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International Covenant on Civil and Political Rights

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Decision adopted by the Committee under the Optional Protocol, concerning Communication No. 2672/2015*,**

Communication submitted by:	J.F.H. (represented by counsel, Rabih Azad-Ahmad)
Alleged victim:	The author
State party:	Denmark
Date of communication:	23 January 2015 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 9 November 2015 (not issued in document form)
Date of adoption of Views:	29 March 2019
Subject matter:	Deportation from Denmark to Italy; inhuman and degrading treatment
Procedural issues:	Exhaustion of domestic remedies; Level of substantiation of claims
Substantive issues:	Cruel, inhuman or degrading treatment or punishment upon return to country of first asylum, family rights
Articles of the Covenant:	7 and 23
Articles of the Optional Protocol:	2 and 5 (2) (b)

* Adopted by the Committee during its 125th session (4 – 29 March 2019)

** The following members of the Committee participated in the examination of the communication: Tania Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi, Furuya, Christof Heyns, Bamariam Koita, Marcia V. J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

Decision on admissibility

1.1 The author of the communication is J.F.H., an ethnic Kurd and Syrian national, born on 2 June 1992 in Aleppo, Syria. He is residing in Denmark and subject to a deportation order to Italy. He claims to be a victim of a violation by Denmark of his rights under article 7 of the Covenant. He is represented by counsel, Rabih Azad-Ahmad. The Optional Protocol entered into force for the State party on 23 March 1976.

1.2 On 9 November 2015, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided not to issue a request for interim measures under rule 92 of the Committee´s rules of procedure.

Factual background

2.1 The author fled Syria in 2012, and was registered in the Euro-hit system[1] on 25 October 2012, in Italy, and on 7 December 2012, in Germany. The author claims that he was deported from Germany to Italy under the Dublin III Regulation[2] on an unspecified date. In Italy, he received no assistance and was forced to live in the streets and exposed to violence and crime.

2.2 As a result of the deficient living conditions in Italy, the author returned to Syria in May 2013, where he stayed at the house of a doctor until 2014. In June 2014, the author fled Syria again because he wanted to avoid being convened by the Syrian army or recruited by rebel movements.

2.3 On 17 June 2014, the author arrived in Denmark, where his paternal aunt lives, and applied for asylum two days later. By letter of 28 July 2014, Italian authorities informed the Danish Immigration Service that the author had been granted refugee status in Italy. The author claims that he was not informed of this decision. The author provides a copy of a medical certificate from the Daer Sem Surgical Hospital referring to his hospitalisation for the period of 8-12 September 2013. He claims to have no other proof or supporting document of his interim residence in Syria because he was hiding from State authorities.

2.4 On 14 January 2015, the Refugee Appeals Board rejected the author´s asylum application, based on paragraph 7, subsection 3, of the Danish Aliens Act, which states that "a residence permit can (…) be denied, if the foreigner already has gained protection in another country, or if the foreigner already has a close connection to another country where the foreigner is assumed to be able to gain protection". This provision gives the Danish government the power to send people like the author to Italy, without any humanitarian consideration. Like the Danish Immigration Service, the Board found that, in Italy, the author would be protected from *refoulement* and that he would receive protection and would have access to basic social and economic rights. Finally, the Board found the author´s allegation regarding his time in Syria between 2013 to 2014 unreliable and constructed especially for the occasion.

2.5 The author claims to have exhausted domestic remedies, because the Refugee Appeals Board upheld the decision of the Danish Immigration Services to reject his asylum application in Denmark.

The complaint

3. The author claims that his deportation to Italy would put him at risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment, given the

[1] EURODAC (European Asylum Dactyloscopy Database).

[2] Regulation (EU) No 604/2013 of the European Parliament and of the Council, of 26 June 2013, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

social and economic conditions for Dublin returnees in Italy. He claims that these conditions are of such nature to amount to a violation of article 7 of the Covenant. The poor reception conditions and integration prospects in Italy affect apply even to people with recognized refugee status[3]. He argues that he has communicated the systemic deficiencies of the Italian refugee system that affects Dublin returnees, and that the Refugee Appeals Board must consider whether the Italian authorities offer guarantees of protection.

State party's observations on admissibility and merits

4.1 On 9 May 2016, the State party submitted its observations on the admissibility and merits of the communication. The State party claims that the communication should be considered inadmissible for lack of sufficient substantiation of the author's risk of being subjected to torture or other form of cruel, inhuman or degrading treatment or punishment upon his return to Italy.

4.2 The State party describes the proceedings before the RAB.[4]

4.3 The State party informs the Committee that, pursuant to section 7 (3) of the Danish Aliens Act, the question on the issue at stake in the author´s asylum application was to determine whether Italy could serve as the author´s first country of asylum. The State party recalls that, on 28 July 2014, Italian authorities informed Danish authorities that the author had been granted refugee status in Italy. Also, on 14 January 2015, the Refugee Appeals Board rejected the author's asylum application and found that the author would be protected against *refoulement* in Italy and that it would be possible for him to enter and stay lawfully in Italy, and that his personal integrity and safety had to be assumed to be guaranteed to the extent necessary in that country. This decision entailed an assessment of whether Italy´s social and economic conditions allow the author to enjoy, to some extent, basic rights, making reference to Chapters II to V of the Convention relating to the Status of Refugees and to ExCom Conclusion no. 58 (1989). However, the State party submits that it cannot be required that the relevant asylum seeker must have completely the same social living standards as the country´s own nationals. Rather, it must ensure that their personal integrity must be protected. Moreover, the State party submits that the Refugee Appeals Board has found that Italy can serve as a first country of asylum in a number of cases, based on the most recent background information on the conditions of refugees in Italy. The State party also observes that Italy is bound by the European Convention on Human Rights and the Covenant. Finally the State party observes that the author´s allegation that he stayed in Syria between 2013 and 2014, which was found non-credible and fabricated for the occasion, is irrelevant to the assessment of whether Italy can serve as a country of first asylum.

4.4 The State party notes that the author has not produced any new information in his complaint to the Committee and that all relevant background information was made available and considered by the Refugee Appeals Board in its decision of 14 January 2015. After a thorough assessment of the relevant background information and the author's individual circumstances, the Board concluded that the author was not at risk of treatment contrary to article 7 of the Covenant. Concerning the author´s reference to the Dublin Regulation and the *UNHCR Recommendation on Important Aspects of Refugee Protection in Italy* of July 2013, the State party observes that these recommendations relate mainly to reception conditions in Italy for asylum-seekers and accordingly not to aliens who have been granted residence. Furthermore, the State party observes that the author has also made reference to the case law of the European Court of Justice, which is of relevance to asylum-seekers, including Dublin returnees to Italy, and not to persons who, like the author, have already been granted refugee status.

[3] The author cites the judgment by the European Court of Human Rights in *Tarakhel v. Switzerland* (application no. 29217/12), 4 November 2014, para. 60.

[4] Please see the Committee's Views on communication No. 2379/2014, *O.H.A. v Demark,* adopted on 7 July 2016, paras. 4.1 to 4.3.

4.5 Based on an overall assessment of the background information available and the information submitted by the author, the State party concludes there is no basis to suggest that the author would be at a particular risk of being subjected to treatment contrary to article 7 of the Covenant because of the general social and economic conditions of Dublin returnees or refugees in Italy. As a person with a recognized refugee status, the author has access to a renewable residence permit, and is entitled, inter alia, to a travel document for aliens, to work, to family reunion and to benefit from the general schemes for social assistance, health care, social housing and education under Italian domestic law. The State party supports its allegations by making reference to a recent case of the European Court of Human Rights 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", or that, "while the general 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 shown to disclose systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group of people" [5]. Moreover, the State party informs the Committee that, according to a communication with Italian authorities, the author would be able to enter Italy and, potentially, request a renewal of his residence permit in case it had expired. According to information provided by the *Asylum Information Database: Country Report – Italy*, published in January 2015 as part of the AIDA project, refugees have the same right to receive medical treatment as Italian nationals. The State party also submits that the facts of a decision of this Committee in another case against Denmark markedly differs from this one, because that case concerned a deportation of a single mother with three minor children to Italy.[6] In the present case, the issue at stake is the deportation of a single, young and healthy man, with a recognized refugee status. Finally, regarding the author´s allegations of violence suffered from the acts of Italian officials, or being exposed to violence and robberies for being forced to live in the streets, the State party submits that the author can report any of these complaints before Italian domestic bodies.

4.6 The State party submits that the author´s communication merely reflects that he disagrees with the assessment of his specific circumstances and the background information considered by the Refugee Appeals Board. In his communication, the author failed to identify any irregularity in the decision-making process or any risk factor that the Refugee Appeals Board has failed to properly take into account. The State party also submits that the Committee must give considerable weight to the findings of fact made by the Refugee Appeals Board, which is better placed to assess the factual circumstances of the author´s case. Hence, the author has failed to establish that there are substantial grounds for believing that he would be in danger of being subjected to inhuman or degrading treatment or punishment if deported to Italy.

Author's comments on the State party's observations

5.1 On 30 August 2016, the author submits his comments on the State party's observations. The author reiterates his previous arguments and insists that Italy does not have the capacity to house the number of refugees currently present in country due to the increased number of Syrian refugees arriving to the country.

5.2 The author informs the Committee that his brother is currently living in Denmark, where he has applied for asylum. Hence, the State party´s deportation of the author to Italy would also entail a violation of article 8 of the European Convention on Human Rights, concerning his right to family life. The author claims to have the right to have his asylum application processed in Denmark, where he has a documented family member.

[5] European Court of Human Rights, *Samsam Mohammed Hussein and others v. the Netherlands and Italy*, No. 27725/10, 2 April 2013, paras. 71 and 78.

[6] See communication No. 2360/2014, *Warda Osman Jasin et al. v. Denmark*, decision adopted on 22 July 2015, para. 8.4.

Additional submissions by the parties

6.1 On 21 December 2016, the State party argues that the author´s additional observations of 30 August 2016 seem to provide no essential new and specific information on the author´s personal situation.

6.2 Concerning the author´s allegations about his right to family life, because his brother is currently living in Denmark, the State party informs that the author´s brother was in fact granted residence in Denmark on 7 April 2015 under section 7(1) of the Danish Aliens Act. The State party submits that this circumstance cannot independently lead to a different assessment of the author´s case, including the assessment that Italy, where the author had already been granted residence as a recognised refugee, can serve as the author´s country of first asylum.

6.3 The State party further observes that the Dublin Regulation governs the transfer of asylum-seekers between Member States, for which reason the author does not fall within the Regulation as he is a recognised refugee in Italy. Moreover, the State party submits that the issue of family reunification is of no relevance to the author´s asylum claim.

7. On 9 August 2017, the author reiterates his non *refoulement claims*, as well as his claims based on his right to family life.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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

8.3 The Committee takes note of the author's allegation relating to his right to family life. However, it notes that this issue has never been raised before national authorities. Therefore, the Committee considers this new claim based on article 23 of the Covenant inadmissible under article 5, paragraph 2 (b) of the Optional Protocol.

8.4 The Committee notes the author's statement that decisions by the Refugee Appeals Board of Denmark are not subject to appeal and that therefore domestic remedies have been exhausted. This has not been challenged by the State party. Therefore, the Committee considers that domestic remedies have been exhausted regarding the author's claim based on article 7 of the Covenant as required by article 5, paragraph 2 (b) of the Optional Protocol.

8.5 The Committee notes the author's allegation that his return to Italy would put him at risk of being subject to torture or other cruel, inhuman or degrading treatment. The author bases this allegation on general social and economic conditions for refugees in Italy.

8.6 The Committee also notes that the Refugee Appeals Board considered his personal and social circumstances, as well as the general situation of recognised refugees in Italy, and concluded that the author´s allegations about being forced to travel back to Syria because of the general conditions of asylum-seekers or refugees in Italy as non-credible and specially fabricated for the occasion.

8.7 The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of a case, unless it can be established that such an assessment was

arbitrary or amounted to a manifest error or denial of justice.[7] In the present case, the author has not explained why the decision by the Refugee Appeals Board would be contrary to this standard, nor has he provided substantial grounds to support his claim that his removal to Italy would expose him to a real and personal risk of irreparable harm in violation of article 7 of the Covenant. In particular, the Committee notes that the author has failed to provide any concrete and detailed information about his personal situation in Italy in 2013. The Committee accordingly concludes that the author has failed to sufficiently substantiate his claim of violation of article 7 for purposes of admissibility and finds his communication inadmissible pursuant to article 2 of the Optional Protocol.

9. The Committee therefore decides:

(a) That the communication is inadmissible under article 2 and 5 (2) (b) of the Optional Protocol;

(b) That the decision shall be communicated to the State party and to the author.

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