



**International Covenant on
Civil and Political Rights**
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Human Rights Committee

**Decision adopted by the Committee under article 5 (4) of the Optional
Protocol, concerning communication No. 2646/2015* ****

<i>Submitted by:</i>	Z (represented by counsel, Søren Rafn)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	17 August 2015 (initial submission)
<i>Date of decision:</i>	... March 2016
<i>Subject matter:</i>	Non-refoulement, deportation to Afghanistan
<i>Procedural issues:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Risk of torture and ill-treatment
<i>Articles of the Covenant:</i>	7 and 18
<i>Articles of the Optional Protocol:</i>	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, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelic, Dulkan Muhumuza Laki, Photini Pazartzis, Sir Nigel Rodley, Victor Manuel Rodriguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

1.1 The author of the communication is Mr. Z, an Afghan citizen born on [...] 1961. He claims that his deportation to Afghanistan would constitute a violation, by Denmark, of his rights under articles 7 and 18 of the Covenant. The author is represented by counsel.

1.2 On 4 September 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures under rule 92 of the Committee's rules of procedure, and determined that no observations from the State party were needed to ascertain the admissibility of the present communication.

The facts as presented by the author

2.1 The author applied for asylum in Denmark on [...] April 2012.¹ The Danish Immigration Service (DIS) rejected the application on [...] October 2013. This decision was upheld by the Danish Refugee Appeals Board (RAB) on [...] April 2014. On [...] February 2015, the author requested the reopening of his case due to his conversion to Christianity. On [...] May 2015, the RAB reopened the author's case, but rejected his application on [...] July 2015.

2.2 In his initial asylum application, the author alleged that he was an ethnic Tadziki from Herat and that he would be exposed to danger if returned to Afghanistan "by the killers of his son",² due to a TV programme that he co-produced on the conflicts between Kuchis and the Hazara local community in the Bahsood area. He also alleged that he was fearful of being killed by the brothers of an influential person connected to the Hezbe Islami, Mr. N. M., who was arrested and convicted to 7 years of imprisonment as a result of a police operation in which the author participated as a witness.³ The author argued before the RAB that in case of being removed to Afghanistan, he would be the object of reprisals by the family of Mr. N.M. The RAB considered that the author's explanations regarding his conflict with Mr. N.M. were not satisfactory. In addition, the RAB considered that even though the author received threats from Mr. N.M.'s family after his conviction, he did not receive any threats after he left Herat for Kabul.⁴

2.3 The author converted to Christianity on [...] June 2014, but he already had contacts before with that religion. In September 2012, he went on a trip organized by the Red Cross language school with other asylum seekers to several places in Copenhagen, including a church where he saw one of his Afghan friends, Mr. H, praying. He asked him about Christianity and about his conversion, and H gave him the Gospel of Luke and a DVD on Christianity. The author read the Gospel, watched the DVD, attended a Lutheran Café and participated in the Christmas celebration organized by the International Christian Centre (IKC) where he was attending language classes. He also joined monthly meals in the [...] church where Christianity was discussed. The author claims that at that time, he did not attend church services because he still considered himself as a moderate Muslim; therefore, he did not mention his interest in Christianity to the RAB.

2.4 After the rejection of his asylum claim on [...] April 2014, the author travelled to Sweden, where he filed an asylum application. While there, he met M, an Afghan who had converted to Christianity. M invited him to a church where the author joined the service and prayed for the first time. From that moment, he joined the service every Sunday and started

¹ No information is provided regarding the circumstances of the author's arrival to Denmark.

² No information is provided on this issue.

³ The author submits that he was part of a group of people who were being blackmailed by Mr. N.M. No further details are provided on this matter.

⁴ The author does not submit any information regarding the circumstances of his move to Kabul or any further details regarding the initial asylum application submitted to the Danish authorities.

Bible classes six days per week. He learned about the meaning of baptism and agreed with the priest that he would be baptised when ready. He was baptised on [...] June 2014.⁵ After this, he returned to Denmark pursuant to the Dublin regulations.⁶ The author indicates that since his return to Denmark, he has been attending Bible classes every Sunday, weekly Bible study classes, monthly meals and conversations at the [...] Church and activities at the Lutheran Café. He has also signed up for a six months stay at the Lutheran [...] School in [...] starting on [...] August 2015, but he was unable to attend because of his illegal status. He also claims that he prays and reads and studies the Bible every day.

2.5 In its decision of [...] July 2015, the RAB noted that the author's conversion to Christianity took place immediately after the denial of his asylum application and therefore considered that it was constructed for the occasion. The RAB also noted that the author requested the reopening of his case several months after his conversion and that during this period he was living in Denmark illegally.⁷ In addition, the RAB considered that the author's posts on Facebook were not explicit about his conversion to Christianity, that his family was not aware of the conversion, and that the religious activities he has been participating in were not sufficient to demonstrate that his conversion was genuine. Therefore, the RAB considered that the author would not be exposed to any risk if removed to Afghanistan.

2.6 The decision of the RAB is final, and the author has therefore exhausted all the available domestic remedies.

The complaint

3.1 The author claims that his deportation to Afghanistan would violate his rights under the Covenant, as once there, his conversion will put him at risk: as a converted Christian, he will not go to the Mosque, he will not fast in Ramadan and he will not pray to Allah, and he will be considered as a non-believer, a status which would put him at a risk of being tortured or even killed, in violation of article 7 of the Covenant. The author also claims that he could be accused of being an apostate which could put him in danger of being arrested and even put to the death penalty.⁸ Furthermore, the author will suffer complete rejection from the Afghan society which could put him in danger of persecution, including physical harm, taking into account that the Taliban has threatened converts with death. As a convert, the author would also risk deprivation of all his property.

3.2 The author further claims that the circumstances described above should be combined with the fact that in the past, he had conflicts with people affiliated with radical

⁵ The author provided a certificate by the Pastor confirming that the author participated in the activities mentioned above and that he was baptised.

⁶ The date of the return to Denmark is not specified.

⁷ The author submits that, on [...] July 2015, after the RAB decided to reopen his case, he submitted a letter explaining that he got in contact with Christianity in September 2012 and that he had a very positive impression of Christianity, as it is a religion that receives every person regardless of their faith, contrary to what happens in Afghanistan where religions different to Islam are rejected. The author explained to the RAB that when his asylum application was rejected he was hopeless and went to Sweden, where he got in contact with Afghan Christians and provided details on how he converted. He then mentioned all the different church-related activities he has been attending since then. The author informed the RAB that in case he returns to Afghanistan, he would not be able to speak freely about his conversion and that as he would not pretend to be Muslim again, he would not go to the Mosque, and consequently he would be rejected by the Afghan society. He also indicated that his conversion could also result into his conviction to death penalty or ill-treatment.

⁸ The author does not claim a violation of article 6.

Islam, including the threats he received from Mr. N.M.'s family linked to the Hezbe Islami,⁹ which enhances the risk he would be exposed to if removed to Afghanistan.

3.3 In addition, the author considers that if returned to Afghanistan, he would be obliged to conceal his Christian faith, in violation of article 18 of the Covenant. The author considers that the RAB did not give sufficient weight to the arguments he presented during the asylum proceedings to demonstrate his genuine conversion. The author also states that it is not relevant whether the Afghan authorities currently know about his conversion and that the RAB's decision could not be based on the assumption that he will hide his faith. As part of the rights enshrined in article 18, the author submits that he must be able to manifest his religion and to carry out related activities freely.

Issues and proceedings before the Committee

4.1 Before considering any claim contained in a communication, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the Covenant.

4.2 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.

4.3 The Committee observes that the author's original request for asylum on grounds of his fear of persecution by private individuals - Mr. N.M.'s family and the "killers of his son" - was refused by the Danish Immigration Service and the RAB for lack of satisfactory proof of risk. Since the author claimed that he had converted to Christianity after these decisions, on [...] May 2015, the RAB re-opened the author's case in order to examine his request on this new ground, giving him the opportunity to substantiate his new allegations and to submit evidence to support them. On [...] July 2015, the RAB dismissed these allegations because the author failed to demonstrate that his conversion to Christianity was genuine and that the Afghan authorities might be aware of his conversion. The Committee notes that the author disagrees with this decision. However, he failed to establish that the State party's authorities did not properly consider all of his submissions, and the information he provided does not demonstrate any irregularity or arbitrariness in the decision-making process in Denmark. Accordingly, the Committee considers that the author's claims under articles 7 and 18 of the Covenant have been insufficiently substantiated for the purposes of admissibility, and concludes that the communication is inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision shall be transmitted to the State party and to the author.

⁹ See para. 2.2