United Nations CCPR/C/122/D/2753/2016

International Covenant on Civil and Political Rights

Advance unedited version

Distr.: General
9 April 2018

Original: English

Human Rights Committee

Views adopted by the Committee under the Optional Protocol, concerning communication No. 2753/2016*,**

Communication submitted by:	C.L. et Z.L. (represented by counsel, Daniel Nørrung)
Alleged victims:	The author and his minor son
State party:	Denmark
Date of communication:	15 March 2016 (initial submission)
Document references:	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 17 August 2015 (not issued in document form)
Date of adoption of Views:	26 March 2018
Subject matter:	Deportation from Denmark to China
Procedural issues:	Inadmissibility – manifestly ill-founded; inadmissibility *ratione materiae* and *ratione loci*; level of substantiation of claims
Substantive issues:	Right to life, risk of torture or ill-treatment upon forced removal to country of origin, and right to freedom of religion
Articles of the Covenant:	6, 7 and 18
Articles of the Optional Protocol:	2, 3 and 5 (2) (a) and (b)

* Adopted by the Committee at its 122nd session (12 March – 6 April 2018).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Ivana Jelic, Bamariam Koita, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

Views under article 5 (4) of the Optional Protocol

1.1 The author of the communication is C.L.,[1] born on [...] 1970. He submits the communication on his behalf and on behalf of his minor son, Z.L., born on [...] 2004. Both are citizens of China. The author and his son are subject to forcible removal to China following the rejection of their application for asylum by the Danish Refugee Appeals Board on - September 2013, and on - September 2015 when it refused to re-open the author's asylum case.[2] The author claims that their forcible removal to China would amount to a violation by Denmark of their rights under articles 6, 7 and 18 of the Covenant. He requested that interim measures be issued to prevent their deportation to China. The Optional Protocol entered into force for Denmark on 23 March 1976. The author is represented by counsel.

1.2 On 21 March 2016, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from returning the author and his minor son to China while their case was under consideration by the Committee. On 4 April 2016, the Refugee Appeals Board suspended the time limit for the departure of the author and his minor son from Denmark until further notice, in accordance with the Committee's request. On 21 September 2016, the State party requested the lifting of the interim measures, as the author had failed to render it probable that he and his son would be at risk of suffering irreparable damage if returned to China. On 13 March 2017, the Committee decided to deny the request for lifting interim measures.

The facts as submitted by the author

2.1 The author and his minor son arrived in Denmark on [...] 2012 with a valid national passport and a valid visa. On [same month] 2012, the author applied for asylum for him and his son, who [has a disorder].

2.2 In his asylum application, the author claimed that he worked secretly for many years in support of the democracy movement in China. In 1989, he organized and participated in major student demonstrations in the city of [...]. As a consequence, he received a warning from the authorities as a punishment and was deprived of some privileges in his subsequent studies and work. From 1998 until his departure, he was an active member of a pro-democracy movement, which purpose was to overthrow the Communist Party's rule and establish a multiparty democracy in China.

2.3 Since the author's father refused to become a member of the Communist party, the family was internally displaced. The author's sisters both have obtained asylum status in Denmark, after participating in the student protests in 1989, and the youngest sister having been exposed to torture.

2.4 In 1998, while he was employed as an auditor in a company dealing with import and export of [...] ([name of company]), the author accepted an invitation from a colleague, Mr. [A], a founder of the '[name of movement]' of China, to support the democracy movement. From 1998 to 2000, the author together with [A] transferred 4.3 million HKD of foreign donations to the pro-democracy movement in China by charging artificially increased prices at the company. The Chinese authorities arrested the author on suspicion of taking bribes in exchange for overcharging customers and, the author was consequently imprisoned and exposed to torture for 6 months in 2001. The torture consisted in beatings with batons, deprivation of food and sleep. As a result of the torture, the author contracted hepatitis B and tinnitus; and has his memory

[1] The author requests the Committee not to disclose his identity or that of his minor child.

[2] The date of the author's removal had not been indicated at the time of the submission of his initial communication.

impaired, pains, anxiety, and sleeping problems. In [...] 2001, the author and the other suspect had been released for lack of evidence. The Chinese authorities never discovered that the money had been transferred to the pro-democracy movement.

2.5 In spite of his weakened physical condition and even though his sisters often urged him to flee to the USA or Europe, the author wished to stay. After his release, he continued his work in the democracy movement, this time by recruiting new members. He had carried out those activities as part of his strong affiliation with the [name of church] Church, of which Mr. [A] was also a member. One of the religious study groups at the church served as a disguise for political work. Even though the authorities monitored and disturbed the religious services, the political work was not discovered. But in [...] 2012, the author was told that Mr. [B], the leader of [A], had been arrested in Shanghai where the democracy movement had gathered. The author was warned that Mr. [B] could disclose his identity and that of other members under torture. Further, the anti-corruption department was expected to intensify their work in the local area, with the risk that the money transfers for the movement prior to 2001 could be disclosed. If arrested again, the life of the author and his associates in the movement would be in great danger. At that time, both Mr. [A] and the author decided to escape China.

2.6 Because of the condition of his [...] son, the author could not risk to exit illegally. He decided to wait until he could obtain a legal visa based on an invitation from his sisters in Denmark. He left in [...] of 2012. After the arrival in Denmark, the Chinese police ransacked his ex-wife's home in [...] 2013 and inquired about the author who was under suspicion of participating in illegal activities infringing national security.

2.7 The author was interviewed by the Danish Immigration Service (the Service) on – May 2013. The Service refused asylum to the author on – June 2013. He appealed the decision to the Danish Refugee Board (the Board). On – September 2013, the Board upheld the negative decision of the Service which did not include a deportation order since the author had in parallel filed an application for residence on humanitarian grounds due to his son's [...] condition. This application was pending with the Ministry of Justice at the time of the Board's decision. The Board in their decisions regarded as facts the experiences of the author, in particular his activity for a pro-democracy movement from 1998 until his departure, and accepted that the applicant continued to carry out activities aimed at strengthening the forces opposed to the communist regime, and that he had had contact with persons who shared his view of the political situation through his religious activities. However, the majority of the Board's members did not accept as a fact that, after his departure, the author had attracted the attention of the Chinese authorities in such manner that he would risk persecution justifying asylum in case of his return to China.

2.8 During the hearing, the legal counsel of the author requested that his older sister E– L – be allowed to provide a brief witness account before the Board. This request was rejected. The author's sister wanted to clarify his experiences and explain how the torture he had suffered had weakened him, impaired his hearing and his ability to concentrate.

2.9 In [...] 2013, the author joined the Church of [name of church] ([...]) where he practiced Christianity because he found there a resemblance to the [...] Church of which he was a member in China. The author also participated in a demonstration against the Chinese communist party regime on – October 2014. At the demonstration, he held two posters saying "We Need Democracy" and "Communist One Party Dictatorship Get Out". Photos of the author holding the posters at the demonstration in Denmark have been posted publicly on two websites.

2.10 On – February 2014, the Danish Ministry of Justice refused the author's application for residence on humanitarian grounds. On – July 2015, the Ministry of Justice refused the author's request for the reopening of his case concerning residence on humanitarian grounds

under section 9b of the Aliens Act. The author and his son were told they were meant to leave Denmark by the end of July 2015.

2.11 On — September 2015, the author's counsel requested the Board to reopen his asylum case in order to consider the information provided by the sisters of the author; the participation of the author at demonstrations against China, in Denmark; and that he had been baptised as a [...]. On — September 2015, the Board refused the author's request for reopening his asylum case. The Board considered that the sisters did not have any new information; that there was no information about specific exposure of the author in the demonstrations; and that the information about his religions and political activities had only been presented before his planned departure.

2.12 In autumn 2015, the author made the last application to the Service, on the grounds of his son's successful integration for two years, in a special school for [...] children. On — December 2015, the Service rejected the author's application for residence for exceptional reasons. Since then, the author and his son can be deported any time.

2.13 The author further claims that in [...] 2015, he received a telephone call from the leader of the pro-democracy movement in China. This person allegedly informed him that his former colleague, Mr. [A], had been arrested by communist agents in [...] when he was taking part in a secret activity; that his church, the [...] Church, had been closed down by the government in [...] 2015; and that the pro-democracy movement had suspended its political activities for the time being and was instead focusing on saving members who had been imprisoned. On that occasion, the author told the leader about his fear of being returned to China.

2.14 The author claims that he has exhausted all available and effective domestic remedies, as the decisions of the Board cannot be appealed. The author has not submitted his complaint to any other procedure of international investigation or settlement.

The complaint

3.1 The author complains that the State party will violate its obligations under articles 6, 7 and 18 of the Covenant by forcibly removing him and his minor son to China.

3.2 The author claims that his rights under articles 6 and 7 of the Covenant will be violated if Denmark proceeds with his and his son's removal to China, due to the fact that he had worked secretly for many years to introduce democracy in China. He fears being arrested, eventually sentenced to life imprisonment or death penalty, and subjected to renewed torture or to cruel, inhuman or degrading treatment or punishment upon return to China. As regards article 18 of the Covenant, he claims that he would be deprived of the possibility to practice his Christian religion if returned to China.

3.3 The author submits that he is at risk of suffering irreparable harm if removed to China because of his previous political and religious engagements with the [...] Church. He also claims that the State party has not duly investigated, in the context of his credibility assessment, the signs of torture he previously endured; his family background (his father's dissidence and his sisters' escape and refugee status in Denmark); his participation at demonstrations against China and his membership of a [...] Church while in Denmark and his absence from China since 2012.

3.4 He particularly claims that the Board did not undertake any examination of available evidence before his first or second rejection, in so far as they did not consider the information on the website of the [...] Church which the author had co-edited; did not call his older sister as a witness; and did not grant the author the requested medical examination for signs of past torture. Such examination should have been carried out before a negative credibility assessment and decision.

3.5 Furthermore, the author submits that in its decision of – September 2015 refusing to reopen his asylum case, the Board did not take into account the information about his sisters and their common background.

3.6 Finally, the author submits that his former spouse, did not have energy to take care of their minor [...] son whom she had abandoned emotionally, and beaten and scolded him. He claims that if he were arrested in China, his son would be left behind and either end up living on the streets or die, which the author feared even more than he feared being sent to prison.[3]

State party's observations on admissibility and the merits

4.1 On 21 September 2016, the State party submitted its observations on the admissibility and merits of the communication, elaborating on the author's asylum proceedings including in particular the Board's decisions of –September 2013 and – September 2015.

4.2 The State party describes the structure, composition and functioning of the Board, which it considers to be an independent, quasi-judicial body.[4]

4.3 The State party submits that the author has failed to establish a prima facie case for the purpose of admissibility of his communication under articles 6 and 7 of the Covenant[5] as he has not sufficiently demonstrated that, if returned to China, he would face a real and personal risk of irreparable harm due to a risk of death penalty, torture or ill-treatment, or deprivation of the possibility to practice [...] religion. Since it has not been sufficiently established that there are substantial grounds for believing that it would constitute a violation of articles 6 or 7 of the Covenant to return the author and his minor son to China, this part of the communication should be considered inadmissible as manifestly ill-founded.

4.4 Concerning the allegations of a violation of article 18 of the Covenant, the State party observes that the author has not sufficiently substantiated either that there are substantial grounds for believing that his freedom of religion will be violated if he is returned to China. Therefore, this part of the communication should be considered inadmissible as manifestly ill-founded. The State party also submits that the author is seeking to apply the obligations under article 18 in an extraterritorial manner, and that Denmark cannot be held responsible for violations of article 18 prospectively to be committed by another State party outside the territory and jurisdiction of Denmark. The author has made no allegations of a violation of this article based on treatment suffered in Denmark or in an area under its effective control. The State party therefore claims that the Committee lacks jurisdiction over the relevant violation in respect of Denmark and that this part of the communication should be considered inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol, or alternatively inadmissible *ratione loci* and *ratione materiae* pursuant to article 2 of the Optional Protocol.[6] The State party further claims that the Committee has

[3] The author does not specify to what extent the national asylum authorities have considered the possible impacts of the removal on the author's son with a [disorder].

[4] See for example communication No. 2379/2014, *Obah Hussein Ahmed v. Denmark* (CCPR/C/117/D/2379/2014), paras. 4.1–4.3.

[5] The State party refers to the Committee's communication No. 1302/2004, *Khan v. Canada* (CCPR/C/87/D/1302/2004), para. 5.4., in which the Committee considered that the author had failed to adduce sufficient evidence, and where the asylum application had been rejected by the immigration authorities on the basis of lack of credibility and implausibility of the author's testimony.

[6] The State party refers to the jurisprudence of the European Court of Human Rights which has clearly stressed the exceptional character of extraterritorial protection of rights contained in the ECHR (ECtHR, *Soering v. the United Kingdom* (application No. 14038/88), judgment of 7 July 1989, para.

never accepted a complaint on its merits regarding the deportation of a person who feared a risk of a violation of provisions other than articles 6 and 7 of the Covenant, whether in the country to which removal is to be effected or in any country to which the person may subsequently be removed.[7] Therefore, the State party argues that it will not cause such irreparable harm as contemplated in articles 6 and 7 of the Covenant to extradite, deport or otherwise remove a person fearing that his rights under, for example, article 18 of the Covenant will be violated by another State party.

4.5 On the merits, the State party contends that the author has not sufficiently established that his return together with his son to China would constitute a violation of articles 6, 7 and 18 of the Covenant. It perceives his communication as a mere reproduction of information already considered by the Board in the context of its decisions of [redacted] September 2013 and [redacted] September 2015. However, the author has provided one piece of new information, stating that, in [redacted] 2015, he was in phone contact with the political organisation of which he had purportedly been a member.

4.6 The State party submits that the Board considered, in its examination of the author's application for asylum, whether the author's statements were coherent, likely and consistent. Based on the overall assessment of the author's statements and background materials, the Board found that the author had failed to render it probable that his political and religious activities in China and Denmark had made him a high-profile individual to such extent that he had attracted the attention of the Chinese authorities in a manner that would justify asylum. It considered the author's statements on his alleged position and high profile within the pro-democracy movement as unlikely.

4.7 The Board accepted as a fact that the author had been detained in 2001 in connection with a case concerning overcharging at the state company with which he was employed, and the Board also accepted as a fact that, for several years, the author had carried out activities for an organisation whose aim was to strengthen the democratic forces in China. By contrast, the Board could not accept as a fact that, in consequence, the author had attracted the attention of the Chinese authorities in a manner that would justify asylum. According to the author's own statements, he left China lawfully five months after the arrest of several leaders of the organisation for which he had carried out activities. Moreover, the Board considered it unlikely that the Chinese authorities would not come to the author's home until eight months have passed after the arrest of the leaders, considering the author's statement that he had held a crucial role in the organisation. As appears from the author's communication to the Committee, the case files relating to the asylum cases of the author's sisters were taken into account by the Board. Furthermore, the Board considered that the author's political and religious activities in Denmark had not made him a high-profile individual in the eyes of the Chinese authorities and that he would not risk persecution or abuse justifying asylum in case of his return to China. When making that assessment, the Board emphasized that the information on those activities had not been submitted to the Board until September 2015 – immediately before the scheduled forced return of the author – despite the fact that, according to the information provided, the author had been baptised about three months after the first Board hearing and despite the fact that the author's most recent participation in a demonstration was on [redacted] 2014.

4.8 As regards his affiliation with the pro-democracy movement in China, the author stated to the Board that since 1998 when he became a member of the movement and had to promise that he would not disclose any details about the movement, he had been responsible

88; *F. v. the United Kingdom* (application No. 17341/03), decision of 22 June 2004, page 12; *Z. and T. v. the United Kingdom* (application No. 27034/05), decision of 28 February 2006, page 7.

[7] The State party refers to the Committee's General Comment No. 31 (2004): The nature of legal obligations under the Covenant, para. 12.

for channelling funds from abroad for the movement by overcharging customers from 1998 to late 2000. From late 2001 until 2012, the author's work for the pro-democracy movement had consisted in developing the disciples of the church and finding among those fellow believers pursuing democracy in China. The author admitted that even though his work had been important, he had ranked low in the hierarchy. As regards the author's statements on his departure from China, he applied for a passport which had been issued to him on [...] 2012 and he subsequently obtained a visa from the Danish embassy in [city] [later in] 2012; hence he could leave lawfully without any problems.

4.9 The Board found that the author's statement on his alleged conflicts prior to his lawful departure from China in [...] 2012 seemed incoherent and unlikely on essential points. The Board emphasized that the author's knowledge of the organisation for which he had worked from 1998 to 2012 seemed very limited and superficial; he had ranked low in the hierarchy of the movement; he had not been detained by the Chinese authorities apart from his detention in 2001 according to his own accounts; and the author continued to attend the meetings of the movement during which the authorities had previously taken photos of the meeting participants, despite the warning of attracting negative attention. Moreover, the author left China on lawfully obtained passport only on [...] 2012 – five months after the arrest of [B] In the meantime, he stayed at his home without being contacted by the authorities, although the case against him had allegedly been reopened [five months prior] Furthermore, it is only in [...] and [...] 2013 that the authorities had contacted the author's former spouse at her home, namely several months after the author's lawful departure. Since the Board also found unlikely that the author had been able to work for a State company and the Chinese authorities for many years if the authorities had suspected that he supported the pro-democracy movement, it concluded that the author failed to render probable that he had faced the risk of persecution justifying asylum prior to his departure.

4.10 The Board attached no weight to the new information provided by the author to the Committee in March 2016, according to which he received a phone call in [...] 2015 from the leader of the organisation, telling him that the pro-democracy movement to which he belonged was the [name of movement] founded in 1989 by [A] It considered that the author has not stated how the leader of the organisation established contact with him, taking into account that he had not dared to contact anybody else in China, not even his friends. The Board found that the author's statement that it had been necessary for him to wait to for his visa application to be attended and to leave China lawfully out of consideration for his [...] son, cannot lead to a different assessment as the Board had already considered his claims and concluded that the author did not prove that he had been pursued by the Chinese authorities.

4.11 Regarding the author's political and religious activities in Denmark and his reference to two articles of [...] 2014 and [...] 2014 posted on the website [...] ([...]) with two photos of the author at a demonstration in Denmark on [...] 2014 against the Chinese communist regime, the State party observes that those photos had already been produced by the author when requesting the Board to reopen his asylum case. In its decision of – September 2015, the Board found that the photos did not warrant the reopening of his case. The Board observed that only a copy of an undated photo of the author at a demonstration had been produced, without providing any details as to the websites on which it had been posted, and that no further documentation or information on the author's participation in other demonstrations after [...] 2014 had been produced. The State party considers it conspicuous that the photos taken on [...] 2014 were only uploaded in 2016, just [shortly] before counsel lodged the author's communication with the Committee. Consequently, the author has not rendered probable that he would risk persecution or abuse in case of return to China. The fact of belonging to a non-recognized denomination in China, which has millions of followers in China, including in the author's province, and the closing down of the [...] Church in China cannot lead to a different

assessment. The author is only an ordinary member of the church and did not have any personal conflicts with the Chinese authorities due to his faith prior to his departure from China.

4.12 Regarding the author's claim that, on — September 2015, the Board rejected his request to call a witness at the hearing, the State party submits that this decision was adopted considering that a witness would not have direct relevance to the author's grounds for asylum, other than proving his general credibility. Calling a witness is a prerogative rather than duty. In the case under review, the Board considered that the reasons given in support of the request was that the author's sisters would be able to elucidate the author's experiences and relate them to their common background, information that the Board already had.

4.13 The State party observes that the author's sisters were granted asylum in Denmark in 1992 and 1998, respectively, and that they were therefore not with the author when he carried out his activities in his country of origin. The conflicts of the author's sisters in China also date far back in time, compared to the time of the author's activities in his country of origin and the date of the author's application for asylum in Denmark. Therefore, the author sisters' information are not directly linked to his grounds for asylum. Moreover, the author did not refer to the "circumstances" of his sisters during the asylum proceedings preceding his request for reopening the asylum case.

4.14 As regards the author's comments on the absence of examination for signs of torture before its substantive assessment, the State party observes that the Board only initiates an examination for signs of torture if it has been proven that an asylum-seeker has previously been subjected to torture, and it also finds that there is actual or real risk that the concerned asylum-seeker will be subjected to torture once again on return to his country of origin. Although in its decision of —September 2013, the Board accepted as a fact that the author had been arrested and tortured in 2001, it could not accept that the author's alleged position and high profile would lead to a risk of persecution justifying asylum upon his return to China, even when taking into account the 2012 incidents. Since there was no real and actual risk that the author would be subjected to torture upon his return to China, the Board rejected the request made by his counsel for an examination of the author for signs of torture. The author's observations in this regard merely reflect his disagreement with the Board's assessment of the evidence which is not relevant in the State party's view.

4.15 The State party recalls the Committee's jurisprudence that important weight should be given to the assessments conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, 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.[8] Both decisions of the Board were based on procedures during which the author had the opportunity to present his views in writing and orally, with the assistance of legal counsel.

4.16 In his communication to the Committee, the author merely disagrees with the Board's assessment of the evidence and its factual conclusions, without demonstrating that the assessment was arbitrary or otherwise amounted to a denial of justice, or that any risk factor would have been omitted. Therefore, the State party submits that the author is in fact trying

[8] See e.g. communication no. 2272/2013, *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), paras. 7.3 and 7.4. The State party also refers to further jurisprudence of the Committee in that regard, including communications No. 2393/2014, *K. v. Denmark* (CCPR/C/114/D/2393/2014), paras. 7.4 and 7.5; No. 2426/2014, *N v. Denmark* (CCPR/C/114/D/2426/2014), para. 6.6; No. 2186/2012, *X and X v. Denmark* (CCPR/C/112/D/2186/2012), para. 7.5; and No. 2329/2014, *Z v. Denmark* (CCPR/C/114/D/2329/2014), para. 7.4.

to use the Committee as an appellate body to have the factual circumstances of his case reassessed.

4.17 In conclusion, the State party reiterates that it would not constitute a violation of articles 6 and 7 of the Covenant to return the author and his minor son to China, and that it cannot be held responsible for violations of article 18 prospectively to be committed by another State party outside the territory and jurisdiction of Denmark. Furthermore, the State party submits that the author has failed to establish that he would be deprived of his rights under article 18 of the Covenant if returned to China, taking into account that the Chinese authorities generally tolerate followers of unregistered churches to practice their faith, and requests the Committee to lift the interim measures that it granted.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 17 February 2017, the author's counsel submitted that there has not been any valid credibility concern in regard to the author's statements. The author has for many years yearned for democracy, like his father and sisters. In 1998, he accepted to work voluntarily for a church-connected organization, in which he, in his position as accountant for a state-owned building material company, channelled large amounts of money by overpricing. The money has been granted from overseas to the pro-democracy movement. Those irregularities were discovered by the authorities and the author was suspected of taking bribes or overpricing for his personal gain.

5.2 He was imprisoned and tortured in 2001 but released as no proof was found. Those allegations were accepted as fact by the State party. Weakened by torture, the author was assigned less demanding tasks in the state company. In parallel, he recruited and trained new members in the church-connected organization in the disguise of a study group in the [...] Church where he was also an active Christian. The police harassed the church as they did to all private churches, including by taking photographs of people participating in religious services.

5.3 After the arrest of his religious leader, Mr. [B], in July 2012, the author was constantly on alert and considered several options to escape quickly, but he rather decided to leave China safely together with his [...] son.[9] The author's risk after [B]'s arrest was two-folded: firstly, it was getting probable that the 1998 – 2001 case that was initiated against him would be reopen in relation to the channelling of large amounts of foreign capital into China for the activities of the democracy organization. Such reopening might very well disclose the full scheme, including the author's role therein, in so far as his leader may have to confess all the information under torture. Secondly, the author's current activities for the same organization in disguise of his church could be disclosed. The author's part in the pro-democracy movement was not luckily revealed before his legal departure in [...] 2012. Sometime between [...] 2012 and [...] 2013, he became under suspicion, and the authorities therefore came to his former wife's home and made searches in [...] 2013.

5.4 After his arrival in Denmark, the author expressed his pro-democracy position on relevant occasions, such as the Chinese New Year in 2014. In [...] 2015, he received a phone call from a leader of his local organization who warned him against being too visible. He had no reason to reveal his pro-democratic activities in Denmark earlier than during the

[9] The author refers to his — August 2013 letter to the Board elaborating on the reasons why the author accepted the risk to wait for a visa instead of leaving China illegally. Several options for escape were discussed with his immediate leader [A] but were deemed too risky because of the author's [...] son. Those included travelling via Hong Kong to Vietnam and Thailand, but the safest way was found to be using the possibility to obtain visa to Denmark because of the two sisters there.

hearing before the Board, since his departure from Denmark was postponed in the context of the processing of his son's case on humanitarian grounds.

5.5 The Board solely based its negative decision on the time span between the arrest of the leader [B] in [...] 2012 and the author's departure from China in [...] 2012 (five months), and the time span between the Mr. [D] 's arrest and the authorities visit to search for the author in [...] 2013 (eight months). The author agrees that he was not listed as a wanted person in [...] 2012, since he had no problem at his departure. Perhaps it took time before [B] would disclose him; perhaps [B] withstood the pressure or died during torture before he could disclose him. However, the author knows that sometime between [...] 2012 and [...] 2013, he was being sought by the Chinese police who came to visit his former spouse. The author emphasizes that no matter how crucial his role was in the organization, it still would take some time before an arrested person would reveal his friends, or before the re-opening of cases relating to the democracy movement could be instigated and lead to increased suspicion against the author. The author adds that, he took precautions to avoid persecution, including through the use of a false name in the neighbourhood following his release in 2001, and requesting to be informed of the register held by the democracy organization as to who was wanted, so he could be warned.

5.6 The author submits that since the State party had credibility concerns as to his allegations, it should have used all the available possibilities for investigation, as repeatedly proposed during the asylum proceedings, in order to make their decisions. The author refutes the State party's conclusions on his perceived lack of credibility, as they contrast with the Board's findings which considered as a fact that the author was detained and tortured, and that he continued to oppose the communist regime despite his arrest and detention. He argues that the State party, having accepted that the author opposed his regime for at least 14 years, did not accept or believe, without adequate substantiation, that he is now in danger, only because it took over five months for the police to start looking for him after the arrest of one of his leaders. Because of this contradiction regarding credibility, the Board ought to have given the benefit of the doubt to the author, or at least to admit his sister to testify. His sister E.L. could have elaborated on the family's anti-communist background, their attitude against the regime in which she was also exposed to torture many years ago, and on the way the author refused to leave for safety, but wished to continue to fight for democracy. She could also have explained that the author was extremely nervous during all his waiting time between [...] and [...] 2012; and that the torture he suffered in the past affected his ability to explain himself. While the State party argues that the sister's case files were taken into account when the Board made its decision on – September 2013, he argues these files were only given to the counsel 10 minutes before the hearing on – September 2013.[10] The State party has not clarified when the Board itself received these files, so it is assumed that it was only on – September 2013. Since the Board handles several cases a day, the decision adopted in the author's case was written and handed over to him and his counsel on the same day. The author submits that the Board's decision of – September 2013 seems as a hasty conclusion, without a thorough review of all relevant material and without admitting the presentation of supporting evidence. He also underlines that the Board's decision contained several mistakes in dates. Finally, the author generally submits that the State party should establish minimal educational requirements for interpreters used by the Board to limit the scope for misunderstanding and errors.

5.7 By upholding the decision to reject the author's asylum claim, without any valid credibility concern, the State party has exposed the author to a great risk of being subjected to threats to life, or to torture or ill-treatment, which would amount to a violation of articles 6, 7 and 18 of the Covenant, if he were deported to China. The author recalls that his political

[10] The author's sisters also refer to this in their letter to the Board dated – September 2013.

"offence" was committed in the disguise of his church which should justify his allegations of a risk of a violation of article 18 of the Covenant in case of his removal to China. Accordingly, the author requests the Committee not to lift the interim measures.

Additional submission from the State party

6.1 On 13 September 2017, the State party submitted additional observations. It argues that the author's additional observations of 17 February 2017 do not provide any new factual information on his original grounds for asylum. It therefore reiterates its observations of 21 September 2016.

6.2 As regards the author's assertion that the Board did not seek to clarify the reasons why his sisters disagree with the Board's assessment, the State party submits that the Board's decision of — September 2015 refusing to reopen the author's asylum case considered that the letter of — September 2013 and the subsequent letter of — August 2015 from the author's sisters did not provide any new information. The relevant information had therefore been considered by the Board.

6.3 As concerns the unavailability of appeals against the decisions of the Board, the State party recalls the case law of the Supreme Court that the judicial review of the Board's decisions is limited to a review on points of law, including any inadequacy in the basis for the relevant decision, procedural errors and unlawful exercise of discretion. Regarding the calling of witnesses, the State party reiterates that the Board found no basis for allowing the author's sisters to testify as they have no first-hand knowledge of the author's activities in his country of origin. As regards the author's general submission that no educational requirements are made for interpreters used by the Board, the State party finds that it has not been rendered probable that the interpreting gave rise to any errors or misunderstandings affecting the Board's decision, nor has the author made any specific claim to this effect.[11]

6.4 As to the author's submission that the Board 'did not render a thorough examination of his case' because the Board's decision of —September 2013 contained incorrect time references and because the Board gave a very short reasoning, the State party observes that the Board has freedom to assess evidence and that it made its decision on the basis of an overall assessment of all the information provided in the case. The incorrect time references in the Board's decision of —September 2013 were due to an error on part of the Board, which were corrected in the State party's observations. However, this error could not independently lead to a different outcome as a thorough assessment was carried out whether the conditions in section 7 of the Aliens Act were met, and this therefore did not justify a revision of its decision by the Board. Moreover, the author has not established that the incorrect time references in the decision had a crucial impact on the Board's assessment.

6.5 The State party further reiterates that the author has not sufficiently established that it would constitute a violation of article 6, 7 and 18 of the Covenant to return him and his minor son to China. The author's communication merely reflects that he disagrees with the outcome of the assessment of his specific circumstances and the background information by the Board. In his additional observations, the author failed to establish that the assessment by the Board was arbitrary or amounted to a manifest error or denial of justice. The author also failed to identify any irregularity in the decision-making process or any risk factors that the Board had failed to take properly into account.

[11] See e.g. *K. v. Denmark*, para. 7.6, supra fn. 8.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim 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.

7.2 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.

7.3 The Committee notes that the author unsuccessfully appealed the refusal of his asylum claim to the Danish Refugee Appeals Board, that his request for residence permits under section 9c (3) (ii) of the Aliens Act was rejected by the Ministry of Justice, and that the request for reopening his asylum case was lastly rejected by the Danish Refugee Appeals Board on — September 2015. In this connection, the Committee notes that the State party has not objected to the admissibility of the communication under article 5 (2) (b) of the Optional Protocol as regards exhaustion of domestic remedies. Since the decisions of the Board cannot be appealed, no further remedies are available to the author. Accordingly, the Committee considers that domestic remedies have been exhausted.

7.4 Concerning the author's claim under article 18 that he would be deprived of the possibility to practise his Christian religion if returned to China, the Committee notes the State party's argument that the author's claims are insufficiently substantiated. It further notes the State party's argument that the author's claim under article 18 is inadmissible *ratione loci* and *ratione materiae* as incompatible with the provisions of the Covenant since article 18 does not have extraterritorial application, and because the author's allegations of a violation of this provision do not rest on any treatment that he has suffered in Denmark, but rather on consequences that he would allegedly suffer if returned to China. The Committee recalls that article 2 of the Covenant entails an obligation for States parties not to deport 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 in articles 6 and 7 of the Covenant, in the country to which removal is to be effected.[12] Accordingly, the Committee considers that the author's communication falls short of substantiating how his rights under article 18 would be violated by the State party by removing him to China in a manner that would pose a substantial risk of irreparable harm such as that contemplated under articles 6 and 7 of the Covenant. This part of the communication is therefore inadmissible pursuant to article 2 of the Optional Protocol.[13]

7.5 The Committee notes the author's claim under articles 6 and 7 of the Covenant that, if he were removed to China, he would be at risk of being sentenced to a death penalty, or subjected to torture or ill-treatment for his activities in support of the multiparty democracy movement, due to which he faced politically motivated charges. The Committee also takes note of the State party's argument that the author's claims under articles 6 and 7 should be held inadmissible for lack of substantiation. However, the Committee considers that the author has adequately explained the reasons why he fears that his forcible return to China would result in a risk of treatment incompatible with articles 6 and 7 of the Covenant for him and his minor [redacted] son. The Committee is therefore of the opinion that this part of the

[12] See the Committee's general comment No. 31 (2004), para. 12.

[13] See e.g. communications no. 2195/2012, *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.5., and No. 2613/2015, *Contreras v. Canada* (CCPR/C/119/D/2613/2015), para. 7.5
See also *Khan v. Canada*, para. 5.6., supra fn. 5.

communication, raising issues under articles 6 and 7 of the Covenant, has been sufficiently substantiated for purposes of admissibility.

7.6 The Committee declares the communication admissible, insofar as it appears to raise issues under articles 6 and 7 of the Covenant, and proceeds with its consideration on the merits.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

8.2 The issue before the Committee is whether the removal of the author and his minor [...] son to China would amount to a violation by the State party of its obligations under articles 6 and 7 of the Covenant.

8.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, 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 in articles 6 and 7 of the Covenant.[14] The Committee has also indicated that the risk must be personal[15] and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.[16] Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.[17] The Committee further recalls that considerable weight should be given to the assessment conducted by the authorities of States parties and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such a risk exists,[18] unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.[19]

8.4 In that regard, the Committee notes that the author fears to be arrested, and eventually sentenced to life imprisonment or death penalty, and subjected to renewed torture or to cruel, inhuman or degrading treatment or punishment if he were returned to China, as he had worked secretly for many years to introduce democracy in China and was an active member of the unrecognized [...] Church. Moreover, the Committee notes the author's claim that the State party has not duly investigated, in the context of his credibility assessment, the allegations and signs of torture he previously endured; his family's dissidence including his sisters' escape and refugee status in Denmark; his participation at demonstrations against China and his membership of a [...] Church while in Denmark; and the pending risks since 2012. He has particularly claimed that the Board did not undertake any examination of available evidence before its first and second rejection of his claim, such as (a) considering the information on the website of the [...] Church which the author had

[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 communications No. 2007/2010, *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; and No. 692/1996, *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), para. 6.6.

[16] See *X v. Denmark*, para. 9.2, supra fn. 15, and communication No. 1833/2008, *X v. Sweden*, (CCPR/C/103/D/1833/2008), para. 5.18.

[17] See, for example, *X v. Denmark*, para. 9.2; and *X. v. Sweden*, para. 5.18.

[18] See communications No. 1763/2008, *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008) para. 11.4; and No. 1957/2010, *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

[19] See, inter alia, ibid. and communication No. 541/1993, *Simms v. Jamaica* (CCPR/C/53/D/541/1993), para. 6.2.

co-edited, (b) calling his older sister as a witness, or (c) granting the author the requested medical examination for signs of previous torture.

8.5 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 considered as manifestly unfounded since the author has not sufficiently established that he would face a real and personal risk of irreparable harm, such as that contemplated in articles 6 and 7 of the Covenant, if returned to China. The Committee also notes the State party's submission that no new substantial information was provided in the author's communication. However, it notes that the State party did not question the author's general credibility, but only pointed to the limited likelihood of several of the author's statements. The Committee further observes that the Board considered as a fact that the author: engaged in pro-democracy movement; attracted adverse attention of the authorities mainly due to overcharging at the state company, which generated funds which were channelled from abroad to the pro-democracy movement; was a member of unrecognized [...] Church; was arrested and tortured; left China legally following his leader's (Mr. [B] 's) arrest; and that the Chinese authorities had contacted the author's former spouse at her home in [...] and [...] 2013.

8.6 Nonetheless, the Board found that the author had failed to render it probable that his political and religious activities in China and Denmark had made him a high-profile individual to such extent that he had attracted the attention of the Chinese authorities in a manner that would justify asylum. The Board based its decision mainly on the fact that the author left China lawfully only five months after the arrest of several leaders of the organisation for which he had carried out activities, while considering unlikely that the Chinese authorities waited eight months after the arrest of the leaders before coming to the author former spouse's home, and disregarding that the author alleged that he had held a crucial role in the organisation. In addition, the Board considered that the information on the author's political and religious activities in Denmark were submitted late - only in September 2015, immediately before the scheduled forced return of the author.

8.7 The Committee is of the view that many of the facts in the present case, including the information on the author's personal engagement in the pro-democracy movement - [name of the movement] -, the previous experience of torture, and the authorities' interest in the author before and after his departure from China, were not contested by the State party's authorities in the context of credibility assessment. However, the authorities have not adequately explained how they arrived at their negative conclusions of absence of a personal risk for the author and his minor son in case of their return. In this context, the Committee observes the failure of the State party to take due account of the past persecution faced by the author, author's father and sisters, and the inadequate consideration by the State party's authorities of whether the author and his son might face a risk of violations of their rights in the given circumstances and of the impacts that the removal would have on the author's [...] son. The Committee further notes the author's request for a medical examination for signs of previous torture[20] which was rejected by the Board since it only initiates an examination for signs of torture when the allegations to that effect appear credible, and if it finds that there is actual and real risk that the concerned asylum seeker will be subjected to torture again on return to his country of origin. The Committee considers that the reasons given for the rejection of the author's request for medical examination by the Board do not appear reasonable, in particular when the State party accepted that the author had suffered torture in the past. In the circumstances of the present case, the Committee considers that the facts as submitted disclose the existence of a real risk for the author and

[20] See e.g. CAT communication No. 634/2014, *M.B., A.B., D.M.B. and D.B. v. Denmark* (CAT/C/59/D/634/2014), paras. 9.6 and 9.8.

his son of treatment contrary to the requirements of article 7 of the Covenant as a consequence of their removal to China, which was not given sufficient weight by the State party's authorities.[21] Accordingly, the Committee is of the view that, by removing the author and his minor son to China, the State party would violate its obligations under article 7 of the Covenant.

8.8 In the light of its findings on article 7, the Committee will not further examine the author's claim under article 6 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that, by removing the author and his minor son to China, the State party would violate their rights under article 7 of the Covenant.

10. In accordance with article 2 (1) of the Covenant, the State party is under an obligation to provide the author with an effective remedy by proceeding to a review of the decision to forcibly remove him and his son to China, taking into account the State party's obligations under the Covenant, and the Committee's present Views. The State party is also requested to refrain from expelling the author and his son while their request for asylum is being reconsidered.

11. By becoming a party to the Optional Protocol, the State has recognized the competence of the Committee to determine whether there has been a violation of the Covenant. In addition, pursuant to article 2 of the Covenant, the State party has undertaken to guarantee to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established. The Committee therefore requests the State party to provide, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, to have them translated into the official language of the State party and to ensure that they are widely disseminated.

[21] See e.g. communication No. 2370/2014, *A.H. v. Denmark* (CCPR/C/114/D/2370/2014), para. 8.8.