



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning Communication No. 2419/2014^{**}

<i>Communication submitted by:</i>	S.A.H.
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	5 June 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 6 June 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	8 November 2017
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Procedural issues:</i>	Substantiation of claims and inadmissibility
<i>Substantive issues:</i>	Expulsion of aliens; risk of irreparable harm in country of origin; right to life; prohibition of torture or cruel, inhuman or degrading treatment; expulsion of non-citizen; right to equal protection of the law
<i>Articles of the Covenant:</i>	6; 7; 13; and 26
<i>Article of the Optional Protocol:</i>	2 and 3

1.1 The author of the communication is Mr. S.A.H, an Afghan citizen born on 6 February 1987. The author claims that by forcibly deporting him to Afghanistan, Denmark would violate his rights under articles 6, 7, 13, and 26 of the International Covenant on Civil and

* Adopted by the Committee at its 121st session (16 October – 10 November 2017).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelic, Bamariam Koita, Marcia V.J. Kran, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.



Political Rights. The author was represented by counsel until 6 October 2017. The Optional Protocol entered into force for Denmark on 23 March 1976.

1.2 On 6 June 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 author to Afghanistan while his case was under consideration by the Committee. On 10 June 2014, the Refugee Appeals Board (RAB) suspended the author's deportation from the State party until further notice, in compliance with the Committee's request.

1.3 On 28 January 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 request.

Factual background

2.1 The author was born in Takhar in the Taloqan province. He claims that he is ethnic Qizilbash/Gazalbash and that he professed the Muslim faith for several years. He attended school for five years, but has limited reading and writing skills. He further alleges that in 1999, his father, who was a medical doctor, was killed by a local commander named A.M.B in Afghanistan. However, it was unclear whether the killing was intentional. As a result, he had to leave school and started working to provide for his mother and brother.

2.2 The author worked as a car mechanic. On 1 September 2009, commander A.M.B.'s driver came to the repair shop with the commander's car. There was an accident when the author was repairing the car, which caused the driver's death. As the incident could be perceived as revenge for his father's death and fearing for his life, the author fled to Kabul with his younger brother and stayed there with a cousin. The day after their arrival, the author's brother went to buy food and, according to witnesses, was kidnapped by unknown persons. The author has not seen him since. The author therefore decided to travel to Herat and then to Iran, where he stayed for about two years. He worked in a shop in an area populated by Afghan refugees. During this period, he was informed by an Afghan neighbor in Iran that the commander's men were looking for him in Afghanistan and Iran; and that they had visited his mother's house.

2.3 The author decided to flee to Europe. He travelled through five countries and in December 2011, he entered Denmark and applied for asylum. He claimed that his life was at risk in Afghanistan since he would be persecuted by commander A.M.B.'s men. The author was held at the Ellebæk Institution for Detained Asylum-Seekers (the asylum centre).¹

2.4 The Danish Immigration Service (DIS) interviewed the author on 2 January and 20 March 2012 concerning his asylum request. He stated that his father died when he was accidentally hit in an armed clash between two commanders. At the end of the second interview the author stated that "he was prepared to change religion to avoid returning to Afghanistan".²

2.5 On 30 March 2012, the DIS dismissed the author's asylum request. The author appealed this decision to the Danish Refugee Appeals Board (RAB).

2.6 On 3 December 2012, the RAB refused the author's asylum claim for lack of credibility. The Board noted that the author had not been a member of any political or religious association, nor had he been politically active. Furthermore, the Board pointed to specific contradicting and inconsistent statements made by the author during the interviews with the DIS and the RAB concerning his father's death, the alleged incident with the

¹ Ellebæk (formerly "Sandholm") Prison and Probation Establishment for Asylum-seekers and Others Deprived of their Liberty.

² According to the summary of the DIS' interview, as appeared in the Refugee Appeals Board's decision of 3 December 2012.

commander's driver, his brother's disappearance, and the visits of the commander's men to his relatives in Afghanistan looking for him. Notably, the author stated during the RAB's hearings that his father was killed in a clash between forces of two commanders; and that therefore the death of A.M.B's driver would be perceived as an act of revenge from the author's side. When asked how he knew which of the two sides killed his father, he replied that people knew who had hit whom. Likewise, the RAB noted that the author had replied evasively to its question about what exactly had happened in the alleged accident at the repair shop. Against this background, the RAB considered that the author's statements seemed fabricated for the occasion.

2.7 The author attempted to commit suicide several times in 2012 and 2013, and had been hospitalized. In 2013 he started attending the Church Kronborg Centre and was baptized on 16 June 2013.³ Subsequently, the author left Denmark and sought asylum in the Netherlands. The author submits that he also participated in church's activities in this country. On 8 April 2014, the Dutch authorities transferred the author back to Denmark in accordance with the Dublin Regulations.

2.8 On 1 May 2014, the author, represented by the Danish Refugee Council (DRC), made a request for reopening his asylum case. He argued *inter alia* that new information had come to light concerning his situation in Afghanistan. The request included three documents received allegedly from the author's neighbors living in Afghanistan and who sent those documents on behalf of the author's mother. His request also referred to his conversion from Islam to Christianity. It noted that the author started taking interest in Christianity when he came to Denmark; that he was a regular churchgoer; that he also attended the Iranian church in the Netherlands; that video clips of the church services in the Netherlands held in Dari language were available in Youtube; that he had told his family and friends in Afghanistan about his faith; and that he could not be expected to conceal his conversion in order to avoid persecution in Afghanistan. The author enclosed a certificate of baptism dated 16 June 2013 and three letters prepared by M.C., pastor of the Church Centre of Kronborgvejen, indicating that the author had attended church services and other activities from 3 March 2013 to 7 July 2013, and that the church perceived him as a sincere believer.

2.9 On 15 May 2014, the priest from the asylum centre, Mr P.B., informed the author's counsel that the author was harassed by Muslim detainees due to his Christian faith.⁴ Counsel brought this information to the RAB's attention.

2.10 On 2 June 2014, the RAB decided not to re-open the case on the ground that there was no significant new information. The RAB referred to its decision of 3 December 2012 and noted that the three documents allegedly received by the author from Afghanistan seemed fabricated. Despite the fact that two of them were dated more than three years before 3 December 2012 hearing, the author did not submit them at that time or explain why they had not been submitted at an earlier date. Moreover, according to the background material available, forged documents are widely used and easy to obtain in Afghanistan.

2.11 The RAB did not find the author's conversion genuine since he confirmed that he was Muslim and did not show any interest in Christianity during the initial asylum procedure. Moreover, when interviewed on 20 March 2012, the author stated that he was an ethnic Qizilbash of the Shia Muslim faith and that this group was unable to practice its religion freely. When interviewed by the DIS, he stated that he was prepared to change his religion to avoid returning to Afghanistan. The RAB also took note of one of the letters prepared by Pastor M.C. and highlighted that the information about the author's conversion was obtained only a few days before the author's scheduled deportation to Afghanistan; and that he did not provide any proof of his statements that the Iranian church services in the Netherlands at which he participated had been recorded and uploaded in the internet.

³ The author provides a copy of a certificate of baptism dated 16 June 2013.

⁴ The author provides a copy of a translation of the email sent by priest P.B. to his counsel.

2.12 The author submits that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author claims that his deportation to Afghanistan by the State party would constitute a violation of his rights under articles 6, 7, 13, and 26 of the Covenant. In Afghanistan he would be at risk to life and/or of being subjected to inhuman or degrading treatment or punishment, due to his situation as a young man of fighting age and member of an ethnic and religious minority; as well as to his conversion to Christianity.⁵

3.2 With regard to article 26 of the Covenant, the author claims that other asylum-seekers in a similar situation, who converted after the RAB dismissed their initial asylum request, were granted international protection. The fact that he only converted after the first negative decision of the RAB cannot be used as proof that his religious conviction is not genuine. In addition, he is prevented from bringing his case before a court, as decisions by the RAB are final under Danish law and cannot be appealed. Further, his new asylum ground based on his conversion to Christianity has never been considered by the DIS.

State party's observations on admissibility and merits

4.1 On 8 December 2014, the State party submitted its observations on admissibility and merits. It maintains that the communication is inadmissible as manifestly ill-founded. With regards to the claims under articles 6 and 7 of the Covenant, it has not been established that there are substantial grounds for believing that the author is in danger of being deprived of his life or being subjected to torture or to other cruel, inhuman or degrading treatment or punishment if returned to Afghanistan. Nor has it been established that articles 13, or 26 of the Covenant have been violated in connection with the procedure in which the author's request for reopening of the asylum case was examined by the Danish authorities.

4.2 Should the Committee find the author's communication admissible, the State party submits that the author has not sufficiently established that it would constitute a violation of articles 6 or 7 to return to Afghanistan or that articles 13 or 26 have been violated in this case.

4.3 The State party provides a detailed description of the asylum proceedings under the Aliens Act and of the organization and competence of the RAB.⁶ It recalls that decisions of the RAB are based on an individual and specific assessment of the relevant case; and that asylum-seekers' statements regarding grounds for seeking asylum are assessed in light of all relevant evidence, including what is known about conditions in the country of origin. The RAB is responsible not only for examining and bringing out information on the specific facts of the case, but also for providing the necessary background material, including information on the situation in the asylum-seeker's country of origin or first country of asylum.⁷

⁵ The author refers to a memorandum of UNHCR's Director of International Protection of 6 August 2013, in which he informed all UNCHR Directors about the 2013 UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of asylum-seekers from Afghanistan and its main recommendations; and to a letter by the UNHCR Acting Senior Regional Legal Officer, Regional Office for the Baltic and Nordic Countries, dated 1 May 2012, related to another case of an Afghan failed asylum-seeker who converted to Christianity, which provides a summary of UNHCR's position regarding inter alia credibility of converted person, conversion post departure and future behavior of converted person to avoid persecution.

⁶ See Communication 2379/2014, *Obah Hussein Ahmed v. Denmark*, Views adopted on 8 July 2016, paras. 4.1-4.3.

⁷ The State party notes that the background material regarding Afghanistan available to the RAB can be found in the following website: www.fl.n.dk/da/baggrundsmateriale.

4.4 The decision to refuse reopening of the author's asylum proceedings on 25 June 2014 was made by the RAB, as represented by the judge who chaired the specific board that made the original decision in the author's case, in accordance with section 53(10) and (11) of the Aliens Act and section 48 of the RAB's Rules of Procedure. The RAB found itself unable to rely on the three additional documents provided by the author as, in view of their nature and the timing of their production, the documents seemed fabricated for the purpose (see 2.10 above). Moreover, according to the State party, forged documents are widely used and easy to obtain in Afghanistan.⁸

4.5 Furthermore, the RAB could not accept as fact that the author had converted from Islam to Christianity (see 2.11 above). The State party points out that the author was baptized on 16 June 2013. Nevertheless, he only informed the migration authorities of his conversion when he faced imminent deportation in May 2014, despite the fact that he had received documentation and confirmation of his church attendance and baptism on 7 July 2013.

4.6 The author's allegations about his attendance at Iranian Church services when he was an asylum-seeker in The Netherlands, which were allegedly recorded and uploaded in Youtube, was not supported by evidence. Nor had the author provided any information indicating that he had been particularly exposed as a convert through these recordings.

4.7 The author's allegations that he was harassed by Afghan Muslim inmates in the asylum centre and that they will persecute him in Afghanistan cannot lead to a revised assessment of the case, especially since his conversion to Christianity is not considered genuine. Moreover, these allegations are not supported by any evidence. The State party notes that according to the UNHCR, the so-called "self-serving" activities do not create a well-founded fear of persecution of a Convention ground in the claimant's country of origin if the opportunistic nature of such activities will be apparent to all, including the authorities there. Consequently, serious adverse consequences would not result if the person were returned.⁹

4.8 In light of the above, on 2 June 2014, when making its assessment, the RAB found that it could not be accepted as a fact that the author had made a genuine conversion from Islam to Christianity and that therefore the author had failed to substantiate that, he would face a risk of persecution if deported to Afghanistan. Accordingly, the RAB also found no basis for reopening the proceedings for reconsideration of the case.

4.9 The State party further maintains that the fact that the author is a young man of Qizilbash ethnicity from Taloqan cannot in itself justify the author's eligibility for international protection. It does not appear from the 2013 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan that ethnic Qizilbash is a particularly persecuted group or otherwise at a special risk of persecution because of its ethnicity. During the asylum procedure, the author stated that he had never been involved in politics and that neither he nor his family had ever had problems with the authorities. Thus, the author will not risk any circumstances contrary to articles 6 or 7 of the Covenant upon return to Afghanistan.

4.10 Article 13 of the Covenant does not confer a right to a court hearing. In its decision of 2 June 2014, the RAB, acting through the judge who chaired the specific board that made the original decision in the author's case, considered all the information submitted by him in his request for reopening his asylum procedure, including information related to his alleged conversion to Christianity. Article 13 has therefore not been violated in this case.

⁸ The State party makes reference to the report of the fact-finding mission of the Danish Immigration Service to Kabul in Afghanistan published on 29 May 2012 entitled: « Country of Origin Information for Use in the Asylum Determination Process ».

⁹ The State party refers to UNHCR Guidelines on international protection: Religion-based refugee claims under article 1A(2) of the 1951 Convention and Convention and/or the 1967 Protocol relating to the Status of Refugees (28 April 2004), paras. 34 and 36.

4.11 The author has been treated no differently from any other person applying for asylum in terms of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The refusal to reopen the asylum proceedings does not in itself constitute discrimination. The author's request for reopening was considered by the competent authority and the refusal to reopen the case was well-founded and in accordance with the case-law of the Board. Therefore, the author's claims under article 26 of the Covenant are not substantiated.

Author's comments on the State party's observations

5.1 On 19 January and 13 April 2015, the author submitted his comments on the State party's observations. He argues that he attends the Church on a weekly basis¹⁰ and that as a result of his conversion he has been harassed by inmates of the asylum centre.

5.2 With regard to his claims under articles 13 and 26, the author submits he had no opportunity to challenge the RAB's decision before a court. This is in violation of basic principles of the rule of law and discriminatory since no other persons than asylum seekers are denied the right to appeal against a Board's decision. Moreover, the issue of conversion was never assessed by the DIS.

5.3 The author alleges that since he was in great personal pain in 2013, he opened up his mind for help from another source. This process is well known from many converts and consequently his spiritual transformation happened during that year in the Kronborg Church where he was also baptized. He now considers himself and lives openly as Christian, practices his faith while in detention, and will continue to practice his faith even if returned to Afghanistan. Therefore, if deported he would be persecuted in his country of origin. He further claims that since he has lived in the Western world for many years, he risks to be perceived to conduct himself contrary to Islamic rules and to be supportive of the international community; that the security situation in Afghanistan has worsened; that the Afghan authorities are unable to protect its own citizens;¹¹ and that persecution of non-Muslim believers takes place even in Kabul. Consequently, if returned to Afghanistan, he will face risks to life and of being subjected to severe ill-treatment.

Parties' additional information

State party

6.1 On 17 May 2016, the State party informed the Committee that on 13 May 2016 the RAB *ex officio* decided to reopen the author's case for consideration at an oral hearing before a new panel.

6.2 On 6 and 14 September 2016, the author submitted to the RAB written briefs in the case. At the hearing before the RAB the author held *inter alia* that he would be considered an apostate, a non-believer, and he might risk being killed in Afghanistan; that he had converted to Christianity because he had originally been a Shia Muslim, and from where he came, it

¹⁰ The author provides copies of a letter issued by the priest of the Kronborgvejens church, dated 21 June 2014; as well as 2 letters issued by the priest of Persian Church Cyrus, dated 23 June and 17 July 2014, in which it is stated that the author attended this church in the Netherlands and participated in bible studies in the refugee detention centre in Rotterdam. He also submitted a letter by the pastor of the Skt. Nicolai Church, dated 14 January 2014, stating that the author attended worship services since 5 October 2014 and participated in other church's activities. It is also noted that it was the pastor's impression that he had a genuine commitment to the life and worship of the Christian church, and that it came to his knowledge that the author had been harassed by Muslim inmates in the asylum centre.

¹¹ The author refers to an article published dated 21 February 2015, in a blog: <https://kabulblogs.wordpress.com/2015/02/21/afghan-minister-for-refugees-and-repatriation-stop-deportation-to-afghanistan/>

was the perception among people that Shia Muslims were bad persons and not real Muslims; and that at the original hearing with the RAB, he did not disclose his interest in Christianity because he was not asked about it. He also denied having stated in the interview with the DIS that he would rather change religions to avoid returning to Afghanistan. The author further stated that in the asylum centre he was harassed by some Muslim Afghans, for which reason he had subsequently been transferred to another accommodation centre, where he was also subjected to harassment; that in Denmark he had stayed together with many Afghans who had learned about his conversion to Christianity and were against it; that some of them had now been returned to Afghanistan; that he had also told an Afghan friend in his country of origin about his conversion; and that, therefore, people in Afghanistan were aware of his conversion.

6.3 On 15 September 2016, the RAB upheld the refusal of the author's request for asylum since the RAB found, by majority, as a fact that his conversion was not genuine. The RAB noted *inter alia* that the author had acquired knowledge of Christianity that was not insignificant. However, the RAB also noted that the author only started to become better acquainted with Christianity in March 2013, after his claim for asylum had been finally refused; that his familiarity with Christianity was limited when he was baptised in June 2013; and that his replies explaining the motives for converting were evasive and formulated in general terms. In this connection, the RAB considered that, in view of the significance of Islam in the Afghan society, if his conversion were genuine, it seemed unlikely that the author would have such general and superficial explanation about the reasons that motivated him to convert. The RAB also found that it had not been rendered probable merely by virtue of the author's appearance among many other persons far into a video from an Iranian church in the Netherlands uploaded to YouTube, nor by the circumstance that other Afghan asylum-seekers in Denmark had learned of the author's conversion, that he would risk persecution or serious abuse in case of his return to Afghanistan; and that his statement that an Afghan Facebook friend has been informed of the conversion could not lead to a different conclusion.

Author

7. On 23 September 2016, the author submitted that he had unsuccessfully requested that his case be remitted to the DIS, since his conversion to Christianity was a new asylum motive, which was had not been examined at first instance. The RAB also rejected the author's request to bring a witness at the hearing without providing any explanation. Likewise, the RAB rejected his request that the Danish Ministry of Foreign Affairs conduct an investigation to determine if the documents provided in support of his initial asylum procedure were genuine.

State party

8.1 On 24 October 2016, the State party referred to the RAB's decision of 15 September 2016 and reiterated its observations on admissibility and the merits of the communication.

8.2 With regard to the author's claims under article 13, the State party maintains that in cases decided by the DIS or the RAB in which the asylum-seeker claims that essential new information has come to light, the RAB will make an assessment of whether this new information may result in a different decision. The RAB may remit the case to the DIS for re-examination. In the case at hand, the panel examining the author's case at the RAB hearing on 15 September 2016 was different from the panel which considered the initial asylum request. The fact that the RAB did not make an explicit reference in its decision of 15 September 2016 to its finding that the case should not be remitted to the DIS for re-examination at first instance cannot be taken to mean that the Board failed to consider a potential remission of the case.

8.3 The author asked for permission to call missionary T.H., whom the author had met in a church context, as a witness at the hearing before the RAB. The Board considered that the witness would only give evidence to substantiate the asylum-seeker's general credibility as to whether his conversion was genuine or not. For this reason and considering the fact that

the author had already produced extensive testimonies from pastors and other persons who had met the author in a church context, the RAB found that it was not relevant to call the missionary. Moreover, in its decision of 15 September 2016, the RAB considered as a fact some of the author's statements concerning his participation in the church and his knowledge about Christianity (see 6.3 above). The RAB's refusal to accept this witness was made in accordance with the second sentence of section 54(1) of the Aliens Act and the RAB's case-law.

8.4 Concerning the author's request to assess the authenticity of the documents produced by him concerning his initial asylum claim, the State party notes that the RAB's decision was based on overall assessment of, *inter alia*, the nature and contents of the documents in conjunction with the prospect of whether such verification could lead to a different assessment of the evidence, the timing and circumstances of the submission of the documents, and the credibility of the asylum-seeker's statements in light of the general background information available on conditions in the country. The Board observed that the contents of a document are not necessarily true even though the document is genuine.¹²

8.5 The State party reiterates the author's claim of violation of article 26 of the Covenant, because he cannot appeal the RAB's decisions before courts, is manifestly unsubstantiated. The author has been treated no differently from any other person applying for asylum. Pursuant to section 56(8) of the Aliens Act, decisions of the RAB are final, which means that there is no avenue for appeal against the Board's decisions. By virtue of the Danish Constitution, aliens may, however, bring an appeal before the ordinary courts, which have the authority to adjudicate any matter concerning the limits to the competence of a public authority.

Author

9. On 10 July 2017, the author reiterated his allegations and pointed out that the RAB's decision of 15 September 2016 did not mention any issue related to his request to bring a witness at its hearing. Nor does it explain why the case was not referred to the DIS.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claims contained in a communication, the 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.

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

10.3 The Committee takes note of the author's assertion that domestic remedies have been exhausted. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b), of the Optional Protocol have been met.

10.4 The Committee takes notes of the author's claims under articles 13 and 26 of the Covenant, that he unsuccessfully requested the RAB that his case would be remitted to the DIS since his conversion to Christianity was a new asylum motive; and that the RAB also rejected his requests to bring a witness at the hearing without providing any explanation and to carry out an investigation to determine if the documents provided in support of his initial

¹² The State party refers to *Afghanistan: Country of Origin Information for Use in the Asylum Determination Process, Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan 25 February to 4 March 2012*, published by the Danish Immigration Service in May 2012, pp. 50-51.

asylum procedure were or not false. The author further claims that the law does not provide for an appeal of the RAB's decisions before courts, which he considers discriminatory. The Committee also takes note of the State party's arguments that the author's asylum proceedings, including his request for reopening the case, were conducted in conformity with the law; that he was able to submit evidence and clarify his statements in the original asylum procedure and after the case was reopened by the RAB; that in light of the information already submitted by the author and the circumstances of the case, the RAB did not grant the author's request to call missionary T.H. as witness and to ask the Ministry of Foreign Affairs to carry out an investigation on the authenticity of some documents submitted by him (see paras. 8.3-8.4 above); that the RAB is an independent, expert board of a quasi-judicial nature, whose Chairman is a judge, and that the Board is under the obligation to bring out the facts and make objectively correct decisions. The Committee further notes the State party's argument that the author has been treated no differently from any other person applying for asylum.

10.5 The Committee observes that the author had the opportunity to submit and challenge evidence concerning his removal and had his asylum application examined by the DIS and reviewed by two different panels of the RAB; as well as by the Chairperson of the Board, who *inter alia* examined the new evidence submitted by the author. The Committee also recalls its jurisprudence that article 13 of the Covenant offers some of the protection afforded under article 14 of the Covenant, but not the right of appeal to courts.¹³ Accordingly, the author's claim regarding the absence of appeal against the RAB's decisions is therefore inadmissible *ratione materiae* under article 3 of the Optional Protocol.

10.6 The Committee also considers that the author has not sufficiently substantiated his claims concerning the procedure before the RAB, under articles 13 and 26 of the Covenant for purposes of admissibility and that this part of the communication must therefore be declared inadmissible in accordance with article 2 of the Optional Protocol.

10.7 The Committee notes the State party's argument that the author's claims with respect to articles 6 and 7 of the Covenant should be held inadmissible owing to insufficient substantiation. The Committee however considers that the author has sufficiently substantiated his claims for the purposes of admissibility. Accordingly, the Committee declares the communication admissible as it may raise issues relating to articles 6 and 7 of the Covenant and proceeds to its examination on the merits.

Consideration of the merits

11.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

11.2 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 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.¹⁴ The Committee has also indicated that the risk must be personal¹⁵ and that there is a high threshold

¹³ See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 62. See also communication No. 2291/2013, A and B v. Denmark Views adopted on 13 July 2016, para 7.3.

¹⁴ See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

¹⁵ See for example communications no. 2007/2010, *X. 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. 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.

for providing substantial grounds to establish that a real risk of irreparable harm exists.¹⁶ In making this assessment, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹⁷

11.3 The Committee 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 States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or a denial of justice.¹⁸

11.4 The Committee notes the author's allegations that he will face a real risk of being subjected to a treatment contrary to articles 6 and 7 if deported to Afghanistan since he will be persecuted by commander A.M.B. in relation to the death of his driver. The Committee notes the State party's argument that all the evidence related to this claim was assessed by the DIS and then the RAB. Subsequently, the chairperson of the panel of the RAB that examined the original asylum request, also considered the author's request for reopening in the light of additional information submitted by the author and concluded that such information was not significantly new with respect to that initially available when the RAB dismissed his asylum request. While the author disagrees with the conclusions reached by the State party's authorities, the Committee considers that the author has failed to submit convincing arguments that such conclusions were manifestly erroneous or denial of justice or clearly arbitrary.

11.5 With regard to the author's conversion to Christianity, the Committee notes his allegations that he started taking interest in Christianity when he arrived in Denmark; that he converted to Christianity in 2013 and was baptized on 16 June 2013; that since he lives openly as Christian, Afghan failed-asylum seekers harassed him in the asylum centres; that he informed his mother and friends in Afghanistan about his conversion; that his conversion puts him at risk of persecution if returned to Afghanistan; and that the Afghan authorities will be unable to protect him.

11.6 The Committee also takes note of the State party's argument that the chairperson of the panel of the RAB that examined the author's original asylum request, and subsequently a full new panel of the RAB examined the information provided by the author on his reported conversion to Christianity and found that 'his conversion was not genuine' and that the author had not rendered probable that he would risk persecution if returned to Afghanistan.

11.7 The Committee notes that reports cited by the parties¹⁹ and other which were in the public domain when the RAB examined the author's asylum request on 15 September 2016,²⁰ indicate that conversion from Islam is considered apostasy in Afghanistan; that under the courts' interpretation of Islamic law it is punishable by death; that if someone converts to another religion from Islam, he or she shall have three days to recant the conversion, before being subject to the punishment for apostasy; and that persons perceived as contravening Sharia law, including converts from Islam, as well as persons perceived as contravening the Taliban's interpretation of Islamic principles, norms and values may be in need of

¹⁶ See for example communication no. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; and communication no. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

¹⁷ Ibid.

¹⁸ 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.

¹⁹ See 2013 UNHCR's eligibility guidelines, footnote 16 above, pp. 46-47.

²⁰ UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of asylum-seekers from Afghanistan (19 April 2016), pp. 53-56.

international refugee protection on the ground of religion, depending on the individual circumstances of the case.

11.8 The Committee considers that when an asylum-seeker submits that he/she has converted to another religion after his/her initial asylum request has been dismissed in the country of asylum; it may be reasonable that an in depth examination of the circumstances of the conversion is carried out by the authorities.²¹ The test remains, however, whether, regardless of the sincerity of the conversion, there are substantial grounds for believing that such conversion may have serious adverse consequences in the country of origin so as to create a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant. Therefore, even when it is found that the reported conversion is not sincere, the authorities should proceed to assess whether, in the circumstances of the case, the asylum-seeker's behavior and the activities done by him/her in connection with or to justify the conversion, such as attending a church, being baptized, participating in proselytizing activities, can have serious adverse consequences in the country of origin so as to put him/her at risk of irreparable harm.

11.9 In the case at hand, the Committee observes that it is not contested that after starting attending a Christian church the author was baptised on 16 June 2013; that he has attended church services and participated in other Christian activities for a continuing period of more than 3 years; and that in those settings he has been perceived as a sincere Christian believer. The RAB also considered it a fact that he has acquired knowledge of Christianity that is not insignificant. Nevertheless, the RAB based its conclusions that the author's conversion 'was not genuine' on the fact that he did not indicate his interest in Christianity before the DIS and the RAB in 2012; that he only started to become better acquainted with Christianity in March 2013 after his original asylum request had been refused by the RAB; and that his statements about the motives for his conversion were general and superficial –especially taking into account the significance of Islam in the Afghan society. Subsequently the RAB assessed whether the author may be at serious risk in Afghanistan, regardless of the motives of the conversion. The RAB noted that he answered the questions relating to the consequences in Afghanistan for himself and his family in relation to his reported conversion in a superficial and evasive manner; and found that he had not rendered probable that he would be at risk of persecution in Afghanistan merely due to his appearance among other persons into a video from an Iranian church in the Netherlands uploaded in YouTube; and the fact the other Afghan failed asylum-seekers in Denmark and an author's friend in Afghanistan learned about the author's conversion. While the author disagrees with the RAB's decision, the Committee considers that the author expressed fears that are of general nature and not based on specific facts that would put him at risk in view of his personal circumstances. Moreover, the author has not pointed out to any procedural irregularities in the decision-making procedure that would show elements of arbitrariness by the Danish authorities. Accordingly, the Committee cannot conclude to any violations of the Covenant in the present case.

12. The Human Rights Committee, acting under article 5(4) of the Optional Protocol, is of the view that the author's removal to Afghanistan would not violate his rights under articles 6 and 7 of the Covenant.

²¹ See UNHCR, Guidelines on international protection: Religion-based refugee claims under article 1A(2) of the 1951 Convention and Convention and/or the 1967 Protocol relating to the Status of Refugees (28 April 2004), para. 34.

