



# International Covenant on Civil and Political Rights

Distr.: General  
18 December 2017

Original: English

## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2585/2015\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	M.A.S. and L.B.H. (represented by the Danish Refugee Council and, subsequently, Hannah Krog)
<i>Alleged victims:</i>	The authors and their three children
<i>State party:</i>	Denmark
<i>Date of communication:</i>	9 March 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure transmitted to the State party on 10 March 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	8 November 2017
<i>Subject matter:</i>	Deportation to Bulgaria
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Risk of torture, cruel, inhuman or degrading treatment or punishment; non-refoulement
<i>Article of the Covenant:</i>	7
<i>Article of the Optional Protocol:</i>	2

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

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

\*\*\* A joint opinion by Committee members Mauro Politi and José Manuel Santos Pais (dissenting) is annexed to the present Views.



1.1 The authors of the communication are M.A.S., born on 1 December 1973, and his wife, L.B.H., born on 1 October 1976. They present the communication on their own behalf and on behalf of their three minor children: X, born on 15 January 2000; Y, born on 13 March 2003; and Z, born on 25 July 2012. The authors are nationals of the Syrian Arab Republic seeking asylum in Denmark and subject to deportation to Bulgaria following the Danish authorities' rejection of their application for refugee status in Denmark. The authors claim that by forcibly deporting them and their children to Bulgaria, Denmark would violate their rights under article 7 of the Covenant. The authors were initially represented by the Danish Refugee Council and subsequently by Hannah Krog. The Optional Protocol entered into force for Denmark on 23 March 1976.

1.2 On 10 March 2015, pursuant to rule 92 of the Committee's rules of procedure, the Special Rapporteur on new communications and interim measures requested the State party to refrain from deporting the authors and their children to Bulgaria while their case was under consideration by the Committee.

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

2.1 The authors are Kurds from the Syrian Arab Republic. They fled the country to seek refuge in Europe due to the civil war. They first fled to Lebanon, then proceeded to Turkey and arrived in Denmark in January 2014 through Bulgaria.

2.2 The authors allege that they paid an amount of money to go to Denmark, but the agent dropped them near the Bulgarian border. He told them that they had arrived in Denmark and immediately disappeared. The authors walked for about seven hours. On 13 July 2013, the authors and their children arrived in Bulgaria. The Bulgarian border guards arrested them for illegal entry, fingerprinted them and registered them as asylum seekers. The authors were detained in a prison for 23 days, in a 40 m<sup>2</sup> room with five to six other families. They allege that there were about 400 people detained in that prison, 14 of whom were minors. Because of the unsuitability of the meals offered for their children<sup>1</sup> and the harassment and degrading treatment they suffered in prison,<sup>2</sup> the authors decided to undertake a hunger strike for three days, together with three other families, during which they were not given any water. They maintained their strike until their release, which took place following a visit from a humanitarian organization<sup>3</sup> and media pressure.<sup>4</sup>

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<sup>1</sup> In particular, their youngest child was only 1 year old and still drank replacement milk. Due to the conditions in prison, they had no choice but to feed her the unsuitable food they were given. They had to ask the prison staff to buy breast-milk substitute, but not all the prison guards were willing to do this for them. They did not receive nappies either.

<sup>2</sup> This was the authors' statement in their initial communication to the Committee dated 9 March 2015. However, in their asylum screening interviews before the Danish Immigration Service on 17 January and 4 February 2014, respectively, M.A.S. declared that they had gone on hunger strike as a protest against their arrest, while L.B.H. declared that they had gone on hunger strike hoping that the authorities would release them. Moreover, in the statement made by M.A.S. at the consultation with the Service on 16 July 2014, they mentioned that they had not been subjected to physical assaults during their detention but that the police/prison staff had acted violently towards M.A.S. when they wanted to fingerprint him and he had refused, whereupon they undressed him. M.A.S. also conceded that he had not lodged a complaint with a superior authority about the treatment that they had been subjected to by the police and prison staff. Following L.B.H.'s interview with the Service, she mentioned that during her detention she suffered no physical assaults, but that the couple had been spoken to and looked at in a very degrading manner. They had been given a limited amount of food, and the food had been bad. L.B.H. reported that she did not lodge a complaint with a superior authority about the treatment because they were too afraid to do so, as there was already negative public feeling about refugees in Bulgaria. In its decision of 8 December 2014 the Refugee Appeals Board also mentions that at the hearing, L.B.H. declared that when she was arrested, she was put on the floor and started to cry. The police allegedly undressed her spouse and children. She was so upset that she fainted. The police took her to hospital and afterwards to prison, where she was reunited with her family.

<sup>3</sup> The authors did not mention the name of the organization. However, in his consultation with the Danish Immigration Service on 16 July 2014, M.A.S. mentioned that relief organizations, "maybe the

2.3 After being released from prison, the authors were moved to a refugee camp in Sofia, where they stayed for around three months. There they could not move freely due to the overwhelming presence and fear of the police, because asylum seekers were mistreated and felt insecure. Their child Y was allegedly beaten by police officers several times because he was too noisy. On 14 October 2013, the authors were granted residence permits in Bulgaria, which were valid until 21 October 2016 for L.B.H. and 31 October 2016 for M.A.S. On that day, they were asked to leave the reception facilities. Since they were offered no assistance, they struggled to find accommodation, work and education, and had no access to the medical care they needed.

2.4 The authors managed to rent a room of 30 m<sup>2</sup> in Sofia. They paid with the money sent by family members living in Turkey and Iraq. They remained in that room for two months. Fearing for the security of the family due to the wave of racism in Bulgaria, only M.A.S. left the room from time to time to buy food or retrieve money.

2.5 A series of incidents made the authors feel unsafe in Bulgaria. In December 2013, M.A.S. witnessed the murder of an Iraqi person by a number of Bulgarian citizens in a park in Sofia. He ran away, fearing for his life. On another occasion, while he was shopping for the family, three Bulgarian men entered the shop and made him sing "Bulgaria is not the place for me". They told him to go back home, and they hit and kicked him. After these incidents, fearing for their safety and due to the harsh living conditions in the absence of an effective integration programme in Bulgaria, the authors left the country and travelled to Denmark. The authors were driven to Denmark by a lorry driver contacted by L.B.H. They presented their Bulgarian residence permits and were allowed to cross the border. After a three-day journey, they arrived at an unknown town in Denmark, from where they travelled to Aarhus.

2.6 The family applied for asylum in Aarhus the day they arrived, 6 January 2014. M.A.S. declared that the reason for the request was his fear that he would be recalled as a reservist by the Syrian military if he returned to the Syrian Arab Republic. In that connection, he declared that before he left the country in July 2013, he had been recalled to enrol but that he left the country instead. L.B.H. referred to her spouse's grounds for asylum. The authors also referred to the poor conditions in Bulgaria, to the impossibility of finding a job, to the general discrimination against refugees in Bulgaria and to the threats by unknown Bulgarians. On 6 and 7 August 2014, the Danish Immigration Service, in separate decisions for each author and their children, decided not to grant them asylum as Bulgaria was their first country of asylum and they had already been granted residence permits, which were still valid. The Service considered that the authors' statements about the poor conditions in Bulgaria, including the impossibility of finding a job and discrimination against refugees, were a question of socioeconomic conditions beyond the scope of section 7 of the Aliens Act. The Service also indicated that the authors' claim that they had been threatened by Bulgarian individuals and also by the police during their arrest and detention would not change its assessment because the authors could ask the Bulgarian authorities for protection and also lodge a complaint. The Service noted that the authors had never lodged a complaint with the Bulgarian authorities to either denounce threats by private persons or the ill-treatment they allegedly suffered during their arrest and detention. Finally, the Service attached great importance to the fact that the authors had not been involved in any conflicts of such a nature that could put them at risk upon their return to Bulgaria.

2.7 The authors submit that they have increased symptoms of post-traumatic stress disorder, including insomnia, excessive negative thoughts, depressive and nervous behaviour and an increased tendency to isolation. In particular, after arriving in Denmark, their son Y received extensive psychological assistance because of the experiences in Bulgaria and because he had witnessed the killing of friends by a bomb in his school in the

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United Nations and the Red Cross", had visited the applicant and others during their hunger strike and given them an opportunity to talk about the treatment they had received in the Bulgarian prison.

<sup>4</sup> The "media pressure" was mentioned by the authors only in their first communication, but with no specific reference.

Syrian Arab Republic. M.A.S. suffers from high blood pressure and a heart condition, for which he receives medical treatment, and he also exhibits symptoms of post-traumatic stress disorder, allegedly due to torture to which he was subjected while in prison in the Syrian Arab Republic. L.B.H. has problems with her metabolism, for which she receives medical treatment, and also receives analgesics to alleviate back problems due to a herniated disc.<sup>5</sup>

2.8 On 8 December 2014, the Danish Refugee Appeals Board upheld the decision of the Danish Immigration Service and ordered the authors to leave Denmark within 15 days. The Board considered that while the authors fell under section 7 (1) of the Aliens Act, Bulgaria was their first country of asylum where they had been granted protection status, and they should therefore be returned there.<sup>6</sup> The Board declared that according to the background information available, the authors would not be exposed to a risk of refoulement once in Bulgaria; that their personal safety would be protected to the extent necessary; and that they should seek the protection of the Bulgarian authorities in respect of the threats made by unknown Bulgarians against them. The Board also indicated that according to a report by the Office of the United Nations High Commissioner for Refugees (UNHCR),<sup>7</sup> refugees and persons with protected status in Bulgaria enjoyed the same rights as Bulgarian nationals and that, although difficult, the general situation, including socioeconomic conditions, were not of such a nature as to prevent Bulgaria from serving as a first country of asylum. In rendering its decision, the Board took into account the authors' allegations that they had been detained and ill-treated in prison. In particular, it noted that the authorities had confiscated L.B.H.'s medication; that they had not provided milk for the applicants' youngest child; that M.A.S. had been harassed by private individuals; that their children had all been seriously mentally affected by their experiences in the Syrian Arab Republic and Bulgaria; and that only after arriving in Denmark had they started to feel better. The children were able to go to school, whereas in Bulgaria, where there was nothing but fear and fights, they were afraid to go anywhere.

### **The complaint**

3.1 The authors submit that, by forcibly returning them and their children to Bulgaria, the Danish authorities would violate their rights under article 7 of the Covenant. Based on their experience, they allege that if returned to Bulgaria, they and their three children would be exposed to inhuman or degrading treatment contrary to the best interests of the child, as they would face homelessness, destitution, and no access to health care and personal safety. The three minor children have already been deeply scarred and traumatized by the civil war in the Syrian Arab Republic and by their stay in Bulgaria, displaying antisocial behaviour and stagnation in their development. They therefore need stability and access to continued psychosocial and medical treatment. The authors therefore argue that they should be regarded as extremely vulnerable and that the first country of asylum, Bulgaria, is not adapted to their needs.

3.2 The authors further allege that Bulgaria does not have any integration programme for asylum seekers or refugees. The last national integration programme ended in 2013, and there is currently no effective integration programme for persons who are granted refugee status or subsidiary protection in Bulgaria.<sup>8</sup> Although according to national law these persons have access to the labour market, health-care system, social services and assistance

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<sup>5</sup> Statements of 18 December 2014 and 18 January 2015 by Solvita, an organization that works with traumatized children, youth and adults in Denmark. However, in the latter statement, Solvita concluded, inter alia, that "the parents are not psychologically elucidated of a [post-traumatic stress disorder] diagnosis, but both have symptoms of it".

<sup>6</sup> The Board also referred to section 7 (3) of the Aliens Act.

<sup>7</sup> Office of the United Nations High Commissioner for Refugees (UNHCR), *Refugee Integration and the Use of Indicators: Evidence from Central Europe*, December 2013, available from [www.refworld.org/docid/532164584.html](http://www.refworld.org/docid/532164584.html).

<sup>8</sup> Tselina Hristova and others, *Trapped in Europe's Quagmire: The Situation of Asylum Seekers and Refugees in Bulgaria* (Munich, bordermonitoring.eu e.V., 2014), available from <http://bordermonitoring.eu/wp-content/uploads/reports/bm.eu-2014-bulgaria.en.pdf>.

in finding housing, in practice it is almost impossible for them to find a job or a place to live.<sup>9</sup> Access to health care is very difficult, as they need to provide an address which, for most asylum seekers and persons in need of international protection, is almost impossible to get.<sup>10</sup> Conditions for children in particular have been described as particularly problematic by UNHCR, which stressed “the urgent need for asylum-seeking children and children found to be in need of international protection to be provided with access to education without further delay within the Bulgarian school curriculum”.<sup>11</sup>

3.3 The authors further indicate that integration in Bulgarian society is almost impossible, as once asylum seekers obtain refugee status or subsidiary protection, they stop receiving the monthly 65 leva (\$36) allocated to them during the asylum procedure. As a result, they face extreme poverty and are forced to live in unfinished and abandoned buildings located near the asylum centres.<sup>12</sup> They also refer to a UNHCR report according to which there is a protection gap for these persons once they are granted refugee status or subsidiary protection. In particular, they have to pay a monthly instalment of approximately 17 leva (approximately \$9), as do nationals, in order to access medical services, although they usually have no income. In addition, medicines and psychological care are not covered by the health-care system.<sup>13</sup>

3.4 The authors point out that once a person is granted refugee status or subsidiary protection, he or she has to move out of the reception centre in a matter of days. Further, even if refugees are entitled to receive a home allowance, the State agency for refugees has stopped paying it because it has run out of funds, forcing many families to live on the streets.<sup>14</sup> The authors also refer to a report by the Danish Refugee Council according to which the short-term solutions for asylum-seeking families in Bulgaria are not sustainable.<sup>15</sup>

3.5 The authors further refer to background documentation according to which Bulgaria faces serious problems of xenophobic violence and harassment, which remain unaddressed by the authorities. To this end, they cite a report according to which “institutional racism” exists in Bulgaria in the form of racist statements made by high-level politicians, which fuel violent physical attacks on asylum seekers and refugees. As a result, such attacks have recently increased.<sup>16</sup> The authors also refer to the jurisprudence of the European Court of Human Rights, in particular the case of *Abdu v. Bulgaria*, where the Court established that the Bulgarian authorities had failed to properly investigate an alleged racist attack on a Sudanese national.<sup>17</sup>

3.6 The authors refer to general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, in which the Committee held that it is the duty of the State party to afford everyone protection against the acts prohibited by article 7 of the Covenant, and they must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by

<sup>9</sup> UNHCR, *Where is my home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria* (Sofia, 2013), available from [www.refworld.org/docid/51b57c864.html](http://www.refworld.org/docid/51b57c864.html); and Iliana Savova, *National Country Report: Bulgaria* (Asylum Information Database, 2014), available from [www.asylumineurope.org/sites/default/files/report-download/aidabulgariareport\\_secondupdate\\_final.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aidabulgariareport_secondupdate_final.pdf).

<sup>10</sup> UNHCR, *Where is my home?*, pp. 11-13.

<sup>11</sup> *Bulgaria as a Country of Asylum: UNHCR Observations on the Current Situation of Asylum in Bulgaria* (2014), p. 13, available from [www.refworld.org/docid/534cd85b4.html](http://www.refworld.org/docid/534cd85b4.html).

<sup>12</sup> Human Rights Watch, *Containment Plan: Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants* (2014), p. 5, available from [www.hrw.org/report/2014/04/28/containment-plan/bulgarias-pushbacks-and-detention-syrian-and-other-asylum-seekers](http://www.hrw.org/report/2014/04/28/containment-plan/bulgarias-pushbacks-and-detention-syrian-and-other-asylum-seekers).

<sup>13</sup> *UNHCR Observations on the Current Asylum System in Bulgaria*, p. 12.

<sup>14</sup> Jodi Hilton, “Syrians face bleak time in Bulgaria’s broken asylum system”, IRIN, 22 October 2013, available from [www.irinnews.org/report/98983/syrians-face-bleak-time-bulgaria%E2%80%99s-broken-asylum-system](http://www.irinnews.org/report/98983/syrians-face-bleak-time-bulgaria%E2%80%99s-broken-asylum-system).

<sup>15</sup> *Notat om forhold for asylansøgere og flygtninge i Bulgarien*, November 2014.

<sup>16</sup> Hristova, *Trapped in Europe's Quagmire*, p. 32.

<sup>17</sup> See application No. 26827/08, judgment of 11 March 2014, paras. 40–53.

way of extradition, expulsion or refoulement. They further refer to conclusion No. 58 (XL) adopted by the Executive Committee of the Programme of the Office of the United Nations High Commissioner for Refugees, in which it is stated that the principle of first country of asylum should only be applied if the applicant is permitted to remain there upon return and is treated in accordance with recognized basic human standards until a durable solution is found.<sup>18</sup>

3.7 The authors further refer to the jurisprudence of the European Court of Human Rights which imposes an obligation upon the State planning to deport to investigate for each case the possibility of a real risk of torture or inhuman or degrading treatment upon the return of the deported person, even when it is assumed that human rights are usually respected in the receiving country. They refer to the judgment in *M.S.S. v. Belgium and Greece*, where the Grand Chamber considered that it was the responsibility of the Belgian authorities not merely to assume that the applicant would be treated in conformity with the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) in the first country of asylum — Greece — but, on the contrary, they should have first verified how the Greek authorities applied their legislation on asylum in practice. Had they done this, they would have seen that the risks faced by the applicant were real and individual enough to fall within the scope of article 3 of the European Convention.<sup>19</sup> The authors also cite the ruling in *Tarakhel v. Switzerland*, in which the Grand Chamber considered that children have “specific needs” and “extreme vulnerability” and that reception facilities for children “must be adapted to their age, to ensure that those conditions do not ‘create ... for them a situation of stress and anxiety, with particular traumatic consequences’”.<sup>20</sup>

3.8 The authors conclude that in the current circumstances of having fled from civil war in the Syrian Arab Republic and the deplorable living conditions of people who are granted refugee status and subsidiary protection in Bulgaria, there is a real risk that they and their children will be subjected to inhuman and degrading treatment contrary to the best interests of the child should they be returned to Bulgaria. As an extremely vulnerable group, they are at serious and real risk of facing homelessness, destitution as well as limited access to medical care and schooling. Furthermore, the background information indicates that they could face an additional risk of being exposed to unaddressed xenophobic violence. Therefore, they consider that Bulgaria is unsuitable as the family’s first country of asylum.

3.9 The authors claim that they have exhausted all domestic remedies because the decisions of the Refugee Appeals Board cannot be appealed before the Danish courts.

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

4.1 On 9 September 2015, the State party submitted its observations on admissibility and the merits of the communication. It submits that the communication is not substantiated, as the authors have not demonstrated any possible breach of the Covenant if deported to Bulgaria.

4.2 The State party describes the structure, composition and functioning of the Refugee Appeals Board,<sup>21</sup> as well as the legislation applying to asylum proceedings.<sup>22</sup> Regarding the admissibility of the communication, the State party indicates that the authors have failed to establish a prima facie case for the purpose of admissibility under article 7 of the Covenant, in the absence of substantial grounds for believing that they are in danger of being

<sup>18</sup> “Problem of refugees and asylum seekers who move in an irregular manner from a country in which they had already found protection”, 13 October 1989, available from [www.unhcr.org/excom/exconcl/3ae68c4380/problem-refugees-asylum-seekers-move-irregular-manner-country-already-found.html](http://www.unhcr.org/excom/exconcl/3ae68c4380/problem-refugees-asylum-seekers-move-irregular-manner-country-already-found.html).

<sup>19</sup> See application No. 30696/09, judgment of 21 January 2011, para. 359.

<sup>20</sup> See application No. 29217/12, judgment of 4 November 2014, para. 119, citing *Popov v. France*, application Nos. 39472/07 and 39474/07, judgment of 19 January 2012, para. 102.

<sup>21</sup> See communication No. 2379/2014, *Obah Hussein Ahmed v. Denmark*, Views adopted on 8 July 2016, paras. 4.1–4.3.

<sup>22</sup> The State party refers to sections 7 (1)–(3) and 31 (1) and (2) of the Aliens Act.

subjected to inhuman or degrading treatment if deported to Bulgaria. It therefore considers that the communication is manifestly unfounded and should be declared inadmissible.

4.3 Regarding the merits of the communication, the State party submits that the authors have failed to establish that their return to Bulgaria would constitute a violation of article 7 of the Covenant. It refers to the Committee's jurisprudence according to which States parties are under an obligation not to extradite, deport, expel or otherwise remove a person from their territory where the necessary and foreseeable consequence of the deportation would be a real risk of irreparable harm, such as that contemplated by article 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. The Committee has also indicated that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>23</sup> The State party indicates that its obligations under article 7 of the Covenant are reflected in section 7 (2) of the Aliens Act, according to which a residence permit will be issued to an alien if he or she risks the death penalty or being subjected to torture or ill-treatment if returned to his or her country of origin.

4.4 The State party indicates that the authors have not provided any new information to the Committee that has not already been reviewed by the Refugee Appeals Board. The State party recalls that the Board considered that the authors fell within section 7 (1) of the Aliens Act but, as they had been granted refugee status there, Bulgaria would serve as their first country of asylum. The State party further indicates that the Board requires as an absolute minimum that the asylum seeker or refugee be protected against refoulement. It also must be possible for him/her to enter lawfully and to take up lawful residence in the first country of asylum, and his/her personal integrity and safety must be protected. That concept of protection also includes a certain social and economic element, since asylum seekers must be treated in accordance with basic human standards. However, it cannot be required that the relevant asylum seekers will have exactly the same social living standards as the country's own nationals. The core of the protection concept is that the persons must enjoy personal safety, both when they enter and when they stay in the first country of asylum.

4.5 Furthermore, the State party recalls that the Board, based on the authors' long statements about their stay and living conditions in Bulgaria, on the available background material and on the applicable international case law, considered that the authors did not risk refoulement in Bulgaria and that their personal safety would be protected to the extent necessary there, and that the financial and social circumstances would be adequate. The Board took into account a report published by UNHCR in December 2013,<sup>24</sup> and considered that the socioeconomic conditions in Bulgaria were sufficient to enable the authors to obtain the necessary help and support and that they would enjoy the same rights as Bulgarian nationals. The Board further indicated that even though the socioeconomic conditions in Bulgaria were difficult, they were not of such a nature that Bulgaria could not serve as first country of asylum.

4.6 Regarding the authors' claim that no integration programme is functioning in Bulgaria, the State party indicates that on 25 June 2014, the Bulgarian authorities published a new integration programme, scheduled to be implemented as of 2015, which would cover a larger number of persons, including language training for a greater number of beneficiaries than the previous programme.<sup>25</sup> The State party highlights that Bulgarian authorities have identified eight areas of priority for the 2014 National Action Plan for Integration of Refugees, including access to training, employment, health care, housing and assistance to persons with special needs and unaccompanied minors.<sup>26</sup> The State party adds

<sup>23</sup> See communication No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

<sup>24</sup> *Refugee Integration and the Use of Indicators*.

<sup>25</sup> Hristova, *Trapped in Europe's Quagmire*, pp. 24 and 25.

<sup>26</sup> Zvezda Vankova, *Monitoring Report on the Integration of Beneficiaries of International Protection in the Republic of Bulgaria in 2014* (Bulgarian Council on Refugees and Migrants, 2014), available from [www.bcrm-bg.org/docs/monitoring\\_integration%20refugees\\_2014-EN.docx](http://www.bcrm-bg.org/docs/monitoring_integration%20refugees_2014-EN.docx).

that the circumstance that the authors may not have access to an effective integration programme in Bulgaria cannot lead to the conclusion that Bulgaria cannot be their first country of asylum.

4.7 With respect to the authors' reference to a Human Rights Watch report, the State party indicates that even if the report indicates that Bulgarian authorities have discontinued the payment of a monthly allowance once asylum seekers are granted residence, it also indicates that conditions in the reception centres have improved and that many residents are allowed to remain in such centres for longer periods of time after they are granted refugee or humanitarian status if they lack the means to support themselves.<sup>27</sup> In addition, the State party refers to available background material according to which the quality of the accommodation provided to asylum seekers and protection status holders after leaving the asylum centres depends on their employment and income, but also on their family status. It submits that, in general, families with young children benefit from a more positive attitude on the part of landlords.<sup>28</sup> The State party points out that no cases have been recorded of families being forced to leave asylum centres without having been provided with accommodation or funds to rent lodgings.<sup>29</sup>

4.8 As to the authors' allegations that they would not have access to health care in Bulgaria, the State party indicates that refugees have access to health-care services under the same conditions as Bulgarian nationals and that the medical treatment is free if they are registered with a general practitioner.<sup>30</sup> The State party therefore considers that it is a fact based on available background information that the authors will have access to the necessary health-care services and treatment in Bulgaria.

4.9 In relation to the authors' claim that their children would not have access to education if returned to Bulgaria, the State party indicates that asylum seekers less than 18 years old have access to free education<sup>31</sup> in the same conditions as Bulgarian nationals, after successfully completing a language course.<sup>32</sup>

4.10 With respect to the authors' statement that they would risk racist attacks in Bulgaria, the State party submits that they can request protection from the national authorities, which have already taken measures against such incidents. The State party refers to a report by UNHCR indicating that in February 2014, following an attack on a mosque, the Bulgarian authorities arrested 120 people, thereby indicating that the authorities have addressed and condemned racist attacks and rhetoric.<sup>33</sup>

4.11 Regarding the authors' allegation that, if deported to Bulgaria, they will not have access to accommodation and will probably have to live on the streets with no access to a minimum living standard, the State party refers to the decision of the European Court of Human Rights in the case *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*.<sup>34</sup> In that ruling, the Court stated that the assessment of a possible violation of article 3 of the European Convention on Human Rights must be rigorous and should analyse the conditions in the receiving country against the standard established by that provision of the Convention. The Court also reiterated that the mere return to a country where one's economic position will be worse than in the expelling State party is not sufficient to meet the threshold of ill-treatment proscribed by article 3. It stated that article 3 cannot be interpreted as obliging the States parties to provide everyone within their jurisdiction with a home, and that it does not entail any general obligation to give refugees financial assistance

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<sup>27</sup> *Containment Plan: Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*.

<sup>28</sup> UNHCR, *Where is my home?*, p. 6.

<sup>29</sup> *Ibid.*

<sup>30</sup> *UNHCR Observations on the Current Situation of Asylum in Bulgaria* p. 12; Hristova, *Trapped in Europe's Quagmire*, p. 16; and Vankova, *Monitoring Report*, p. 51.

<sup>31</sup> Report of the Danish Refugee Council.

<sup>32</sup> *UNHCR Observations on the Current Situation of Asylum in Bulgaria*, p. 12.

<sup>33</sup> *Ibid.*, p. 14.

<sup>34</sup> Application No. 27725/10, judgment of 2 April 2013.

to enable them to maintain a certain standard of living.<sup>35</sup> Moreover, the Court indicated that in the absence of exceptionally compelling humanitarian grounds against removal, the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed from the contracting State is not sufficient in itself to give rise to a breach of article 3.<sup>36</sup> Furthermore, the State party considers that it cannot be inferred from the judgment of the Court in *Tarakhel v. Switzerland* that individual guarantees must be obtained from the Bulgarian authorities in the case at hand, as it concerns the transfer of a family which has been granted subsidiary protection in Bulgaria, while in *Tarakhel* the authors' application for asylum in Italy was still pending when the case was reviewed by the Court.

4.12 The State party therefore submits that when rendering its decision, the Refugee Appeals Board took into account all relevant information and that the communication has not brought to light any new, specific information about the authors' situation. It recalls the Committee's established jurisprudence,<sup>37</sup> according to which important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice. In the present case, the authors are trying to use the Committee as an appellate body to have the factual circumstances advocated in support of their claim for asylum reassessed by the Committee. There is no basis to challenge the assessment made by the Board, according to which the authors have failed to establish that there are substantial grounds for believing that they would be in danger of being subjected to inhuman or degrading treatment or punishment if deported to Bulgaria. Against this background, the State party submits that the deportation of the authors to Bulgaria would not constitute a violation of article 7 of the Covenant.

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

5.1 In their comments of 25 November 2015, the authors maintained that their deportation to Bulgaria would constitute a breach of article 7 of the Covenant. They consider that their allegations are duly substantiated and assert that they would face inhuman and degrading treatment by being forced to live on the streets with no access to housing, food or sanitary facilities and no prospect of finding durable humanitarian solutions.

5.2 The authors consider that Bulgaria cannot serve as their first country of asylum. They argue that certain conditions are necessary to become a first country of asylum: the authors should be protected against refoulement; they should be able to travel and stay lawfully in the country; and their personal integrity should be protected. They submit that the concept of protection includes a social and a financial element and that their basic rights must be protected. The authors refer to chapters II–V of the Convention relating to the Status of Refugees and to UNHCR conclusion No. 58 (XL), in which it is emphasized that before returning asylum seekers or refugees to a country where they obtained protection, it must be ensured that they will be "treated in accordance with recognized basic human standards" in that country (para. (f) (ii)). They submit that, as a minimum, refugees must be offered housing and access to paid work or an allocation until they find a job. The authors further state that according to the most recent background information regarding refugees with temporary residence documents in Bulgaria, they would not enjoy the necessary protection there.

5.3 The authors indicate that the State party did not contest that they had stayed at a detention centre for approximately 23 days and that subsequently they were transferred to an asylum centre where they stayed for approximately three months, and where the conditions were appalling. They reiterate that when they left the reception centre, they were not given any instructions as to where to go or how to get accommodation or food; they

<sup>35</sup> Ibid., para. 70.

<sup>36</sup> Ibid., para. 71.

<sup>37</sup> See communications No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.3; No. 2186/2012, *Mr. X and Ms. X v. Denmark*, Views adopted on 22 October 2014, para. 7.5; and No. 2329/2014, *Z. v. Denmark*, Views adopted on 15 July 2015, para. 7.4.

managed to find a temporary room with a small kitchen which they paid for with money received from their family, given that they did not receive any financial support from the Bulgarian authorities. They were in contact with other refugees who told them that it was impossible to find a job. Both authors have health problems, but they did not receive any medical assistance in Bulgaria.

5.4 The authors reiterate that refugees in Bulgaria do not have access to housing, work or social benefits, including health care and education. They cite a report by the Commissioner for Human Rights of the Council of Europe, according to which the system to support the integration of refugees and other beneficiaries of international protection still suffers from serious and worrisome deficiencies, mainly connected with the insufficient funding of the system. Consequently, refugees and other beneficiaries of international protection face serious integration challenges, which threaten their enjoyment of social and economic rights. They face a serious risk of becoming homeless and problems in accessing health-care services; they suffer high levels of unemployment; and they have no real access to education. They are also vulnerable to hate crimes. The report further indicates that, although persons granted refugee status are apparently given the possibility to stay in the reception centres when they have no means of sustaining themselves, they can only stay for six months. There are allegations of corruption by the staff of the reception centres, who are said to extort payment from the families for the right to stay.<sup>38</sup> The authors consider that these problems will persist for a long time. They also quote a report by Amnesty International according to which concerns persist over the reception conditions of asylum seekers, although the conditions in reception centres have partially improved, in particular with regard to food, shelter and access to health care and sanitary goods.<sup>39</sup> It is further stated in the report that the prevention and investigation of hate crimes have been inadequate.<sup>40</sup>

5.5 The authors further submit that the living conditions in Bulgaria for beneficiaries of international protection are worse for returned beneficiaries because they seem to be excluded from the reception facilities due to their initial stay and to the fact that they left the facilities. The authors therefore submit that they will not benefit from proper housing and adequate medical treatment. They and their children will be exposed to substandard living conditions, lack of social assistance from the authorities and no prospect of finding a durable humanitarian solution. They will end up living in deprived and marginalized conditions due to the “zero refugee integration policy” in Bulgaria.

5.6 With regard to the State party’s reference to the ruling of the European Court of Human Rights in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, the authors submit that the issue at stake is not that refugees in Bulgaria have significantly reduced material and social living conditions, but that the current living conditions there do not meet basic humanitarian standards, as required by UNHCR Executive Committee conclusion No. 58 (XL). They also indicate that, in view of their experience in Bulgaria, there is no basis for assuming that the Bulgarian authorities will prepare for their return in accordance with basic humanitarian standards. They reiterate that the decision of the European Court in *Tarakhel v. Switzerland* is applicable to their case, as the living conditions of beneficiaries of international protection in Bulgaria can be regarded as similar to the situation of asylum seekers in Italy, and that the premise outlined in the *Samsam Mohammed Hussein* case is no longer sufficient: individual guarantees, especially protecting returning children from destitution and harsh accommodation conditions, are now required by the European Court. The authors argue that the Court’s reasoning in *Tarakhel* regarding article 3 of the European Convention on Human Rights can be regarded as corresponding to article 7 of the Covenant.

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<sup>38</sup> Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Bulgaria from 9 to 11 February 2015, pp. 28-29. Available from <https://rm.coe.int/16806db7e2>.

<sup>39</sup> Amnesty International, *Report 2014/15: The State of the World’s Human Rights* (London, 2015), p. 87. Available from [www.amnesty.org/en/documents/pol10/0001/2015/en/](http://www.amnesty.org/en/documents/pol10/0001/2015/en/).

<sup>40</sup> *Ibid.*, p. 88.

5.7 The authors also refer to the Committee's Views in *Jasin et al. v. Denmark*,<sup>41</sup> in which it emphasized the need to give sufficient weight to the real and personal risk a person might face if removed. The authors submit that this requires an individualized assessment of the risk faced rather than reliance on general reports and on the assumption that having been granted subsidiary protection in the past, they would in principle be entitled to work and receive social benefits.

5.8 The authors finally submit that as newly recognized refugees, they need further support to be established in a country of asylum, as they do not have cultural or social networks. They submit that special attention must be given to the fact that they have three minor children; that they suffer from severe medical conditions and are dependent on medication; and that they did not receive any help from the Bulgarian authorities during their initial stay in Bulgaria, where they have no possibility to exercise the most basic economic and social rights. They submit that consequently, they may have no choice but to return to the Syrian Arab Republic, rendering illusory their right to non-refoulement under international refugee law. They also claim that regardless of Bulgarian legislation on the formal access to social benefits, health care and education, relevant background information indicates that refugees in Bulgaria risk homelessness and destitution. They further submit that the Refugee Appeals Board has failed to give sufficient weight to the real personal risk they would face if removed there; that it did not take into account that they did not receive any assistance from the Bulgarian authorities; and that the only reason they did not live on the streets was that they had received money from their family. In addition, the Board did not contact the Bulgarian authorities to ensure that they and their children would be received under circumstances that would guarantee the protection of their rights.

#### **Additional submission from the State party**

6.1 On 27 April 2016, the State party provided further observations to the Committee, generally referring to its observations of 9 September 2015. It reiterates that the authors failed to establish a prima facie case for the purposes of admissibility and that the communication should be declared inadmissible as manifestly unfounded. It further reiterates that should the Committee consider the communication admissible, it should be deemed as lacking substantiation, as the authors have failed to establish a violation of their rights under article 7 of the Covenant.

6.2 The State party considers that the Committee's jurisprudence in *Jasin et al. v. Denmark* is not applicable to the present case because the circumstances are different. While the *Jasin* case concerned the deportation of a single mother with minor children to Italy whose residence permit for Italy had expired, the present case concerns the deportation of a married couple with minor children to Bulgaria who were in possession of valid residence permits when they applied for asylum.

6.3 The State party also indicates that the Refugee Appeals Board took into account all the information provided by the authors, which was based on their own experiences. Moreover, the background material consulted by the Board is obtained from a wide range of sources, which is compared with the statements made by the relevant asylum seekers, including as to their past experience. The State party observes that in the present case, the authors have had the opportunity to make submissions in writing and orally before the domestic authorities and that the Board has thoroughly examined their case on the basis of those submissions.

6.4 The State party further notes that there is no indication that the authors made any attempt to request help from the Bulgarian authorities; on the contrary, they managed to find private accommodation in Sofia and also managed to support themselves before leaving Bulgaria. Referring to the fact that the authors did not manage to find work during the period of about two months spent in Bulgaria after having been granted residence, the State party considers that this is also not a circumstance that would lead to a different assessment. According to the information provided, the authors did not request assistance from the authorities in this respect either. In addition, it is not reasonable to require that

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<sup>41</sup> Communication No. 2360/2014, Views adopted on 22 July 2015.

everybody be given a job within such a short period of time. The State party further notes that the authors have referred to the problems encountered by other refugees in finding work, but that they did not look for a job themselves. As regards the authors' allegations that M.A.S. was threatened by private individuals who told him that he should leave the country, the State party notes that they did not contact the Bulgarian authorities to seek protection.

6.5 With respect to the authors' reference to the *Tarakhel* case, the State party considers that it cannot be inferred from that case that individual guarantees must be obtained from the Bulgarian authorities before effecting a transfer. *Tarakhel v. Switzerland* concerned a family with the status of asylum seekers in Italy and the present case is not comparable, as the authors have already been granted subsidiary protection in Bulgaria. The State party further considers that the *Tarakhel* case, which concerned specifically the reception and accommodation conditions for families with young children in Italy, cannot serve as a requirement for other States to provide individual guarantees to families when they have already been granted subsidiary protection and when the available background material does not allow assuming that aliens risk ill-treatment contrary to article 7 of the Covenant due to the general conditions in the country.

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

#### *Consideration of admissibility*

7.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required by 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 the authors' claim that they have exhausted all effective domestic remedies available to them. In the absence of any objection by the State party in that connection, the Committee considers that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

7.4 The Committee notes the State party's challenge to the admissibility of the communication on the grounds that the authors' claim under article 7 of the Covenant is unsubstantiated. However, the Committee considers that, for the purpose of admissibility, the authors have adequately explained the reasons for which they fear that their forcible return to Bulgaria would result in a risk of treatment in violation of article 7 of the Covenant. As no other obstacles to admissibility exist, the Committee declares the communication admissible and proceeds with its consideration of the merits.

#### *Consideration of the merits*

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

8.2 The Committee notes the authors' claim that deporting them and their three children to Bulgaria, based on the Dublin Regulation principle of first country of asylum, would expose them to a risk of irreparable harm, in violation of article 7 of the Covenant. The authors base their arguments, inter alia, on the treatment they received when they arrived in Bulgaria and after they were granted residence permits, and on the general conditions of reception for asylum seekers and refugees in Bulgaria. The Committee notes the authors' argument that they would face homelessness, destitution, lack of access to health care and lack of personal safety, as demonstrated by their experience after they were granted subsidiary protection in October 2013. The Committee further notes the authors' submission that since they had already benefited from the reception system when they first arrived in Bulgaria, and as they were granted a form of protection, they would have no access to accommodation in the reception facilities.

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 by article 7 of the Covenant which prohibits cruel, inhuman or degrading treatment (para. 12). The Committee has also indicated that the risk must be personal<sup>42</sup> and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.<sup>43</sup> The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists,<sup>44</sup> unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>45</sup>

8.4 The Committee notes the finding of the Refugee Appeals Board that Bulgaria should be considered the first country of asylum of the authors, and the position of the State party that the first country of asylum is obliged to provide asylum seekers with basic human rights, although it is not required to provide for such persons the same social and living standards as nationals of the country. The Committee further notes the reference made by the State party to a decision of the European Court of Human Rights according to which the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed from the contracting State — Denmark — is not sufficient in itself to give rise to breach of article 3 of the European Convention on Human Rights.<sup>46</sup>

8.5 The Committee also notes the authors' submission that they were detained for approximately 23 days upon their arrival in Bulgaria, during which time they suffered abuse and degrading treatment, and that they were transferred to a reception centre where they lived for around three months in appalling conditions. The Committee also notes the authors' allegations that their son Y was abused by the police in the reception centre and that they did not receive proper food for their youngest child. The Committee further notes that the authors were then transferred to another reception centre in Sofia, where they stayed for approximately three months until they were granted residence permits, whereupon they were asked to leave without being provided with alternative accommodation.

8.6 However, the Committee notes that since the authors now have a residence permit, they are not likely to be detained upon arrival, as occurred when they entered Bulgaria in July 2013 without a permit. Nor would they be required to reside in a State-run reception facility. As a result, the Committee does not consider it probable that the authors would face once again the same harsh treatment from the detaining authorities to which they were exposed when they first entered Bulgaria. The conditions in which the authors lived in Sofia after they received their residence permit on 14 October 2013 are more relevant to present risk analysis, as the authors are likely to find themselves upon return to Bulgaria in a similar legal and factual situation.

8.7 The Committee notes in this regard the author's claims that they managed to find accommodation in Sofia, paying with money received from their family. The Committee also notes the authors' allegations that they did not feel safe in Bulgaria, that M.A.S. was

<sup>42</sup> See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; and No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6. See also Committee against Torture, communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008; *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

<sup>43</sup> See communication No. 2007/2010, *X v. Denmark*; *A.R.J. v. Australia*; and communication No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>44</sup> See communications No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 11.4; and No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

<sup>45</sup> *Ibid.* See also, inter alia, communication No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

<sup>46</sup> See *M.S.S. v. Belgium and Greece*, para. 249.

harassed and threatened by unknown private persons and that the authors and their children suffer from anxiety due to their experience there. The Committee further notes the authors' claim that they left Bulgaria and went to Denmark out of fear for their safety and due to the harsh living conditions in Bulgaria.

8.8 The Committee further notes the authors' allegation that as they were granted refugee status, they would, upon their return, be excluded from the reception facilities which they already benefited from when they first arrived in Bulgaria and that they would not have access to social housing or temporary shelters. The Committee notes the authors' arguments that: (a) they would face a precarious socioeconomic situation, given the lack of access to financial help or social assistance and to integration programmes for refugees; (b) that they would not be able to access employment; (c) that they would not be able to find accommodation because of their lack of resources and incomes; and (d) that they would therefore face homelessness and be forced to live with their children on the streets.

8.9 The Committee also takes note of the various reports submitted by the authors highlighting the lack of a functional integration programme for refugees in Bulgaria and the serious practical difficulties they face in gaining access to housing, work and social benefits, including health care and education. The Committee further notes the background material, according to which sufficient places in reception facilities for asylum seekers and returnees under the Dublin Regulation are lacking and are often in poor sanitary condition. It observes that returnees like the authors, who have already been granted a form of protection and benefited from reception facilities in Bulgaria, are not entitled to accommodation in the asylum camps beyond the six-month period after protection status has been granted, and that although beneficiaries of protection are entitled to work and enjoy social rights in Bulgaria, its social system is in general insufficient to meet the needs of all persons requiring assistance, in particular in its current socioeconomic situation.<sup>47</sup>

8.10 However, the Committee notes the State party's statement that, by law, persons granted refugee and protection status in Bulgaria have the same rights of access to several important social services on the same terms as Bulgarian nationals, and that although difficulties are encountered in the implementation of such rights, Bulgaria has been taking steps aimed at improving its refugee integration policies. It also notes the State party's argument according to which the authors did not request assistance during their stay in Bulgaria with respect to accommodation and employment. Regarding the authors' allegations that they did not receive any medical assistance, the Committee notes the information submitted by the State party according to which refugees have access to health-care services on the same terms as Bulgarian nationals and that the medical treatment is free if they register with a general practitioner for a nominal sum. The Committee observes that the authors have not submitted any evidence or explanation of whether they have registered with a general practitioner, and that they have not claimed before the Danish immigration authorities that their health situation should bar their deportation.

8.11 Regarding the authors' allegations of xenophobic violence, the Committee takes note of the State party's submission, based on the determination of the Refugee Appeals Board that after leaving the reception centre the authors did not experience any aggressive treatment from the Bulgarian authorities and did not seek protection from the authorities against the private act of racism that M.A.S. experienced. The Committee further notes that the authors did not lodge a complaint with the Bulgarian authorities in respect of their allegations of ill-treatment during arrest and while in prison. The Committee therefore considers that although the authors may not have placed trust in the Bulgarian authorities, they have not demonstrated that these authorities are not able and willing to provide appropriate protection in their case.

8.12 The Committee observes that, notwithstanding the fact that it is difficult in practice for refugees and beneficiaries of subsidiary protection to have access to the labour market or to housing, the authors have failed to substantiate a real and personal risk upon return to Bulgaria. In this connection, the authors have not established that they were homeless

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<sup>51</sup> See, for example, *UNHCR Observations on the Current Situation of Asylum in Bulgaria*, p. 12; Hristova, *Trapped in Europe's Quagmire*; and the report of the Danish Refugee Council.

before their departure from Bulgaria; they did not live on the streets; and their situation with three children must be distinguished from that of the author in the decision in *Jasin et al. v. Denmark*, which concerned a single mother of three minor children, suffering from a health condition and holding an expired residence permit.<sup>48</sup> The fact that they may possibly be confronted with serious difficulties upon return, in the light of the past traumas suffered by all members of the family, in particular the children, by itself does not necessarily mean that they would be in a special situation of vulnerability — and in a situation significantly different to many other refugee families — such as to conclude that their return to Bulgaria would constitute a violation of the State party's obligations under article 7 of the Covenant.<sup>49</sup>

8.13 The Committee further considers that although the authors disagree with the decision of the State party's authorities to return them to Bulgaria as a first country of asylum, they have failed to explain why this decision is manifestly unreasonable or arbitrary in nature. Nor have they pointed out any procedural irregularities in the procedures before the Danish Immigration Service or the Refugee Appeals Board. Accordingly, the Committee cannot conclude that the removal of the authors to Bulgaria by the State party would constitute a violation of article 7 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the authors' removal to Bulgaria would not violate their rights under article 7 of the Covenant. The Committee is confident, however, that the State party will duly inform the Bulgarian authorities of the authors' removal, in order for the authors and their children to be taken charge of in a manner adapted to their needs, especially taking into account the age of the children.

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<sup>48</sup> See communication No. 2640/2015, *R.I.H. and S.M.D. v. Denmark*, Views adopted on 13 July 2017, para. 8.6.

<sup>49</sup> *Ibid.* See also communication No. 2569/2015, *B.M.I. and N.A.K. v. Denmark*, Views adopted on 28 October 2016, para. 8.6 (deportation to Bulgaria).

## Annex

### Joint Opinion of Committee members Mauro Politi and José Santos Pais (dissenting)

1. We regret not being able to share the decision reached by the majority of the Committee that the removal of the authors and their three children to Bulgaria will not violate their rights under article 7 of the Covenant.

2. In the present case, both the authors and their children had a most traumatic experience when entering Bulgaria in 2013 (para. 2.2), where they were detained, subjected to hunger, harassment and degrading treatment, and were even forced to resort to a hunger strike to be released. They were then moved to a refugee camp, where they could not move freely due to the overwhelming presence and fear of the police, who allegedly beat one of the authors' children repeatedly (para. 2.3). One of the authors even witnessed the murder of an Iraqi person and was harassed by Bulgarian nationals because he was a foreigner (para. 2.5).

3. The authors, as a result, now experience increased symptoms of post-traumatic stress disorder and both of them are receiving medical treatment for several ailments (high blood pressure, heart condition, problems with metabolism and a herniated disc). The authors' children, already deeply scarred and traumatized by the civil war in the Syrian Arab Republic, have also been seriously affected by their experience in Bulgaria. One of them has even undergone extensive psychological treatment to overcome the trauma he has consequently suffered (para. 2.7). The State party acknowledged all these allegations (para. 2.8).

4. And now, the authors and their children will have to move again, from Denmark to Bulgaria, the third change of country in a very short period of time.

5. It is doubtful whether the authors, and particularly their children, besides facing difficult economic and social conditions upon their return to Bulgaria, will be guaranteed access in practice to the medical assistance they, and especially their children, so desperately need. Not to mention that, vulnerable as they already are, they will all certainly be exposed to homelessness, destitution and lack of personal safety. Moreover, the children will face difficult integration conditions, especially in regard to access to education, as rightly acknowledged by the Office of the United Nations High Commissioner for Refugees (para. 3.2).

6. On the other hand, it does not seem that the State party has given sufficient weight to the real and personal risk the authors and their children will face, once deported.<sup>1</sup> In particular, the evaluation of whether the removed individuals are likely to be exposed to conditions constituting cruel, inhuman or degrading treatment in violation of article 7 of the Covenant should have been based not only on the assessment of the general conditions in the receiving country, but also on the individual circumstances of the persons in question. These circumstances include vulnerability-increasing factors relating to such persons, as in the present case, which may transform a general situation that is tolerable for most removed individuals to intolerable for some other individuals.

7. The evaluation by the State party should also have taken into account elements from the past experience of the authors and their children in Bulgaria, which indeed underscore the special risks they are likely to be facing and will render their return to that country a particularly traumatic and, unfortunately, renewed experience for them.<sup>2</sup>

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<sup>1</sup> See, for example, communications No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, paras. 11.2 and 11.4; and No. 2409/2014, *Ali and Ali Mohamad v. Denmark*, Views adopted on 29 March 2016, para. 7.8.

<sup>2</sup> See communication No. 2681/2015, *Y.A.A. and F.H.M. v. Denmark*, Views adopted on 10 March 2017, para. 7.7.

8. Finally, the assessment by the State party failed to take duly into account the protection of the best interests of the authors' children, which should have been of paramount importance in the present case.

9. Therefore, in our view, the removal of the authors and their children to Bulgaria constitutes a violation of article 7 of the Covenant by the State party.

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