



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 2426/2014

#### Decision adopted by the Committee at its 114th session (29 June–24 July 2015)

<i>Submitted by:</i>	N (represented by Helle Holm Thomsen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	13 June 2014
<i>Document references:</i>	Special Rapporteur's decision under rules 92 and 97, transmitted to the State party on 16 June 2014 (not issued in document form)
<i>Date of adoption of decision:</i>	23 July 2015
<i>Subject matter:</i>	Expulsion of the author to his country of origin
<i>Procedural issues:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Prohibition of torture or cruel, inhuman or degrading treatment or punishment
<i>Articles of the Covenant:</i>	7
<i>Articles of the Optional Protocol:</i>	2



## Annex

### **Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (114th session)**

concerning

#### **Communication No. 2426/2014\***

*Submitted by:* N (represented by Helle Holm Thomsen)

*Alleged victim:* The author

*State party:* Denmark

*Date of communication:* 13 June 2014

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting on 23 July 2015,*

*Having concluded* its consideration of communication No. 2426/2014, submitted to it by N under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the author of the communication and the State party,

*Adopts* the following:

#### **Decision on admissibility**

1.1 The author of the communication is N, an Iranian national of Kurdish origin born on 1 July 1991 in Al-Tash refugee camp in Iraq. He is residing in Denmark and subject to a deportation order to the Islamic Republic of Iran. 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, Helle Holm Thomsen.

1.2 On 16 June 2014, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, requested that the State party refrain from returning the author to the Islamic Republic of Iran while his communication was pending before the Committee. On that same date, the State party suspended the execution of the deportation order against the author. On 16 December 2014, the State party requested that the interim measures be lifted (see para. 4.12 below). On 23 January 2015, the Special Rapporteur decided to deny the request to lift the interim measures.

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\* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

## **Factual background**

2.1 The author was born into a Muslim Iranian family of Kurdish origin in Al-Tash refugee camp, Iraq. The author's parents had fled the Islamic Republic of Iran in 1979 and moved to Al-Tash camp. When that camp was closed in 2005, the family moved to another refugee camp in northern Iraq, Barika camp, where the author lived until his departure from Iraq in April 2013.

2.2 On 28 July 2013, the author applied for asylum in Denmark.<sup>1</sup> On 21 and 29 August 2013, he was interviewed by the Danish Immigration Service about his identity, travel route and grounds for seeking asylum. The author provided a copy of a certificate issued by the Office of the United Nations High Commissioner for Refugees (UNHCR) in November 2011, certifying him and his family members as Iranian refugees in Iraq. As to the reason for seeking asylum, the author explained that he had left Iraq because of his family's political situation and the dire conditions of Iranian refugees in Iraq, where they "had no country and no rights". He argued that his father had been a member of the Democratic Party of Iranian Kurdistan (PDKI) until 1979 and had "fought for PDKI" and lost his eyesight as a result. The author added that his father had left the Islamic Republic of Iran because of his political activities but had ceased to be politically involved in 1979, "although the family house was still used by Kurdish partisans to smuggle weapons". He also argued that his brother had smuggled weapons for PDKI when he was in the Islamic Republic of Iran but had ceased to be a PDKI member after they moved to Al-Tash camp. His brother was later granted refugee status in Sweden in 2001, where he lived until his death in 2007 or 2008. He noted that his brother had died under mysterious circumstances and suspected that the Iranian intelligence service had been behind his death. He added that, although he himself had never been politically involved, he had participated in cultural events organized by PDKI, such as folk dances, and that he had attended party meetings in Iraq and memorials for former PDKI secretaries-general. However, he had never held a position in PDKI. The author further explained that he had applied for PDKI membership seven months before his departure to Denmark but had not been informed whether he had been accepted. He argued that he was considered as a political person in the Islamic Republic of Iran due to his father's and his brother's political activities. At the interview, the author admitted having lied about his travel route.

2.3 On 11 October 2013, the Danish Immigration Service denied asylum to the author. On 20 May 2014, the Refugee Appeals Board upheld that decision. The Board concluded that the political activities of the author's father had occurred a long time ago and that the author had provided diverging statements regarding his brother's continued activities after 1979. The Board concluded that the author had not proven the likelihood that the family's overall activities had been of such a nature and intensity that they alone would justify asylum. The fact that the author had participated in cultural Kurdish activities such as folk dances could not lead to a different conclusion. The Board also found that the author had provided an account about his travel route that was not credible. Additionally, the Board found that the fact that the author had been born and raised in Al-Tash camp could not alone justify a residence permit. The Board concluded that the applicant had not proven the likelihood that he would be at actual risk of persecution by the Iranian authorities.

2.4 The author argues that he has exhausted all available domestic remedies. He notes that decisions by the Refugee Appeals Board of Denmark are not subject to appeal before national courts, according to section 56 (8) of the Danish Aliens Act. In this regard, he notes that, in its concluding observations on Denmark's seventeenth periodic report, the Committee on the Elimination of Racial Discrimination had recommended that asylum

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<sup>1</sup> The author does not explain how he left Iraq and arrived in Denmark.

seekers be granted the right to appeal against decisions of the Refugee Appeals Board (see CERD/C/DEN/CO/17, para. 13).

2.5 The author contends that it has been a longstanding practice for Iranian refugees from Al-Tash camp who have been recognized by UNHCR as refugees to be granted residence permits in accordance with section 7 (1) of the Danish Aliens Act. However, this practice changed in 2011, as it was decided that Iraq could serve as the first country of asylum, in the light of the length of their residence in that country. Yet, Iraq would not accept Iranian refugees since they were not Iraqi citizens. Therefore, these cases were reopened and refugees were granted residence permits in Denmark. In 2013, the Danish Immigration Service started denying asylum to some refugees from Al-Tash camp; each case is assessed on an individual basis.

### **The complaint**

3.1 The author claims that his deportation to the Islamic Republic of Iran would put him at risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment, given that he has always lived in refugee camps in Iraq, such as Al-Tash and Barika camps, which carry a great affiliation to PDKI. He argues that he would automatically be perceived as an active member of PDKI, especially since he has sympathized with the party since 2009 and has participated in meetings and a folk dancing group, and because he sought PDKI membership seven months prior to his departure, as well as because of his father's political engagement with PDKI in the Islamic Republic of Iran and his family's involvement with the party in Iraq by attending meetings and festivities. The family's connection to PDKI could put him at risk of being detained and imprisoned and subjected to torture. He adds that Iranian authorities would know that he had spent his entire life in Kurdish refugee camps and would be interested in his knowledge about PDKI. He notes that Iranian intelligence services routinely ask people to provide them with information about PDKI and, if they refuse to do so, they are accused of being spies and at risk of persecution.

3.2 The author adds that the fact that he is not registered in the Islamic Republic of Iran, has no identification documents and does not speak Farsi increases the risk of persecution.

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

4.1 On 16 December 2014, 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 if returned to the Islamic Republic of Iran.

4.2 The State party alleges that, should the communication be considered admissible, the facts as presented by the author do not reveal a violation of article 7 of the Covenant. The State party cites the Committee jurisprudence according to which the risk of being subjected to torture or ill-treatment must be personal and the author must provide substantial grounds to establish that a real risk of irreparable harm exists.<sup>2</sup>

4.3 The State party informs the Committee that, pursuant to section 7 (1) of the Danish Aliens Act, a residence permit will be issued to an alien upon application if he or she falls under the Convention relating to the Status of Refugees. Pursuant to section 7 (2) of the Aliens Act, a residence permit will also be issued to an alien if he or she is at risk of being

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<sup>2</sup> The State party cites the Committee's views in the case *X v. Denmark* (communication No. 2007/2010, Views adopted on 26 March 2014), para. 9.2.

subjected to the death penalty or torture or ill-treatment. The Refugee Appeals Board will consider the conditions for issuing a residence permit under section 7 (2) of the Aliens Act to be met when there are specific and individual factors substantiating that the asylum seeker will be exposed to a real risk of the death penalty or torture in case of return to his or her country of origin. The Aliens Act further requires that any refusal of an asylum request be accompanied by a decision on the existence of this risk. To ensure that the Board makes its decision in accordance with Denmark's international obligations, the Board and the Danish Immigration Service have jointly drafted a number of memorandums describing in detail the legal protection of asylum seekers afforded by international law, in particular the Convention relating to the Status of Refugees, the Convention against Torture, the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.

4.4 The State party further informs the Committee that proceedings before the Board include an oral hearing, at which the asylum seeker is allowed to make a statement and answer questions. Decisions by the Board are based on an individual and specific assessment of the relevant case. The asylum seeker's statements regarding his or her grounds for asylum are assessed in the light of all relevant evidence, including what is known about conditions in his or her country of origin. In that regard, the Board conducts a comprehensive collection of background material on the human rights situation in the country of origin, such as whether there is a consistent pattern of gross and systematic violations.<sup>3</sup> The Board sees to it that all facts of the case are brought out and decides on the basis of examinations of the asylum seeker and witnesses and the provision of other evidence. The State party notes that an asylum seeker must provide such information as is required for deciding whether he or she falls within section 7 of the Aliens Act. It is thus incumbent upon an asylum seeker to substantiate that the conditions for granting asylum are met.

4.5 The State party adds that, in cases in which the asylum seeker's statements throughout the proceedings are characterized by inconsistencies or omissions, the Board will attempt to clarify the reasons therefor. However, inconsistent statements about crucial elements of the grounds for requesting asylum may weaken the asylum seeker's credibility. In such cases, the Board will take into account the asylum seeker's explanation for such inconsistencies and his or her particular situation, including age, cultural background, literacy or condition as a torture victim.

4.6 In the present case, the State party notes that the Board concluded that the asylum seeker's ethnicity, religion and political views could be considered as proven facts but that his activities did not constitute sufficient reason for considering him as falling under the protection of the Convention relating to the Status of Refugees.

4.7 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 Board. 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.

4.8 The State party cites several sources of background information referring to the situation of Kurdish Iranian refugees in Iraq, according to which the International

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<sup>3</sup> The State party notes that background material is collected from various sources, including the UNHCR website, the European Country of Origin Information Network, the Ministry of Foreign Affairs of Denmark, the Country of Origin Information Division of the Danish Immigration Service, the Danish Refugee Council, Amnesty International, Human Rights Watch and other international human rights organizations.

Committee of the Red Cross had facilitated the return of former Iranian refugees of Kurdish origin from northern Iraq to the Islamic Republic of Iran.<sup>4</sup> The State party adds that several former active opponents of the Iranian regime, including members of the Mujaheddin e Khalq organization had returned voluntarily and in an organized manner to the Islamic Republic of Iran. The State party cites analyst Ziryan Roj Helaty, according to whom refugees from Al-Tash camp with no political affiliation would be able to return to the Islamic Republic of Iran.<sup>5</sup> The State party notes that there is no available information indicating that Iranian nationals from Al-Tash camp or Barika camp would be subjected to abuse by Iranian authorities upon return to that country. According to the aforementioned background information, it has been possible even for formerly active opponents to the Iranian regime to return to the country without risking persecution or abuse.

4.9 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 his birth and childhood spent at the Al-Tash refugee camp in Iraq and his subsequent stay at the Barika camp would, by themselves, signify that, if returned to the Islamic Republic of Iran, the author would be at a particular risk of being subjected to treatment contrary to article 7 of the Covenant because the Iranian intelligence service would use him as an informer. This applies even if the author may become an object of general interest to the Iranian authorities in the event of his return.

4.10 The State party notes that the author has not been politically active even to a modest extent. In the light of his limited activities (participating in folk dances and meetings), he has not been profiled as a politically active person. As regards the political activities of the author's father and brother, the State party observes that these occurred a long time ago, and ceased in 1979, when the current Iranian regime assumed power. Therefore, these activities were allegedly targeted under the former Shah's regime, which was later brought down.

4.11 The State party concludes, in line with the Refugee Appeals Board, that the author has failed to prove the likelihood of his claim that his father and brother's activities in the Islamic Republic of Iran or the family's combined activities have been of such a nature and intensity that the author would be at risk of being subjected to treatment falling under article 7 of the Covenant. The State party therefore submits that the author's return to the Islamic Republic of Iran will not constitute a violation of article 7.

4.12 The State party notes that, on 16 June 2014, the Refugee Appeals Board suspended the time limit for the author's departure from Denmark until further notice, in compliance with the Committee's request. Considering that the author has failed to prove the likelihood that, if returned to the Islamic Republic of Iran, he will be at risk of suffering irreparable damage, the State party requests that the Committee's request for interim measures be lifted.

#### **Author's comments on the State party's observations**

5.1 On 17 January 2015, the author submitted his comments on the State party's observations. The author insists that his family has been recognized by UNHCR as refugees and that the relevant certificate was renewed in 2011, which means that UNHCR does not

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<sup>4</sup> This information was contained in the report entitled "Iran: on conversion to Christianity, issues concerning Kurds and post-2009 election protestors as well as legal issues and exit procedures", published by the Danish Immigration Service, Landinfo and the Danish Refugee Council in February 2013.

<sup>5</sup> Ibid.

consider that the need for protection has ceased. The author further insists that his family is considered to be politically active and at risk of persecution.

5.2 The author notes that, according to the same reports invoked by the State party, the now closed Al-Tash camp in Iraq was known to have been under the control of PDKI and, hence, Iranian authorities view refugees from those camps as “ex-affiliates” of PDKI. It would be difficult for Kurds from those camps to be repatriated to the Islamic Republic of Iran, especially if they have a family member who was a Kurdish activist at some point. The author notes that the State party cited passages in the reports that referred to former MKO members and other refugees in northern Iraq, who have a different history and political views than those of Al-Tash camp refugees. All sources agree that Al-Tash camp refugees would be of interest to Iranian authorities.

5.3 The author challenges the State party’s statement that his family was not politically active after arriving in Iraq in 1979. He notes that all refugees in the Al-Tash camp supported PDKI, although his father and brother were no longer engaged at the level that they had been while in the Islamic Republic of Iran.

5.4 The author adds that the Government of the Islamic Republic of Iran is known to use torture in connection with imprisonment.

5.5 The author concludes that he has sufficiently substantiated his risk of being subjected to torture or ill-treatment if returned to the Islamic Republic of Iran, and he requests that interim measures be maintained.

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

#### *Consideration of admissibility*

6.1 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.

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

6.3 The Committee further 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 as required by article 5 2 (b) of the Optional Protocol.

6.4 The Committee notes the author’s allegation that his return to the Islamic Republic of Iran would put him at risk of being subjected to torture. The author bases this allegation on the fact that he was born and raised in Al-Tash refugee camp in Iraq, which he claims to be connected to PDKI; on his participation in PDKI meetings and cultural events; and on his family’s past engagement with the party.

6.5 The Committee notes that the Refugee Appeals Board thoroughly examined the author’s claim and considered his personal and family circumstances, as well as the general situation of Iranian Kurdish refugees in Iraq, including those from the Al-Tash refugee camp, and their return to the Islamic Republic of Iran, and concluded that the author’s personal background and activities did not constitute a risk of persecution and that his family’s political activities had ceased in 1979. The Board further concluded that the author had provided divergent statements regarding his family’s activities after 1979, which had undermined his credibility on that issue. On the basis of all of the above, the Board concluded that it would be unlikely that the author would be at an actual and personal risk of persecution by Iranian authorities if returned to the Islamic Republic of Iran.

6.6 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.<sup>6</sup> 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 the Islamic Republic of Iran would expose him to a real risk of irreparable harm in violation of article 7 of the Covenant. 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.

7. The Committee therefore decides:

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

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<sup>6</sup> 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.