



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 32/2017\* \*\*

<i>Communication submitted by:</i>	Z.H. and A.H. (represented by the non-governmental organization Asylret)
<i>Alleged victims:</i>	K.H., M.H. and E.H.
<i>State party:</i>	Denmark
<i>Date of communication:</i>	22 August 2017 (initial submission)
<i>Date of adoption of decision:</i>	18 September 2019
<i>Subject matter:</i>	Deportation from Denmark to Albania
<i>Procedural issues:</i>	Already examined under another procedure of international investigation or settlement; failure to exhaust domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Right to life; best interests of the child; protection of the child against all forms of violence or ill-treatment; right to the enjoyment of the highest attainable standard of health; right to physical, mental and social development; right to education
<i>Articles of the Convention:</i>	3, 6, 19, 24, 27 and 28
<i>Article of the Optional Protocol:</i>	7 (d), (e) and (f)

1.1 The authors of the communication are Z.H. and A.H., nationals of Albania born in 1976 and 1987, respectively. The authors submit the communication on behalf of their daughters, K.H., M.H. and E.H., Albanian nationals born in 2005, 2010 and 2013, respectively. The family's applications for asylum and for residence permits on humanitarian and compassionate grounds have been denied by the State party. They claim that the deportation of the family to Albania would amount to a violation of their children's

\* Adopted by the Committee at its eighty-second session (9–27 September 2019).

\*\* The following members of the Committee participated in the examination of the communication: Suzanne Aho Assouma, Amal Salman Aldoseri, Hynd Ayoubi Idrissi, Bragi Gudbrandsson, Philip Jaffe, Olga A. Khazova, Cephass Lumina, Gehad Madi, Faith Marshall-Harris, Benyam Dawit Mezmur, Clarence Nelson, Luis Ernesto Pedernera Reyna, José Ángel Rodríguez Reyes, Aissatou Alassane Sidikou, Ann Marie Skelton, Velina Todorova and Renate Winter.



rights under articles 3, 6, 19, 24, 27 and 28 of the Convention.<sup>1</sup> The Optional Protocol entered into force for the State party on 7 January 2016. The authors are represented by the non-governmental organization (NGO) Asylret.

1.2 On 24 August 2017, pursuant to article 6 of the Optional Protocol, the Working Group on Communications, acting on behalf of the Committee, requested the State party to refrain from deporting the authors and their children to Albania while the communication was under consideration by the Committee.

1.3 On 10 May 2018, the Working Group on Communications, acting on behalf of the Committee, decided to reject the State party's request to consider the admissibility of the communication separately from the merits. On the same date, the State party's request to lift interim measures was denied.

### **The facts as submitted by the authors**

2.1 Z.H. arrived in Denmark on 28 January 2013, where he applied for asylum. His wife, A.H., and their two daughters, K.H. and M.H., arrived in Denmark on 9 March 2013. E.H. was born in Denmark in 2013. The family left Albania owing to its involvement in a blood feud. The authors note that blood feuds often continue until all male members of a family involved in them have died. They claim that the feud was preventing them from living a regular family life in Albania due to the intrusive, inhibited and isolated life they were forced to lead in order to protect their physical integrity. They note that most of the male members of the family have been murdered and that the rest have fled Albania, with some other members of the family having been granted asylum in France and the United Kingdom of Great Britain and Northern Ireland. The authors enclose a statement from the Albanian Human Rights Group, an NGO, according to which the family has been involved in a blood feud since 1992. The statement indicates that no concrete steps have been taken in Albania to eliminate blood feuds and no State protection is available where mediation has failed. The police are often reluctant to intervene for fear of being involved in the feuds themselves. Corruption adds to the problems in eliminating the phenomenon. The statement also indicates that blood feuds originate in the northern parts of Albania and, while victims may try to hide in other parts of Albania, they are often found as the country is small and as their distinct dialect gives them away.

2.2 The authors note that both they and their children have been assessed by health professionals in Denmark to be vulnerable and affected by depression, anxiety and stress. They are currently undergoing intensive family care and therapy and are receiving psychiatric, psychological and social support for 20 hours each week.<sup>2</sup> They argue that the abrupt withdrawal of such support would harm their children's psychological and social well-being. They note that A.H. has been diagnosed with severe depression and has been considered to be suicidal. She is undergoing psychiatric treatment. The authors claim that, if the family was deported to Albania, it is likely that Z.H. would be killed because of the blood feud and A.H. would not be able to maintain the children and support their development due to her medical condition. The authors note that, as indicated in a psychological report dated 14 April 2016, M.H. is in need of treatment for anxiety, an eating disorder and behavioural problems in order to prevent those conditions from becoming chronic.

2.3 The authors note that Z.H.'s application for asylum was rejected on 27 February 2013 and that the rest of the family's applications were rejected in November 2013. The decisions were upheld by the Refugee Appeals Board on 11 June 2014. On 25 February 2015, the family applied for residence permits under section 9 (c) (1) of the Aliens Act, according to which an applicant may be granted a residence permit if there are exceptional circumstances in his or her case warranting the granting of a residence permit, including on grounds such as respect for the family unit and the best interests of the child. Their application was rejected on 13 July 2017 by the Immigration Service, which found that no

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<sup>1</sup> Although the authors do not formally invoke articles 3 and 28, they raise claims under these provisions in substance.

<sup>2</sup> The authors refer to a report by the social services dated June 2017.

essential health or humanitarian circumstances had been presented in the case that would warrant the granting of residence permits. The authors appealed against that decision before the Immigration Appeals Board on 18 July 2017, requesting that the deportation order against them be suspended while the appeal was pending. The request was denied by the Immigration Appeals Board on 26 July 2017.

### **The complaint**

3.1 The authors claim that, although Albania can in general be seen as a safe country of return, there are specific circumstances in their case that would lead to a violation of their children's rights if the family was deported to Albania. They claim that there is a risk that their children's rights under article 6 of the Convention would be violated if they were returned to Albania as there is a risk that they would be killed by a rival family as a result of the blood feud. The authors submit that blood feuds are not only dangerous for boys, but also for girls.

3.2 The authors also claim that their children's rights under articles 19, 24 (1) and 27 of the Convention would be violated if the family was returned to Albania. The children would be forced to live a life in isolation, as is common practice for families affected by a blood feud, which would prevent the children from accessing education and from having a social life. The children would suffer serious mental harm due to the constant uncertainty and isolation and their physical, mental and social development would be affected negatively.

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

4.1 In its observations of 16 October 2017, the State party submitted that the communication should be declared inadmissible under article 7 (d) of the Optional Protocol as the same matter has already been examined under another procedure of international investigation or settlement, or alternatively it should be declared inadmissible under article 7 (e) of the Optional Protocol for failure to exhaust domestic remedies.

4.2 The State party notes that on 15 February 2015, Z.H. and A.H. lodged a communication on their own behalf and on behalf of their minor children before the Human Rights Committee, *Z.H., A.H. et al. v. Denmark* (CCPR/C/119/D/2602/2015), claiming that their deportation to Albania would amount to a violation by Denmark of their rights under articles 6, 12 and 17 of the International Covenant on Civil and Political Rights. On 27 March 2017, the Human Rights Committee found that the removal of the authors and their children to Albania would not violate their rights under article 6 of the Covenant.

4.3 The State party submits that the subject matter of the present case is the same as that of *Z.H., A.H. et al. v. Denmark*, namely the claim that the family should not be returned to Albania because of a blood feud. The State party therefore submits that the communication should be considered inadmissible because the same matter has already been examined under another procedure of international investigation.

4.4 The State party further submits that the communication is inadmissible for failure to exhaust domestic remedies. It notes that the authors' application for residence permits under section 9 (c) (1) of the Aliens Act was rejected by the Immigration Service on 13 July 2017, and that at the time the authors submitted their complaint before the Committee, their appeal was still pending before the Immigration Appeals Board.

### **Authors' comments on the State party's observations on admissibility**

5.1 On 31 January 2018, the authors provided their comments on the State party's observations on the admissibility of the communication. They maintain that the communication is admissible. As for the State party's submission that the communication should be declared inadmissible on the grounds that it has been examined under another procedure of international investigation or settlement, the authors argue that the complaint submitted to the Human Rights Committee differs from the present case. The complaint brought before the Human Rights Committee concerned the alleged violation of the authors' rights under the International Covenant on Civil and Political Rights. That complaint was, however, not focused on the violation of their children's rights. The authors note that the

present case was filed on the basis of the State party's refusal to account for its obligation to protect the authors' children's best interests, which concern not only protection from the dangers of the blood feud in Albania, but also the fact that it is in the children's best interests to remain in Denmark in order to ensure their physical, psychological and mental well-being and healthy development. The authors argue that the case before the Committee therefore concerns a different set of rights and different victims from the complaint submitted to the Human Rights Committee.

5.2 The authors maintain their claim that all domestic remedies have been exhausted. They note that in their appeal to the Immigration Appeals Board on 18 July 2017, they requested that the deportation order against them be suspended while the appeal was pending. That request was denied by the Appeals Board on 26 July 2017 and the family was ordered to leave Denmark immediately. The authors therefore argue that they have exhausted all available domestic remedies. They further note that, in their application for suspension of the deportation order against them, they argued that A.H. was undergoing psychiatric treatment in Denmark in order to treat her psychotic symptoms, anxiety and depression, and that without access to such treatment, she would be unable to provide the care necessary for her three children. In their application, they also noted that health professionals had assessed that compensating for A.H.'s lack of parental skills through social support measures, including psychological and pedagogical support, was a necessity. The authors argued that the discontinuation of those social services, upon return to Albania, would risk damaging the well-being of the three children and would cause them additional trauma.

5.3 In their comments on the State party's observations, the authors further note that their children have developed strong connections to Denmark throughout their stay in the country. If removed to Albania, the children would suffer harm as they would be deprived of the social support services they are currently receiving in Denmark, and of their network of family and friends in Denmark. The children have lived the majority of their lives in Denmark, they do not know how to read or write in Albanian, they do not identify with Albania, and they perceive only Denmark as their home.

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

6.1 On 10 September 2018, the State party submitted its observations on the merits of the complaint and further observations on admissibility. It reiterates its submission that the communication should be considered inadmissible as the same matter has already been examined under another procedure of international investigation or settlement and for failure to exhaust domestic remedies. It further submits that the communication should be found inadmissible for failure to substantiate the claims for the purposes of admissibility under article 7 (f) of the Optional Protocol. It argues that, should the Committee consider the communication to be admissible, then it is without merit.

6.2 Concerning the exhaustion of domestic remedies, the State party notes that the Immigration Appeals Board rejected the authors' appeal against the decision of the Immigration Service on 18 July 2018. It notes that the appeal is thus no longer pending before the Board. It further notes that section 52 (a) (8) of the Aliens Act provides that no appeal can be made to any other administrative appeals body against decisions made by the Immigration Appeals Board. It notes, however, that it is possible to apply for judicial review of decisions of the Immigration Appeals Board under section 63 of the Constitution. The State party argues that, as the authors have failed to apply for judicial review, they have failed to exhaust all available domestic remedies.

6.3 The State party notes that the authors have claimed that the deportation of the family to Albania would amount to a violation of their children's rights under articles 6, 19, 24 and 27 of the Convention. Furthermore, it notes that it appears from the substance of the communication that the authors also claim a violation of their children's rights under articles 3 and 28 of the Convention.

6.4 The State party notes that, on 28 January 2013, Z.H. entered Denmark and applied for asylum. His application was denied by the Immigration Service on 27 February 2013. On 9 March 2013, A.H. entered Denmark together with K.H. and M.H. Their application

for asylum was denied on 1 November 2013. On 11 June 2014, the Refugee Appeals Board upheld the decision to reject the family's application for asylum. In its views adopted on 27 March 2017, the Human Rights Committee found that it would not be contrary to the family's rights under article 6 of the International Covenant on Civil and Political Rights to return the family to Albania. On 25 February 2015, the authors lodged an application for residence under section 9 (c) (1) of the Aliens Act. On 13 July 2017, the Immigration Service rejected their application. That decision was upheld by the Immigration Appeals Board on 18 July 2018.

6.5 The State party notes that, under section 9 (c) (1) of the Aliens Act, a residence permit may be issued to an alien if exceptional reasons make it appropriate, including family unity and, if the person is under the age of 18, the best interests of the child. The State party notes that the Immigration Appeals Board is an independent, collegial, quasi-judicial administrative body that considers appeals against decisions relating to immigration, including decisions on family reunification, immigration, visas and permanent residence and first-instance decisions on administrative expulsion or refusal of entry made by the Immigration Service.

6.6 The State party notes that in its decision of 18 July 2018, the Immigration Appeals Board noted that section 9 (c) (1) of the Aliens Act does not confer a general right to be granted residence to persons who have stayed in Denmark for a prolonged period without a residence permit. It found that the fact that the authors' children had attended elementary school or kindergarten in Denmark, spoke Danish and had friends in Denmark could not lead to the granting of residence permits. The Appeals Board noted that it took into account that the children may have formed certain ties with Denmark, but it found that this fact could not independently justify that they should be granted residence permits under section 9 (c) (1) of the Aliens Act, considering the fact that the family had had only temporary residence permits for the duration of the various domestic proceedings since their arrival in Denmark. It found that it would therefore not be contrary to the international obligations of Denmark, taking into account the principle of the best interests of the child, to reject the authors' application for residence permits. It noted that it followed from well-established case law of the European Court of Human Rights that article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) does not allow families the right to choose in which country they want to enjoy their family life. The Appeals Board found that the right to family reunification afforded by the Convention on the Rights of the Child does not extend beyond that conferred by article 8 of the European Convention, and that the Convention on the Rights of the Child does not confer an independent right to immigration. The Appeals Board noted that the authors were the ones who had made the choice to travel to Denmark together with their children and thus to move the children away from their former life in Albania. The Appeals Board further noted the authors' claim that the family could not live together in their country of origin due to their fear of blood revenge. It found that this claim related to asylum law issues, which had already been rejected by the Refugee Appeals Board on 11 June 2014 and by the Human Rights Committee. The Appeals Board further found that no other information had been provided about the family's personal circumstances, including their health, which would justify the granting of their application for residence permits.

6.7 Concerning the merits of the case, the State party notes that in its decision of 18 July 2018, the Immigration Appeals Board explicitly took the principle of the best interests of the child into account, as required under article 3 of the Convention. The State party submits that the authors' application for residence under section 9 (c) (1) of the Aliens Act was given thorough consideration by the Immigration Appeals Board. It submits that the authors have failed to identify any irregularity in the decision-making process or any risk factors that the domestic authorities failed to take properly into account in assessing their application.

6.8 As regards the authors' claim that it would constitute a violation of their children's rights under article 6 of the Convention to return them to Albania, the State party notes that this issue was assessed in connection with the authors' asylum proceedings before the Refugee Appeals Board and that it was subsequently submitted to the Human Rights Committee which found, on 27 March 2017, that it would not violate the authors' or their

children's rights under article 6 of the International Covenant on Civil and Political Rights to return them to Albania.

6.9 Regarding the authors' indirect claim that it would constitute a violation of article 3 of the Convention to return the family to Albania, the State party refers to article 3 (2) of the Convention and argues that a child's parents have the main responsibility for protecting the best interests of their children. The State party also argues that as there is no information on file justifying the claim that the authors and their children cannot reside together in their country of origin, it would not be contrary to article 3 of the Convention to remove the family to Albania.

6.10 Concerning the rest of the authors' claims, the State party argues that a positive duty to ensure a child's right of residence and the continued protection of the living conditions of a child cannot be inferred to exist under articles 3, 19, 24, 27 or 28 of the Convention for any other country but the child's country of nationality, nor can it be inferred that a child has a separate right of immigration to obtain better living conditions in another country regardless of certain ties with that other temporary country of residence. The State party argues that despite the facts that: (a) the authors' children have attended elementary school or kindergarten during the period of temporary residence in Denmark; (b) the family has received family therapy and support, as well as various therapeutic interventions during this period of temporary residence; and (c) M.H. has attended psychology sessions due to an anxiety disorder, a positive duty cannot be inferred to exist on the part of the State party, eliminating the duty of the children's country of nationality, to ensure continued protection of the living conditions of the children, including any supportive measures. It argues that the authors have not substantiated their claim that there is a reasonable assumption that their children risk a violation of their fundamental human rights as set out in the Convention if returned to Albania.

#### **Authors' comments on the State party's observations on admissibility and the merits**

7.1 On 14 January 2019, the authors submitted their comments on the State party's observations on admissibility and the merits. They reiterate their claim that the communication is admissible. As concerns the State party's submission that the communication should be considered inadmissible as the same matter has already been examined under another procedure of international investigation or settlement, the authors reiterate their argument that the complaint before the Human Rights Committee mainly concerned the risk the family would be exposed to due to the blood feud on return to Albania, while the present communication concerns the children's connection to Denmark, the harm they would suffer if they were deprived of the social support services and education they are currently receiving, and the deprivation of their Danish network of family and friends. The authors argue that it is in the best interests of their children to remain in Denmark, to ensure their physical, psychological and mental well-being and healthy development.

7.2 The authors reiterate their claim that all available and effective domestic remedies have been exhausted. They note the State party's submission that by failing to apply for judicial review of the decision of the Immigration Appeals Board under section 63 of the Constitution, they failed to exhaust domestic remedies. They note that they sought information on possible avenues of appeal from the Immigration Appeals Board following the final rejection of their application for residence permits on 18 July 2018. They were informed by the Board that all remedies had been exhausted and that they had no other option than to leave the country.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure, whether the claim is admissible under the Optional Protocol.

8.2 The Committee notes the State party's submission that the communication should be declared inadmissible as the authors failed to exhaust domestic remedies by not filing an application for judicial review before the domestic courts of the negative decision of the Immigration Appeals Board of 18 July 2018. It notes, however, the authors' submission that an application for judicial review would not have constituted an effective remedy in their case as their application for the suspension of the deportation order against them was denied by the Immigration Appeals Board on 26 July 2017, and that consequently at the time of their submission of the communication to the Committee they were at risk of immediate removal to Albania. The Committee also notes that the State party has not refuted the authors' claims in this regard. The Committee therefore concludes that it is not precluded by article 7 (e) of the Optional Protocol from examining the communication.

8.3 The Committee notes the State party's position that the communication is inadmissible under article 7 (d) of the Optional Protocol because the same matter has been examined by the Human Rights Committee. The Committee also notes that the matter raised before the Human Rights Committee related to the alleged risks the authors and their children would face because of a blood feud in Albania. The Committee further notes that the authors' claims under article 6 of the Convention in the present case are largely consistent with the claims already examined by the Human Rights Committee under article 6 of the International Covenant on Civil and Political Rights. Accordingly, the Committee finds that it is precluded by article 7 (d) of the Optional Protocol from considering the authors' claims that the blood feud in Albania would expose their children to a risk of irreparable harm if the family was to be removed to Albania.<sup>3</sup> The Committee notes that the authors' claims concerning the alleged risk of having to live a life in isolation is auxiliary to their claim regarding the alleged risk due to the blood feud. Therefore the Committee also finds that it is precluded by article 7 (d) of the Optional Protocol from considering this claim. However, the Committee notes that the authors' other claim, namely that it would be in the best interests of their children to remain in Denmark in order to ensure their physical, psychological and mental well-being and healthy development, was not raised in their communication before the Human Rights Committee. The Committee therefore considers that it is not precluded by article 7 (d) of the Optional Protocol from considering that claim.

8.4 The Committee notes the authors' claim that it would be in the best interests of their children to remain in Denmark, to ensure their physical, psychological and mental well-being and healthy development, taking into account the children's connection to Denmark and the harm they would suffer if they were deprived of the social support services and education they are currently receiving, and deprived of their Danish network of family and friends. It further notes the State party's position that the communication should be found inadmissible under article 7 (f) of the Optional Protocol for failure to substantiate the claim for the purposes of admissibility.

8.5 The Committee recalls that the assessment of the existence of a real risk of irreparable harm in the receiving State should be conducted in an age and gender-sensitive manner,<sup>4</sup> that the best interests of the child should be a primary consideration in decisions concerning the return of a child, and that such decisions should be taken pursuant to a procedure that should ensure that the child, upon return, will be safe and provided with proper care and enjoyment of rights.<sup>5</sup> The best interests of the child should be ensured explicitly through individual procedures as an integral part of any administrative or judicial decision concerning the return of a child.<sup>6</sup>

8.6 The Committee also recalls that it is generally for the organs of the States parties to review and evaluate facts and evidence in order to determine whether a real risk of

<sup>3</sup> See also *Y and Z v. Finland* (CRC/C/81/D/6/2016), para. 9.2.

<sup>4</sup> General comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, para. 27.

<sup>5</sup> Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, paras. 29 and 33.

<sup>6</sup> *Ibid.*, para. 30.

irreparable harm exists upon return, unless it is found that such evaluation was clearly arbitrary or amounted to a denial of justice.<sup>7</sup>

8.7 In the present case, the Committee notes that, in its decision dated 18 July 2018, the Immigration Appeals Board thoroughly assessed the authors' application for residence permits based on the children's connection to Denmark, the family's personal circumstances, including their health and schooling situation, and explicitly taking the best interests of the children into consideration when deciding on the family's application for residence. The Committee observes that, while the authors disagree with the conclusions reached by the Board, they have not shown that its assessment of the facts and evidence presented by the authors was clearly arbitrary or otherwise amounted to a denial of justice, nor have they provided any arguments to justify the existence of a real, specific and personal risk of irreparable harm to their children's rights enshrined in the Convention upon return to Albania. In this regard, the Committee also notes that the authors have not provided any information as to why the children would experience special hardship or be placed in a particularly vulnerable situation that would result in irreparable harm upon return to Albania.

8.8 In the light of all of the above, the Committee considers that the authors have failed to justify the existence of a real, specific and personal risk of irreparable harm to their children's rights upon return to Albania. The Committee therefore considers that this part of the communication is insufficiently substantiated and declares it inadmissible under article 7 (f) of the Optional Protocol.

9. The Committee decides:

(a) That the communication is inadmissible under article 7 (d) and (f) of the Optional Protocol;

(b) That the present decision shall be transmitted to the authors of the communication and, for information, to the State party.

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<sup>7</sup> *U.A.I. v. Spain* (CRC/C/73/D/2/2015), para. 4.2; and *A.Y. v. Denmark* (CRC/C/78/D/7/2016), para. 8.8.