorities, if returned to Somalia. Furthermore, the second author fears being killed if returned to Somalia due to her spouse's (the first author) conflict with Al-Shabab militia.

2.5 In [the spring of] 2008 the second author arrived to Italy and at an unidentified date she applied for asylum. She was housed in reception centres first in Sicily and then in Turin. In early 2009 she was granted subsidiary protection by the Italian authorities and issued a residence permit valid for three years. Subsequently she was not permitted to stay at the reception center and she moved into a shelter for homeless persons in Turin.

2.6 The second author's residence permit allowed her to stay in Italy and work. She was not receiving financial or any other assistance from the Italian authorities.

2.7 The homeless shelter where the second author was staying was overcrowded, violent, and also housed alcohol addicts, so she decided to move out and was living in the streets in the absence of other housing alternatives. She was alternatively spending the nights at railway stations, churches or informal settlements. The second author sought assistance from the Italian authorities, including in finding an alternative living arrangement and a job, but to no avail. At the same time she was actively looking for accommodation and work with no success. She remained homeless with no means of subsistence.

2.8 Because the second author's situation had become desperate in Italy, in [the summer of] 2009 she travelled to the Norway where her father and siblings lived. There she applied for asylum and family unification. The Norwegian authorities carried out a DNA test which determined that she was not her father's biological daughter. She was therefore returned to Italy by the Norwegian authorities [in the beginning of] 2012 and initially housed in a reception center in Turin, Italy, where she met the first author. Shortly after her return to Italy her residence permit was renewed and was valid until [spring] 2015. [In the spring of] 2012 the authors got married while still housed in the reception center in Turin.

2.9 In [the spring of] 2012 the authors were requested to leave the reception center in Turin without being offered any assistance in finding alternative temporary shelter, work or more permanent housing. The authors became homeless. They lived in the streets, occasionally in homeless shelters and in churches. They registered themselves at the local employment office; however they were never contacted by the office concerning work opportunities. They did not receive financial or other assistance from the Italian authorities.

2.10 The second author became pregnant in 2012 with the first author's child. She subsequently contacted the police hoping to receive assistance in finding a solution to the authors' housing dilemma, as the homeless shelters where the authors stayed occasionally were overcrowded and not safe. The police offered no assistance and she was forcefully removed from the police station.

2.11 Facing homelessness and destitution, being dependent on receiving food from churches, and fearing being unable to provide for their future child, the authors travelled to Norway in [the winter of] 2012 and there applied for asylum. Their applications were refused with reference to the Dublin Regulations as they held valid residence permits for Italy. The authors therefore faced deportation to Italy by the Norwegian authorities. Refusing to go back to Italy, the authors left Norway to Denmark [in the winter of] 2012 without informing the authorities.

2.12 [In the early winter of] 2013 the authors applied for asylum in Denmark. [Later in] 2013 the second author gave birth to the authors' first child, AA.

2.13 [In the fall of] 2013 the Danish Immigration Service found that the authors were in need of subsidiary protection, however they ought to be returned to Italy as Italy was their first country of asylum. The authors appealed this decision to the Refugee Appeals Board which [in the winter of] 2014 upheld the Refugees Immigration Service decision, stating that the authors fall within section 7(2) of the Danish Aliens Act,[1] meaning

[1] Article 7(2) of the Denmark Aliens Act reads as follows: 'Upon application, a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin. An application as referred to in the first sentence hereof is also considered an application for a residence permit under subsection (1)'.

that they were in need of subsidiary protection, but should be returned to Italy in accordance with the principle of first country of asylum. In [the spring of] 2014, the second author gave birth to the authors' second child, AI, in Denmark.

2.14 The authors claim that they exhausted all domestic remedies in Denmark, and that the negative decision, [from the winter of] 2014, which was handed down by the Danish Refugee Appeals Board, is final and cannot be appealed before another court.

The complaint

3.1 The authors submit that, by forcibly returning them and their children to Italy, the Danish authorities would violate their rights under article 7 of the International Covenant on Civil and Political Rights.[2] They submit that since they were asked to leave the reception center in Turin in [the fall of] 2012 they have not been able to find housing, work or any durable humanitarian solution. They also submit that reception centers for asylum seekers and refugees with temporary residence permit in Italy lack basic human standards and do not comply with international obligations of protection.[3]

3.2 The second author submits that she had already tried seeking asylum in Norway after having been granted a residence permit in Italy in 2009, and upon her (forced) return to Italy in 2012, apart from being housed in a reception center for only a couple of months, she was not offered assistance from the Italian authorities in finding shelter, work or permanent housing. She claims that now in their current situation, the authors would be returning with two children with no right to access reception centers, as persons who have already been housed in such centers are not allowed access to these centers should they be returning from other European countries. Thus deporting them to Italy constitutes a real risk of exposing the authors and their children to inhuman and degrading treatment, by living in the streets in destitution, with no prospect to finding durable humanitarian solutions.

3.3 On the principle of first country of asylum, the authors refer to UNHCR ExCom Conclusion No. 58 (1989) according to which this principle should only be applied if the applicants upon return to the first country of asylum 'are permitted to remain there and be treated in accordance with recognized basic human standards until a durable solution is found for them'.

3.4 On the Italian reception system for asylum seekers and beneficiaries of international protection, the authors further cite reports which state that international protection seekers returning to Italy who had already been granted a form of protection and benefitted from the reception system when they were in Italy, were de facto not entitled to accommodation in the reception facilities in Italy.[4] This is generated by the lack of

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

[3] The authors refer to the Swiss Refugee Council (OSAR), Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees (October 2013), p. 11; Asylum Information Database (AIDA), Country report: Italy, May 2013, p. 34; Council of Europe, "Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012", 18 September 2012 (CommDH(2012)26), p. 150.

[4] The authors cite European Network for technical cooperation of the application of the Dublin II Regulation, *Dublin II Regulation - National report on Italy*, 19 December 2012, available from www.dublin-project.eu/dublin/Dublin-news/New-report-Dublin-II-regulation-lives-on-hold; AIDA, *Country report: Italy*, May 2013, p. 37; United States of America, Department of State, "Country Reports on Human Rights Practices for 2012: Italy13); OSAR, *Reception conditions in Italy* (see note 4), pp. 4-5; and Jesuit Refugee Service Europe, *Protection Interrupted: The Dublin Regulation's impact on asylum seekers' protection*, June 2013, pp. 152 and 161.

available places in reception centers and fragmentation of the reception system, which affects principally returnees from European countries. As a consequence, many such returnees are living in the streets or in self-organized informal settlements that have flourished in the metropolitan areas that are characterized by overcrowding and sub-standard living conditions with limited access to public services and no prospect of social integration.

3.5 The second author states that her circumstances are in contrast with those in the case of *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*,[5] as she has already experienced being transferred from Norway to Italy, and after being housed for a couple of months in a reception center in Turin, she was not receiving any assistance from the Italian authorities in securing the basic needs, namely, shelter and food, nor was she provided with any assistance to find work, more permanent housing and to integrate into Italian society.

3.6 The authors maintain that the background information presented above concerning the situation of asylum seekers and refugees with temporary residence permit in Italy, together with their previous experiences, indicate systemic failures regarding basic support for asylum seekers and refugees in Italy, especially members of vulnerable groups. It thus seems substantiated that there is a serious and real risk that, if deported, the authors and their children will face homelessness, destitution with no prospects of finding a durable humanitarian solution.

3.7 The authors assert that, in view of that situation, including the fact that they have two infant children, their deportation to Italy constitutes a violation of article 7 of the Covenant as Italy does not currently meet the necessary humanitarian standards for the principle of first country of asylum to be applied.

State party's observations on the admissibility and the merits

4.1 In its observations dated 27 November 2014, the State party informed the Committee that in a decision [from the winter of] 2014, the Danish Refugee Appeals Board upheld the refusal by the Danish Immigration Services of the authors' asylum application. In its evaluation of whether Italy could serve as the applicants' first country of asylum the Board took note of the authors' account but found that their integrity and safety were sufficiently protected. The State party considers that the authors failed to establish a prima facie case for the admissibility of their communication under article 7 of the Covenant. Thus it has not been established that there are substantial grounds for believing that the authors risk being subjected to torture, or to cruel, inhuman or degrading treatment if returned to Italy, and therefore the communication is manifestly ill-founded and should be declared inadmissible; for the same reasons, the State party considers that it is wholly without merit.

4.2 In more specific terms, the State party considers that the authors did not produce any essential new information or views on their circumstances, beyond the information already relied upon during the asylum proceedings, and the Refugee Appeals Board had already considered that information in its decision [from the winter of] 2014. The Refugee Appeals Board found that the authors had previously been granted subsidiary protection in Italy and that they may enter legally into Italy and stay there while applying for renewal of their residence permits; therefore, Italy is considered the "country of first asylum", which justifies the refusal of the Danish authorities to grant them asylum, in accordance with section 7 (3) of the Aliens Act. When applying the principle of country of first asylum, the Refugee Appeals Board requires, at a minimum, that the asylum seeker is

[5] See *Mohammad Hussein and Others v. the Netherlands and Italy,* application No. 27725/10, ECHR decision adopted on 2 April 2013.

protected against *refoulement* and that he or she be able to legally enter and take up lawful residence in the country of first asylum, and that the asylum seeker's personal integrity and safety must be protected in that country.

4.3 According to the State party, such protection includes certain social and economic elements, as asylum seekers must be treated in accordance with basic human standards and their personal integrity must be protected. The core element of such protection is that the person(s) must enjoy personal safety, both upon entering and while staying in the country of first asylum. However, requiring that the asylum seeker will have the exact same social and living standards as nationals of the country is not possible.

4.4 In response to the authors' allegations that they will not have access to accommodation and will most likely live in the streets, if returned to Italy, the State party refers to the decision of inadmissibility handed down by the European Court of Human Rights in *Samasam Mohammed Hussein and Others v. the Netherlands and Italy* in 2013.[6] In that case, the court observed that persons granted subsidiary protection will be provided with a residence permit valid for three years, renewable by the Territorial Commission that granted it. Such a permit entitles the concerned persons to a travel document for aliens, to work, to family reunion and to benefit from the schemes of social assistance, health care, social housing and education under Italian domestic law.[7] The Court also ruled that in the absence of exceptionally compelling humanitarian grounds against removal, the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed from the Contracting State is not sufficient in itself to give rise to breach of article 3. It then considered, while taking into account the reports drawn up by both governmental and non-governmental organizations, that "while the general situation and living conditions in Italy of asylum seekers, accepted refugees and aliens who have been granted a residence permit for international protection or humanitarian purposes, may disclose some shortcomings, it has not been shown to disclose a systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group of people, as was the case in *M.S.S. v. Belgium and Greece*."[8] The Court found the applicant's allegations manifestly ill-founded and inadmissible and that the applicant could be returned to Italy.

4.5 With regard to the present case, the State party considers that, although the authors have relied on the European Court's finding in *M.S.S. v. Belgium and Greece* (2011), the Court's decision in the *Samsam Mohammed Hussein* case (2013) is more recent and specifically addresses the conditions in Italy.

4.6 The 2013 AIDA country report on Italy, also cited by the authors, stated that some asylum seekers who did not have access to asylum centres were obliged to live in "self-organized settlements", which are often overcrowded. The November 2013 update of that country report indicates that those were the reception conditions in Italy for asylum seekers and not for aliens who had already been issued residence permits. Moreover, the 2012 United States of America Department of State country report on Italy, cited by the authors was already available when the Court handed down its decision in the *Samsam Mohammed Hussein* case. Information that some aliens lived in abandoned buildings in Rome and had limited access to public services was included in the *Samsam Mohammed Hussein* decision. Finally, the authors have relied primarily on reports and other background material relating to reception conditions in Italy that were relevant to asylum seekers, including returnees under the Dublin Regulation, and not to persons, like themselves, who had already been granted subsidiary protection.

[6] See *Mohammad Hussein and Others v. the Netherlands and Italy,* application No. 27725/10, decision adopted on 2 April 2013.

[7] Ibid, *Samsam Mohammed Hussein and Others v. the Netherlands and Italy,* para 38.

[8] Ibid, para.78.

4.7 With reference to the recent case of the European Court, *Tarakhel v. Switzerland* (2014),[9] the State party notes that while it was ruled by the majority of judges that there would be a violation of Article 3 if the Swiss authorities were to send the applicants back to Italy under the Dublin Regulations without having first obtained the individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together, at the same time the Court had reiterated that article 3 could not be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home, nor did article 3 entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living.[10] In the opinion of the State party, the *Tarakhel* case — which concerned a family with the status of asylum seekers in Italy–does not deviate from the findings in the Court's previous case law on individuals and families with a residence permit for Italy, as expressed in, inter alia, the *Samsam Mohammed Hussein* decision. Accordingly, the State party expresses the view that it cannot be inferred from the *Tarakhel* decision that States are required to obtain individual guarantees from the Italian authorities before returning individuals or families in need of protection, who had already been granted residence permits in Italy.

4.8 In that respect, the State party reiterates that it appears from the decision in *Samsam Mohammed Hussein* case that persons recognized as refugees or granted subsidiary protection in Italy are entitled to benefit from the general schemes for social assistance, health care, social housing and education under Italian domestic law.[11]

4.9 Accordingly, the State party submits that article 7 of the Covenant does not prevent it from enforcing the Dublin Regulations in respect of individuals or families who have been granted residence permits in Italy, like the authors.

4.10 Consequently, the State party concludes that it will not be breaching article 7 of the Covenant to deport the authors and their children to Italy.

Author's comments on the State party's observations

5.1 In their comments dated 28 January 2015, the authors assert that the living conditions in Italy for asylum seekers *and* beneficiaries of international (subsidiary) protection are similar, since there is no effective integration scheme in Italy. Asylum seekers and recipients of subsidiary protection often face the same severe difficulties in finding basic shelter, access to sanitary facilities and food.[12] The authors refer to the Jesuit Refugee Service report which states that the real problem concerns those who are sent back to Italy and who already were granted some kind of protection; these may have already stayed in at least one of the accommodation options available upon initial arrival, but, if they left the centre voluntarily before the established time, they are no longer entitled to accommodation in the Government reception centres for asylum seekers (CARAs).[13] Moreover, most of the people occupying abandoned buildings in Rome fall into this last category. The findings show that the lack of places to stay is a big problem, especially for returnees who are, in most cases, holders of international or humanitarian protection.[14] The OSAR report quoted by the authors similarly indicated that it is extremely difficult for

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

[10] Ibid, *Tarakhel v. Switzerland* decision, para. 95.

[11] Ibid, *Samsam Mohammed Hussein and Others v. the Netherlands and Italy,* paras. 38 and 39.

[12] The authors refer to their initial communication and the reports cited therein.

[13] See Jesuit Refugee Service Europe, *Protection Interrupted* (see above footnote 4), page 152.

[14] Ibid, page 161.

people who have been granted protection status who are returned to Italy to find accommodation.[15]

5.2 The authors submit that they, regardless of being granted international protection or not, risk facing serious difficulties in finding shelter, access to sanitation facilities and food. Therefore and based on the above mentioned reports and the authors' prior experiences, it is submitted that living conditions in Italy for asylum seekers and beneficiaries of international protection can be regarded as similar, and even worse for returned beneficiaries of international protection, such as the authors.

5.3 The authors also dispute the State party's interpretation of the European Court jurisprudence. First, with reference to the entitlements of beneficiaries of international protection enumerated in the *Samsam Mohammed Hussein* decision to which the State party refers, the authors argue that these reflect relevant Italian domestic law, and that this information is partly challenged by UNHCR and NGOs reports,[16] thus in reality the actual living conditions of returnees in Italy under the Dublin Regulations are disputed. They further contend that the *Samsam Mohammed Hussein* decision was based on an assumption that upon notification, the Italian authorities would prepare a suitable solution for the arrival of the applicant's family in Italy.[17] The second author submits that she had also been transferred from Norway to Italy and was not provided with any assistance by the Italian authorities in finding shelter, temporary or permanent, apart from a brief stay in a reception center upon her return from Norway. Thus, based on the second author's experience, there is no basis for assuming that the Italian authorities will prepare for the authors' return in accordance with basic human rights standards and durable solutions for refugees.

5.4 Furthermore, the authors argue that the more recent European Court decision in *Tarakhel v. Switzerland* (2014), which involved similar facts, supports their claim that they should not be sent back to Italy.[18] The authors note that, in the *Tarakhel* case, the Court stated that the presumption that a State participating in the Dublin system will respect the fundamental rights in the European Convention on Human Rights is not irrebuttable.[19] The Court further found that, in the current situation in Italy, 'the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy or even in insalubrious or violent conditions, cannot be dismissed as unfounded.'[20] It further emphasized that especially children have 'specific needs' and 'extreme vulnerability' and that reception facilities for children 'must be adapted to their age to ensure that those conditions do not 'create…for them a situation of stress and anxiety, with particular traumatic consequences'.[21] The Court required Switzerland to obtain assurances from its Italian counterparts that the applicants (a family) would be received in facilities and conditions adapted to the age of the children; if such assurances were not made, Switzerland would be violating article 3 of the European Convention by transferring them to Italy.

5.5 The authors submit that the *Tarakhel* decision seems to indicate that the fact that a person does not risk refoulement in Italy, does not exclude a violation of article 3

[15] See OSAR. Reception conditions in Italy-Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, October 2013, page 4-5.

[16] See *Mohammad Hussein and Others v. the Netherlands and Italy,* application No. 27725/10, decision adopted on 2 April 2013, paras 43-44, 46-50.

[17] See *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, para. 77.

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

[19] Ibid, *Tarakhel v. Switzerland* decision, para. 103.

[20] Ibid, para. 115.

[21] Ibid para. 119.

of the European Convention due to the harsh living conditions in the over-crowded reception facilities for asylum seekers, especially for families with children. Accordingly, the authors claim that the fact that they may face harsh living conditions, homelessness and destitution upon returning to Italy would fall within the scope of article 7 of the Covenant, even if their residence permits in Italy are to be renewed. The authors conclude by stating that the actual living conditions in Italy for returnees under the Dublin Regulations, beneficiaries of international protection, do not meet basic humanitarian standards as required by the UNHCR EXCOM Conclusion No. 58, and thus returning them to Italy would constitute a violation of article 7 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with article 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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

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

6.4 The Committee notes the authors' claim that deporting them and their two minor children to Italy, based on the Dublin Regulations principle of "first country of asylum", would expose them to the risk of irreparable harm, in violation of article 7 of the Covenant. The authors base their arguments on, inter alia, the economic situation they faced after they were granted residence permits in Italy, and on the general conditions of reception for asylum seekers and refugees entering Italy. They claim that the authors had lived in the streets, occasionally in homeless shelters which were overcrowded and not safe, and in churches after they had to leave the reception center in [the spring of] 2012, and assert that they may face harsh living conditions, homelessness and destitution upon returning to Italy again. The Committee also notes the State party's argument that the authors failed to establish a prima facie case for the admissibility of their communication under article 7 of the Covenant, and that it has not been established that there are substantial grounds for believing that the authors risk being subjected to torture, or to cruel, inhuman or degrading treatment if returned to Italy, and therefore the communication is manifestly ill-founded and should be declared inadmissible. The Committee also notes the State party's submission that the prohibition of torture or inhuman or degrading treatment or punishment cannot be interpreted as obliging States parties to provide everyone within their jurisdiction with a home nor as entailing any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living.[22]

6.5 The Committee recalls its general comment No. 31,[23] in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by 7 of the Covenant which prohibits cruel, inhuman or degrading treatment. The Committee has also indicated that the risk must be

[22] See ibid, *Tarakhel v. Switzerland* decision, para. 95.

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

personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.[24] The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party and that it is generally for the organs of the States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such risk exists.[25] unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or to a denial of justice.[26]

6.6 The Committee observes that the authors had been granted subsidiary protection in Italy. It further observes that the Danish Immigration Service had confirmed their need of subsidiary protection. The authors have not pointed to any procedural irregularities in the decision-making procedure by the Danish Immigration Service or the Refugee Appeals Board. Nor have they substantiated that the decision to return them to Italy as their first country of asylum was manifestly unreasonable or arbitrary in nature.[27] In this respect the Committee notes the authors' claim that while they had been issued valid residence permits in Italy for three years before they travelled to Norway in [the winter of] 2012, they had not received financial or other assistance from the Italian authorities in finding living arrangements, work or permanent housing and that there was no effective integration scheme in Italy. The Committee also notes the authors' claim that if returned to Italy they would be returning with two children with no right to access reception centers. The Committee notes, however, that in [the winter of] 2012 upon the second author's return from Norway after her asylum application had been rejected by the Norwegian authorities with reference to the Dublin Regulations, she was hosted in a reception center in Turin for two months and thereafter her residence permit was renewed for three additional years. As for the first author, the Committee notes that he had stayed in reception centres since his arrival to Italy in [the summer of] 2011 through [the beginning of spring] 2012. The Committee concludes that the authors' previous experiences in Italy do not substantiate their claim that if returned to Italy they will be at a real risk of cruel, inhuman or degrading treatment.

7. In the light of the above considerations, the Committee considers that the authors' claims under article 7 of the Covenant have not been sufficiently substantiated for the purposes of admissibility. Accordingly, the Committee concludes that the communication is inadmissible under article 2 of the Optional Protocol.

8. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That the decision be transmitted to the State party and to the authors.

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

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

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

[27] The authors' situation is different from the facts in Jasin v. Denmark where the author, a single mother of three small children suffering from health problems, whose residence permit entitling her to work and benefit from the schemes of social assistance, health care, social housing education had expired while in Italy and where the State party had failed to take the author's situation into account in an individualized risk assessment. See communication No. 2360/2014, *Jasin v. Denmark*, Views adopted on 22 July 2015.

Appendix I

Individual opinion of Committee member Yadh Ben Achour (dissenting)

[Original: French]

1. I am afraid I cannot endorse the Committee's decision to find communication No. 2402/2014 inadmissible. From my point of view, the communication is admissible and, on the merits, there is a risk of a violation of article 7 if the authors are deported to Italy. The reasoning behind my opinion is as follows.

2. At the end of paragraph 6.6 of the issues and proceedings before the Committee, the Committee notes a number of facts, some of which argue in favour of the authors' case, while others argue against it and could justify their deportation. After taking note of all the facts, the Committee concludes: "that the authors' previous experiences in Italy do not substantiate their claim that if returned to Italy they will be at a real risk of cruel, inhuman or degrading treatment". In order to come to this conclusion, the Committee appears to have given disproportionate weight to the factual arguments against the authors. It should, in my opinion, have taken a more balanced view of the facts. Paragraphs 2.5, 2.7, 2.8 and 2.9 of the factual background contain enough elements to assert that the authors' deportation to Italy might pose a real risk of them being subjected to treatment contrary to article 7. The fact that the authors enjoyed subsidiary protection in Italy, that they were granted residence permits, that the wife was "hosted in a reception centre in Turin for a couple of months and thereafter her residence permit was renewed for three additional years" and that the author (the husband) "stayed in reception centres since his arrival to Italy in [the summer of] 2011 through [the early spring of] 2012" in no way alleviates the situation of distress the authors experienced in Italy (above-mentioned paras. 2.5, 2.7, 2.8 and 2.9). On the contrary, the situation was aggravated by the fact that their deportation to Italy would take place subsequently to the birth of two children to the couple, after 2012. This important factor should be taken into consideration to the extent that, objectively speaking, it can only make their situation more unstable and vulnerable if deported to Italy.

3. In this case, the Committee could have relied on precedent from the 114th session (29 June-24 July 2015): *Warda Osman Jasin et al. v. Denmark* (communication No. 2360/2014), which is similar in some regards to the present case. In *Warda Osman Jasin et al. v. Denmark*, the Committee found that the author's deportation to Italy along with her three minor children would expose them to a risk of irreparable harm. And yet, like in the present case, the author had enjoyed protection and been given housing and a residence permit, which did not prevent the Committee from concluding, based on the circumstances of the case, that she was in a highly vulnerable personal situation, which, coupled with the proven shortcomings of the reception system for asylum seekers and refugees in Italy, gave rise to a real risk of her being subjected to treatment contrary to article 7 of the Covenant. It is therefore hard to understand why the two cases are being treated differently. The Committee should have come to the same conclusion as in communication No. 2360/2014.

4. The Committee could also have drawn on certain cases considered by the European Court of Human Rights, in particular the judgment in the case of *Tarakhel v. Switzerland* of 4 November 2014, which dealt with the deportation to Italy of an Afghan couple and their six children. The European Court criticized Switzerland for not sufficiently taking into account the complainant's personal and family circumstances. It ruled that article 3 of the European Convention on Human Rights would be violated if the Swiss authorities deported the applicants to Italy under the Dublin Regulation without first obtaining guarantees from the

Italian authorities that the applicants would receive appropriate assistance adapted to the family and the age of the children.

5. It is true that, more recently, the European Court appears to have ruled otherwise, for example in the judgments in the cases of *A.M.E. v. the Netherlands* of 13 January 2015 and *A.S. v. Switzerland* of 30 June 2015. However, these judgments are based on facts which are unlike those in *Tarakhel v. Switzerland*. In fact, the European Court took pains to expressly note this difference in the facts compared with the *Tarakhel v. Switzerland* decision, in paragraph 34 of *A.M.E. v. the Netherlands* and paragraph 36 of *A.S. v. Switzerland*. In the latter case, the issue was strictly limited to the problem of whether Italy would provide appropriate medical treatment for the applicant's condition. The European Court found that the applicant had failed to demonstrate that he would not have access in Italy to the treatment required by his condition and, moreover, that his situation was not of exceptional gravity. The issues are not the same and the Committee should rather have followed the *Tarakhel* precedent. The fact that there are children involved, the pain of being uprooted and the level of vulnerability experienced by the family in the country of first entry are decisive risk criteria, of which the Committee has not taken sufficient account.

6. All of these considerations lead me to believe that in the present case, the communication was admissible and that, in view of the heightened instability and vulnerability of the complainants' situation, their deportation to Italy would put them at real, serious and specific risk, in violation of article 7 of the Covenant.

Appendix II

Individual opinion of Committee member Olivier de Frouville (dissenting)

[Original: French]

1.I wish to associate myself with the arguments put forward by my colleague Mr. Yadh Ben Achour in his dissenting opinion. For all the reasons he explained, I disagree with the decision taken by the Committee in this case. Like Mr. Ben Achour, I consider that the communication should have been declared admissible and that the Committee should have found on the merits that there would be a risk of irreparable harm in violation of article 7 if the authors were deported to Italy. In addition, it is difficult to understand what distinguishes this case from not only the case of *Warda Osman Jasin* (No. 2360/2014) but also that of *Abdilafir Abubakar Ali et al.* (No. 2409/2014). As the Committee indicated in both those Views, in this type of case, Denmark needs to establish a proper procedure for seeking adequate assurances from the Italian authorities that the authors will be received in conditions compatible with the requirements under article 7 of the Convention.

Appendix III

Individual opinion of Committee member Anja Seibert-Fohr (concurring)

1. I concur with the Committee's Views. I write separately in the hope of shedding further light on the Committee's reasoning which is summarised in paragraph 6.6 and led to the conclusion that the communication is inadmissible under article 2 of the Optional Protocol.

2. According to the Committee's standing jurisprudence, States parties are under an obligation "not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that *contemplated by articles 6 and 7 of the Covenant"*. [a] The existence of a risk under article 7 must be determined on a case by case basis. It is for the authors of a communication to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being subjected to cruel, inhuman or degrading treatment. In order to substantiate the universally applicable threshold of article 7 it is insufficient if an author submits that he or she will not receive financial or other assistance from the authorities of the receiving state. The non-availability of social assistance as such does not amount to treatment in violation of article 7.

3. In the present case, the authors had been granted temporary residence permits by Italy which allowed them to work and benefit from the general schemes for social assistance, health care, social housing and education. They submit that, having been granted subsidiary protection and having benefitted from the reception system before, they would now return to Italy without a right to access reception centers. However, the authors' previous experience in Italy does not support this submission. When the second author returned from Norway to Italy in [the winter of] 2012 she was not denied access but housed again in a reception center in Turin where she had been before in 2008/09. There are no reasons to assume that this would not be the case if she is deported to Italy again. Neither is there any indication that the authors would not be able to renew their residence permits when they return.

4. In order to substantiate the claim that Denmark would violate their right not to be subjected to cruel, inhuman or degrading treatment it also does not suffice to submit, as the authors do, that they did not (and will not) receive financial or any other assistance from the Italian authorities in finding alternative living arrangement and work.[b] The same applies to their claim that there is no effective integration scheme in Italy. The living conditions claimed by the authors do not rise to a level that would render their deportation cruel, inhuman or degrading. The facts in this case where both authors are entitled and capable to work are substantially different from the facts in *Jasin v. Denmark* where the Committee found a violation of article 7*,* because as a single mother of three small children, whose residence permit had expired while in Italy and who was suffering from health problems, the author would have been left upon deportation in a situation threatening her and her children's existence. [c] In contrast, in the present case, the legal status of the authors which permits them to work and their situation as a family with two healthy adults fit for work does not warrant the same conclusion.

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

[b] See the author's submission in para 6.6.

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

5. Since the authors have failed to submit to us facts to support the claim that there are substantial grounds for believing that, if deported to Italy, they would be exposed to a real risk of being subjected to cruel, inhuman or degrading treatment pursuant to article 7, the communication is inadmissible under article 2 of the Optional Protocol.[d] I would like to emphasize that the Committee's inadmissibility decision is based on the facts before us, in application of the Covenant and without prejudice to obligations under other legal regimes. Though I recognize a need for a union of states which is founded on the indivisible, universal value of human dignity and solidarity[e] to take action in order to abide by this commitment and to improve the living conditions in which many refugees entitled to subsidiary protection are left under a regulatory regime for which this union is responsible, this, for the reasons given above, does not allow the Committee to find a violation of article 7 of the International Covenant on Civil and Political Rights in the case before us.

[d] See Rule 96 (b) Rules of Procedure of the Human Rights Committee, CCPR/C/3/Rev.10. For a similar holding see R.G. v. Denmark, Comm. No. 2351/2014, Views adopted on 2 November 2015, para 7.8 where the Committee also found the communication inadmissible for insufficient substantiation.

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

Appendix IV

Individual opinion of Committee Members Sarah Cleveland and Fabián Salvioli (dissenting)

1. We disagree with the Committee's Views and write separately to object to the determination of inadmissibility in this case.

2. In *Jasin v. Denmark,*[a] and *Ali v. Denmark,*[b] the Committee concluded that the authors' removal to Italy with their young children on the basis of the initial decision of the Danish Refugee Appeals Board would violate article 7 of the Covenant.[c] In both cases, the Committee found that the State party had failed to devote sufficient analysis to the individual authors' personal experience regarding the demonstrable failure of the Italian social service network and to the foreseeable consequences of forcibly returning them and their families to Italy. The Committee further concluded that the State had failed to seek proper assurance from the Italian authorities that the authors and their minor children would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7.[d]

3. The State party properly acknowledges that the concept of protection includes certain social and economic elements, as asylum seekers must be treated in accordance with basic human standards. Like the authors in *Jasin* and *Ali*, the authors in the present case were granted subsidiary protection and residence permits, which legally entitled them to work and to various forms of social protection under Italian law. However, as in the above cases, the authors soon found themselves destitute and living on the streets, with no assistance from the Italian authorities. As in the above cases, the authors allege facts based on their personal experience, supported by reports regarding the conditions in Italian reception centres, indicating that there is a real risk that they and their two young children will be left similarly destitute and homeless if returned to Italy without assurances. And notably as in *Jasin*, the second author in this case actually left Italy and was returned there, and after two months in a reception centre again was turned out onto the streets. As in *Jasin*, she thus was able to present specific evidence based on her own experience regarding the fate of persons who previously have been granted subsidiary protection by Italy and returned there.

4. The fact that in *Jasin* the author's residence permit had expired does not itself distinguish that case or *Ali* from the circumstances here. Under Italian law the residence permit given to a person who is granted subsidiary protection, even if expired or lost, is renewable so long as the individual remains entitled to subsidiary protection. Indeed, in the present case, both authors' residence permits were scheduled to expire in 2015, well before the Committee adopted its views.

5. The Committee does not typically articulate the legal standard for finding a communication inadmissible for lack of substantiation.[e] However, the Committee has made clear that this form of admissibility requires the author to "submit sufficient evidence in substantiation of the allegations as will constitute a *prima facie* case".[f] States parties have

[a] Communication No. 2360/2014 (Views adopted 22 July 2015).
[b] Communication No. 2409/2014 (Views adopted 29 March 2016).
[c] *Jasin*, para. 8.10; *Ali*, para. 7.9.
[d] *Jasin*, paras. 8.8-8.9; *Ali*, paras. 7.7-7.8.
[e] Article 2 of the Optional Protocol; Rule of Procedure 96(b) (claim shall be "sufficiently substantiated").
[f] Report of the Human Rights Committee, UN Doc. A/39/40P (1984), para. 588 (emphasis in original).

understood this to be the standard[g], and at times have treated it as equivalent to the "manifestly ill-founded" standard applied by the European Court of Human Rights[h] and our sister treaty bodies.[i]

6. Reasonable minds perhaps may differ over whether the situation of the authors in this case is distinguishable from that in *Ali* and *Jasin.* But their circumstances are far too similar for the claim here to be inadmissible for lack of substantiation. It is untenable to contend that the claims in *Ali* and *Jasin* were admissible and established a violation of article 7, but that the authors' claims here fail to even state a *prima facie* case. Nor does the Committee provide the reader with any meaningful justification for the radically different outcome here. An inadmissibility determination is particularly inappropriate given that under Committee procedures, cases considered inadmissible by the working group are discussed by the plenary only upon the affirmative request of a Committee member.[j] For all of these reasons, we believe this case should have been deemed admissible and decided on the merits.

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[g] Para. 4.1 (alleging the authors failed to establish a *prima facie* case for admissibility); see also Communication No. 2272/2013, *P.T. v. Denmark* (Views adopted 1 April 2015), para. 4.1 (same); Communication No. 1544/2007, *Hamida v. Canada* (Views adopted 18 March 2010), para. 4.3 (same); Communication No. 2186/2012, *Mr. X and Ms. X v. Denmark* (Views adopted 22 Oct. 2014), para. 4.2 (same). See also Yogesh Tyagi, The UN Human Rights Committee Practice and Procedure (2011), at 463 ("[i]n effect, the submission must constitute a prima facie case").

[h] European Convention on Human Rights, article 35(3) (application inadmissible if "manifestly illfounded").

[i] See CEDAW Protocol, art. 4(2)(c) (inadmissible if "manifestly ill-founded or not sufficiently substantiated"); CRPD Protocol, art. 2(e) (same); ICESCR Protocol, art. 3(2)(e) (same); ICED, art. 30(2)(a) ("not manifestly unfounded"). States have used both the "prima facie" and "manifestly ill-founded" standards. Compare *Jasin*, *supra,* para. 4.1 (arguing that communication was "manifestly ill-founded"); *Ali*, *supra,* para. 4.1 (same); Communication No. 2149/2012, *M.I. v Sweden* (Views adopted 25 July 2013), para. 4.3 ("manifestly unfounded"). See also J. Th. Möller and A. de Zayas, *United Nations Human Rights Committee Case Law, 1977-2008: A Handbook* (2009), at 91 ("[T]he [Human Rights Committee's] 'insufficient substantiation ground has become synonymous with the 'manifestly ill-founded' ground in other international procedures.").

[j] Rule of Procedure 93(3).