



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3188/2018***

<i>Communication submitted by:</i>	M. N (represented by Counsel Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	22 May 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party, on 2 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	22 July 2021
<i>Subject matter:</i>	Deportation from Denmark to Iran
<i>Procedural issues:</i>	<i>admissibility, issues raised under article 18</i>
<i>Substantive issue:</i>	Risk to life, risk of torture, inhuman or degrading treatment or punishment; non-refoulement
<i>Article of the Covenant:</i>	6 and 7
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1.1 The author of the communication is M.N, an Iranian national of Persian ethnicity born on 23 February 1997 into a Shia Muslim family. He alleges that his rights under articles 6 and 7 of the International Covenant on Civil and Political Rights (hereinafter "the Covenant"), read in conjunction with article 18, would be violated by the State party if he were to be deported to Iran.

1.2 The case was registered on 24 May 2018 and, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications

* Adopted by the Committee at its 132nd session (28 June—23 July 2021).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Tania María Abdo Rocholl, Arif Bulkan, Wafaa Ashraf Moharram Bassim, Mahjoub El Haiba, Shuichi Furuya, Kobayyah Tchamdja Kpatcha, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Hélène Tigroudja, Imeru Tamerat Yigezu, and Gentian Zyberi

and interim measures, requested the State party to refrain from deporting the author to Iran while his case was pending before the Committee.

1.3 On 28 May 2018, the Refugee Appeals Board confirmed suspension of the execution of the author's deportation order until further notice.

The facts as presented by the author

2.1 The author converted to Christianity from Islam in 2013 whilst still in Iran. He had become interested in Christianity through his mother who had taught him about the Bible and he started to participate in weekly church meetings she organized at their home. The author began recounting stories he had learned from the Bible to his (Christian) uncle's clients.

2.2 During one of these home church services, the author met a woman, S., and they started a relationship. He had not known at that time that she was married, although she indicated that she had been previously. They met regularly at her home and had a physical relationship, although he did not see some parts of the house, which he now understands to have been because she was, in fact, still married.

2.3 One day, in 2015, the author returned home to learn that his mother had been arrested, having been accused of contravening Sharia Law by converting to Christianity. His father, a Muslim, who had been unaware of the conversion and worship at their home, owing to working away most of the time, blamed the author for not having stopped this activity, beat the author unconscious. When he came to consciousness, the author fled and called S, who didn't answer her phone. He found out from a mutual friend that S. had also been arrested as her husband, a high ranking government official, had found photographs on the phone of S, which she had taken of them together.

2.4 The author began receiving calls from S' husband, accusing him of trying to convert S to Christianity and threatening the author and his family. The harassment continued even after the author changed his phone number, leading him to the conclusion that S' husband had connections with government intelligence services.

2.5 The author's mother was released after a week. Two days later, however, she was driven into by a car in the street and badly injured. She was taken to hospital and later discharged to the home of sympathetic relatives for ongoing care. S' husband continued calling the author, claiming responsibility for his mother's injuries and began demanding that the author meet with him, threatening further harm if he didn't comply.

2.6 Fearing for his younger brother's life, the author took him to stay with relatives and on 11 October 2015, at the age of 18, the author fled Iran without a passport or any other documentation, evading compulsory military service.¹ Following his departure, his mother received further threats at her home and three men attended the house with an arrest warrant.

2.7 On 16 December 2015, the author arrived in Denmark, applying for asylum on the same day. His claim was based on both his conversion to Christianity and his relationship with a married woman.² On 27 March 2017, the Immigration Service rejected his application, finding that the author's account of events in Iran lacked credibility, owing to inconsistent statements made at different times during the course of the asylum process, regarding the timing and certain details of events. On 27 March 2018 the Danish Refugee Appeals Board (RAB), rejected the author's appeal.³ The RAB held that, since the author had failed to substantively demonstrate that he converted to Christianity prior to his entry into Denmark, his conversion could not be accepted as genuine. The author again challenged this decision requesting permission to call a witness to provide oral testimony, which would support the authenticity of the conversion and therefore his credibility. The request was denied without providing reasoning.

¹ In Iran, minors are free to leave the country until 18 when their passport is confiscated and given to them only if they perform the 24 months military service.

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³ The author indicates that it is the final domestic decision.

2.8 Whilst in Denmark, the author consistently participated in church services and religious instruction. He encouraged other Iranian asylum seekers to attend church services. On 28 February 2016, he was baptized.⁴ The author had an angel, a cross and an excerpt from the bible, in Farsi, tattooed on his body. He also published Christian messages on his Facebook page, which were seen and reviewed, as noted in the interview transcript, during his substantive asylum interview. However, no further questions were put to him on any of these matters.

2.9 The author also took part in a demonstration against the Iranian regime, in Denmark, where pictures of him were taken, which he informed the asylum interviewer of. Again, this line of questioning was not pursued.

Complaint

3.1 The author claims that his deportation to Iran would violate his rights under articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR). Under article 6, he fears that his life will be at risk owing to the fact that apostasy and adultery both carry the death penalty under Sharia law. He fears he will be killed by S' husband or those commissioned by him. Under article 7, he fears that he will be subjected to torture, inhumane and degrading treatment or punishment as a detainee, as he will be immediately questioned upon his arrival in Iran for leaving illegally,⁵ as he left without any permission, visa or no identity documents, and will face charges for not appearing for military service.⁶ He claims that, once detained, he will necessarily be subjected to a routine body search during which time his tattoos will be obvious. This will immediately raise the issue of his conversion and he will face immediate questioning and persecution for apostasy. In this connection, the author refers to the case *Z v. Denmark*, in which it was argued that the fact that the author had no passport led the Iranian authorities to strip search him, leading to the discover his religious tattoos.⁷ He fears he will be arrested and charged for apostasy and, if he fails to recant, will be prosecuted. He further fears that, as a result of questioning, his identity in connection with his mother's detention and his relationship with S through her husband's government links, will be discovered placing him at risk of being charged with adultery and proselytizing in relation to S. Owing to his presence at a political protest against the Iranian regime in Denmark, which he knows are closely monitored by the Iranian security apparatus, he further fears persecution and prosecution as an opponent to the regime. The author also asserts that he would be forced to perform military service, which is against his beliefs and that he would in any case be forced to suppress or deny his faith, contrary to his rights under article 18 of the Covenant. The author alleges that he also fears being killed, extra judicially, by S' husband in accordance with repeated threats.

⁴ In the R.A.B. decision, the State party disputes the credibility of the author concerning the moment of the conversion.

⁵ 'According to Article 34 of the Penal Code, the penalty for leaving the country without a valid passport (or similar travel document) is between one and three years' imprisonment, or a fine of between 100,000 and 500,000 rials (AUD 4-20). A special court located in Tehran's Mehrabad Airport deals with [cases of people leaving the country without a valid passport or similar travel document] ... The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, their connection with any organizations or groups, and any other circumstances. This procedure also applies to people who are deported back to Iran and who are not in possession of a passport containing an exit visa. The Australian Department of Foreign Affairs and Trade (DFAT) understands that illegal departure is often prosecuted in conjunction with other unrelated offences:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/852768/cpin-iran-illegal-exit_-_ext.pdf accessed 27 January 2021.

⁶ The December 2013 General Official Report of the Netherlands Ministry of Foreign Affairs noted that: 'The evasion of military service is punishable under Article 40 of the Armed Forces Penal Law by imprisonment of six months to two years, or an extension of the service. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/852768/cpin-iran-illegal-exit_-_ext.pdf, accessed 21 January 2021.

⁷ *Z v. Denmark* (CCPR/C/114/D/2329/2014).

3.2 He claims that the State party failed its procedural obligations to carry out a thorough assessment of the risk he faces on return, having regard to either the individual elements explained above, or their cumulative effect on his risk profile. He claims the judicial process is therefore marred by procedural irregularities, which amount to a denial of justice.

State Party's observations on admissibility and merits

4.1 The State Party provided its observations on the admissibility and merits of the author's communication on 26 November 2018 along with a request to lift interim measures, which was not acceded to, and provided additional submissions on 11 March 2021.

4.2 The State Party asserts that the author's communication is inadmissible. It refers to the reasoning of the R.A.B. delivered on 27 March 2018, in which it held that it did not accept the author's account, owing to 'inconsistent and elaborative' statements made during the course of the asylum process. It states that the author, during his initial screening interview, gave September 2015 as the approximate period during which the events causing him to flee Iran took place. However, at his substantive interview, he stated that these events took place in March/April 2015. The State Party also refers to the RAB's finding of inconsistent statements as to the existence of an arrest warrant the first time authorities attended his residence,⁸ and the fact that it had only been mentioned later in the asylum process that the author's mother had needed to use a wheelchair after being hit by a car. The State party also refers to the finding that the author had told the immigration service that S. had been married but divorced six months earlier but later before the RAB had stated that she was married for six months and that he assumed she was divorced. It also refers to inconsistent comments regarding the timeline of his interactions with S' husband. At his substantive interview with the Immigration Service, he claimed that he had changed his sim card after he found out that S. was married but that the spouse had only called him after that. However, before the Board he stated that he had received a call from S' spouse first and then changed his sim card.. Additionally the State Party points to the RAB's observation that, in his initial interview with the Immigration Service the author stated that prior to his departure from Iran, S' spouse, accompanied by three men had come to his mother's home. At his second interview with the Immigration Service, he stated that his mother's house was first searched after he left Iran.⁹

4.3 Owing to these inconsistencies, the RAB assessed that the author was not a credible witness and therefore, had failed to render it probable that his statement affirming his Christianity prior to leaving Iran was reliable.. Although it was accepted that the author had been baptized whilst in Denmark, it was not accepted that the conversion took place in Iran and therefore the conversion itself was not found to be genuine.

4.4 Further, the State Party refers to the RAB's reasoning that the author had indicated that he planned to keep a low profile in terms of his faith if returned to Iran and, that had therefore relied primarily on his extra-marital relationship as grounds for his asylum claim, it did not accept that his baptism or religious belief was sufficient to trigger the State Party's protection obligations.¹⁰

4.5 The State Party refers to the RAB assessment that, as the facts leading to the author's departure from Iran were disregarded owing to the negative credibility finding, the author had not rendered it probable that there was a specific and individualized risk of harm within the definition of article 7 of the Alien's Act in the event of his return to Iran. It also held that neither the fact that he had left illegally or that he had evaded military service, taken individually or cumulatively, were sufficient to lead to a different conclusion. Therefore, the State Party echoes the reasoning given by the RAB for upholding the first instance decision stating that the author has presented no new facts leading it to question the decision of the RAB.

4.6 The State party asserts that the author has failed to establish a *prima facie* case of violation of articles 6 and/or 7 of the ICCPR and invites the Committee to find the communication inadmissible for being manifestly ill founded on the basis that it lacks merit.

4.7 The State Party refers to the Committee's general comment No. 31 on the nature of the general legal obligations under the Covenant as they relate to non-refoulement. It notes the importance of establishing that the risk of harm under articles 6 and 7 risk is, personal with the threshold for providing substantial grounds to establish a real risk of irreparable harm being high.¹¹

4.8 Further, the State Party refers to its domestic legislation, which reflects its obligations under the Covenant in relation to articles 6 and 7, in sections 7(1) and 7(2) of the Aliens Act,¹² and notes the Committee's previous findings that there had been no irregularity in State Party's decision making process.¹³ It refers to the Committee's established position that it is generally for the organs of state parties to review and evaluate facts and evidence in order to determine whether such risk exists, unless it is found that the assessment was clearly arbitrary or amounted to a denial of justice. It provides further support for this contention in the precedent of the European Court of human rights.¹⁴

4.9 The State Party asserts that the author has failed to establish that the assessment of the R.A.B. was arbitrary or amounted to a manifest error or denial of justice. It also submits that the author has failed to identify any irregularity in the decision-making process or any risk factor that the R.A.B. failed to take into account in reaching its decision. It further states that the author challenges only the assessment of the circumstances of his case and the factual conclusions reached. The State Party therefore submits that the author is attempting to use the Committee to have the facts and circumstances of his asylum claim reassessed in the hope of achieving a more favourable outcome.

4.10 The State Party notes that the author's case was considered before two instances and, in the latter case, the author was allowed to submit evidence orally and in writing and was provided with legal counsel. It states that the Board carried out a comprehensive and thorough examination of the author's statements along with all the other evidence in the case.

4.11 It explains that, while the decisions of the R.A.B. are final, judicial review of its determinations can be applied for where there exists grounds of error of law or procedure or the exercise of unlawful discretion.¹⁵

4.12 In reference to the R.A.B.'s assessment of the author's credibility, the State Party contends that this comprised an implicit overall assessment of the asylum-seeker's statements and demeanour during proceedings before the RAB, as well as all the other material in the case, including country information. In doing so, the State Party asserts that the RAB considers whether the statements are coherent, likely and consistent. If it is found that the claimant's explanation cannot be assumed, it will typically provide, in its reasoning some, but not necessarily all, examples of inconsistencies found.

¹¹ A.A.I. and A.H.A. v. Denmark and Jossefe Jacob Mekonen v. Denmark Communication No 2007/2010, para. 9.2.

¹² Pursuant to section 7(1) of the Aliens Act a residence permit will be issued to an alien on application if the alien falls within the definition of person in need of protection under the 1951 Refugee Convention. Under section 7 (2) a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in the case of his return to his country of origin.

¹³ A.S.M. and R.A.H. v. Denmark, Communication No. 2378/2014, paras 8.3 and 8.6; P.T. v. Denmark, Communication No. 2272/2013, Views adopted on 1 April 2015, para. 7.3, N v. Denmark, Communication No. 2426/2014, Z v. Denmark, Communication No. 2392/2014, para. 7.4, adopted on 15 July 2015, Mr. X and Ms. X v. Denmark, Communication No. 2186/2012, para 7.5, S v. Denmark and H.A. v. Denmark, Communication No. 2328/2014, adopted 9 July 2018, S v. Denmark and H.A. v. Denmark, Communication No. 2328/2014, adopted 9 July 2018.

¹⁴ MO v Switzerland, application 41282/16, para. 80, adopted on 20 June 2012

4.13 With regard to the author's sur place activities, including his baptism, his religious tattoos and comments on Facebook, the State party echoes the RAB's assessment that these are not capable of putting the author in danger of treatment contrary to the Covenant, based on its assessment that his conversion was not genuine. In support, the State Party quotes guidance from UNHCR on asylum procedures advising that: "Where individuals convert after their departure from the country of origin, this may have the effect of creating a sur place claim. In such situations, particular credibility concerns tend to arise and a rigorous, and in depth examination of the circumstances and genuineness of the conversion will be necessary."¹⁶

4.14 In this context, the State Party asserts that the R.A.B. made a careful assessment of the author's statements as well as all other circumstances in the case in accordance with procedures found to be adequate by the European Court of Human Rights in *M.E. v. Denmark*¹⁷.

4.15 The State Party reaffirms that in the case of the author his general credibility and the circumstances of his alleged conversion were included in the Board's assessment of the evidence.

4.16 In this connection, the State Party also draws the Committee's attention to the public debate in Denmark, in general and among asylum seekers, which has focussed on the significance of conversion, typically from Islam to Christianity and its positive effects on the outcome of asylum claims.

4.17 As to the author's claims that he will have to hide his religion in Iran, the State Party reiterates the RAB's finding that, as he has failed to substantiate that his conversion to Christianity was sincere, it cannot be assumed that he would face persecution in Iran and furthermore, that he does not carry an existing profile with Iranian authorities. The RAB found that the author's Christian tattoos alone are not enough to trigger the State Party's protection obligations, as the author failed to rendered probable that these tattoos would place him in opposition to Iranian authorities or that any sanctions resulting from discovery of his tattoos would be disproportionate. In any case, the State Party notes that, regardless of the sincerity of his conversion, the R.A.B. implicitly assessed whether, in the circumstances, the author's behaviour and activities could have adverse consequences, which would put him at risk and it found that they would not.

4.18 The State Party refers to country information¹⁸ which indicates that while the Iranian authorities are aware that Iranian nationals use conversion as grounds for asylum, such conversion, in itself, does not result in sanctions amounting to persecution. The State Party notes that the same report it is stated that no one in Iran has been executed for conversion and that there is some flexibility from the authorities on such matters.

4.19 Concerning the demonstration, the State Party posits that it does not see this as being capable of changing the assessment, as the author does not in any way appear to have been

¹⁶ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status at paras. 96 and 34 of the UNHCR Guidelines on International Protection, Para 34:
<https://cms.emergency.unhcr.org/documents/11982/49074/UNHCR%2C+Handbook+and+Guidelines+on+Procedures+and+Criteria+for+Determining+Refugee+Status+under+the+1951+Convention+and+the+1967+Protocol+Relating+to+the+Status+of+Refugees/30fe78f2-5414-47ec-9439-0f2663889e58>.

¹⁸ Danish Immigration Service, Iran: House Churches and Converts, February 2018, 4/2018, available at: <https://www.refworld.org/docid/5ab8f2de4.html>, "The Iranian authorities are aware that some returnees converted to Christianity to obtain asylum. It has agents abroad to monitor Iranian citizens. However it is unknown to what capacity the authorities monitor everyone. They do not monitor everyone all the time, what the authorities want is to create fear among people that they are being monitored. The authorities could interrogate a convert on return, if they had become aware of the conversion prior to departure from Iran or if significant information was available online for a significant period. Such interrogation would only come about if additional information were in the hands of authorities such as the individual being known to have attended a house church in Iran. A comment or posted on Facebook and then deleted without more for instance would not be of interest".

profiled by Iranian authorities¹⁹ and, therefore, it has not been rendered probable that his participation has come to the attention of authorities.

4.20 In connection with his illegal departure from Iran and his lack of passport, the State Party avers that this does not of itself present a risk of persecution referring to a decision of the UK's Upper Asylum Tribunal²⁰, which states that:“(a) An Iranian male whom it is sought to be returned to Iran, who does not possess a passport, will be returnable on a laissez passer, which he can obtain from the Iranian Embassy on proof of nationality and identity; and (b) An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of article 3 rights on return to Iran because of having left illegally or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and failed asylum claim) have been established. In particular, there is not a real risk of prosecution leading to imprisonment.”

4.21 Further reference is made by the State Party to background information published by the UK Home Office²¹ in which it is confirmed that asking for asylum abroad is not illegal in Iran and that persons who have left Iran illegally, if they are not on the list of persons banned from leaving Iran, will not face problems with authorities on their return, although they may face a fine and, if they left having previously committed a crime, it is only for the crime itself that they will be punished.²²

4.22 With regard to the author's assertions of conscientious objection to military service on the basis of his Christian beliefs, the State party refers to the Danish Ministry of Foreign Affairs' 2017, note which states that sanctions for not complying with mandatory national service are generally limited to not being able to obtain a driver's license and does not usually lead to imprisonment.²³ Further, simultaneous illegal departure is noted to have no bearing on the penalty. The State party also submits that since the conversion is not thought to be sincere, religious belief is not deemed to be a genuine basis for avoiding military service.

4.23 As regards the author's claim that the RAB failed to consider all the risk factors cumulatively, the State Party states that the R.A.B. is generally very attentive to the cumulative significance of circumstances in each case, in accordance with UNHCHR Guidelines, which underline the importance of considering factors that alone may not lead to a risk of persecution but, when taken together with other adverse elements, may lead to well-founded fear of such for the individual.

4.24 As to the refusal by the R.A.B. to allow the author to call a witness and his contention that there was insufficient reasoning given in support of the refusal in the RABs decision of 27 March 2018, the State party recalls that, in accordance with section 54(1) of the Alien's Act, it is for the R.A.B. to decide on the examination of asylum seekers, witnesses and on the provision of other evidence. Furthermore, it refers to the RABs jurisprudence that witnesses are generally only called if their evidence relates to the central asylum claim, rather than in support of their general credibility and even in cases where their testimony is directly

²⁰ SSH and HR (illegal exit: failed asylum seeker) Iran CG, [2016] UKUT 00308 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 29 June 2016, Para 33, available at: https://www.refworld.org/cases,GBR_UTIAC,577a6cc84.html

²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868800/Iran_-_Christians-Converts_-_CPIN_-_v6.0_-_Feb_2020_-_EXT_PDF.pdf, para 5, accessed 27 January 2020.

²³ "Note on Call for Military Service and Penalties for Absence of January", 2017, The December 2013 General Official Report of the Netherlands Ministry of Foreign Affairs noted that 'The evasion of military service is punishable under Article 40 of the Armed Forces Penal Law by imprisonment of six months to two years, or an extension of the service. 'Young men from the age of 18 who are called for military service but do not present themselves to the authorities are considered as draft evaders. There is no alternative military service in Iran and conscientious objection is not recognized. Draft evasion is liable for prosecution, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878219/Iran_-_Military_Service_-_CPIN_-_v2.0_-_April_2020.pdf.

supportive of the central claim, if the Board considers that the testimony would not be of relevance to the outcome, the request may still be refused. The State Party notes that the proposed witness had already provided written testimony prior to the hearing, which had been included in the Board's assessment of the author's credibility. The State Party concludes that, in accordance with general principles of the administration of law and justice,²⁴ regarding the presentation of evidence, a witness who is intended to substantiate the general sincerity and credibility of the author cannot be attributed any significance. It is therefore submitted that the refusal to hear the oral evidence of this witness was justified and in line with established law and practice, including Committee jurisprudence and that the reasoning appears implicitly from the decision of the R.A.B.,²⁵ It also stated that the statements provided in June 2019 by two individuals who were known to the author through his Christian activities and church attendance were not necessarily able to better assess the genuineness of his beliefs owing to the context in which they met him.

4.25 The State party characterizes the fears expressed by the author to be of a general nature and states that these are not based on specific facts that would put him at personal risk. It therefore supports the assertions reached by the R.A.B. after a thorough assessment.

4.26 It is additionally noted that the case-law supplied by the author in support of his claim before the Committee,²⁶ is irrelevant in the current context, as each case can be distinguished on the facts and circumstances in each case and could be countered with numerous cases²⁷ in which the State Party was found not to be in violation.²⁸ .

4.27 The State party therefore reiterates that, in the case that the Committee finds the communication admissible, it is submitted that the claim lacks merit as the author does not present substantial grounds for his contention that his removal to Iran would be in violation of articles 6 and 7 of the Covenant.

Author's comments on the State party's observations

5.1 On 30 December 2019, the author submitted comments on the State party's observations on the admissibility and merits of the communication.

5.2 In response to the State party's contention that the communication is inadmissible, the author notes that where the Danish authorities accepted the genuineness of an asylum seeker's conversion to Christianity, in previous cases, they have also accepted the contention that the person in question faces serious risk upon return to Iran and it is established practice they are awarded refugee status. Therefore, the underlying question is the State Party's decision making authorities' assessment of the genuineness of the author's conversion, which necessarily implicates the merits of the communication. The author has explained the nature of his beliefs, conversion and other risk factors in detail and has set out the separate elements of his claim. He has explained why he believes that these were not fully assessed either individually, or cumulatively, leading to a failure to full assess the risk he faces and therefore a denial of justice. Therefore, the author submits that the communication is well founded in fact and thus admissible.

5.3 The author further asserts that the State Party provides no specific arguments as to the inadmissibility of the communication, merely stating that the communication is inadmissible and, in support only refer the reader to its reasoning in the subsequent section on the merits. The author therefore reads this as tacit acceptance that the controversy in the case relates to the merits only. The author therefore submits that he has a *prima facie* case with regard to his claim the State party's is in violation of his rights under articles 6 and 7 of

²⁴ s. 341 of the Danish Administration of Justice Act (retsplejeloven)

²⁵ X v. Norway Communication No. 2474/2014, paras 7.4, 7.5 and 7.7 adopted on 5 November 2015.

²⁶ Including E.A. v. Denmark (CCPR communication No. 2320/2013), Jamal Gazemi v. Denmark (CCPR communication No. 2150/2012) and Mr. Ziaouddin Shahroki v. Denmark (CCPR communication No. 2286/2013).

²⁷ Citing for example, E.K. v. Denmark (CCPR communication No. 2346/2014), on 2 April 2019 in I.K. v. Denmark (CCPR communication No. 2373/2014), on 4 April 2019 in M.B.S. v. Denmark (CCPR communication No. 2439/2014), on 10 April 2019 in S.F. v. Denmark (CCPR communication No. 2494/2014).

²⁸ M.M. v. Denmark (CCPR communication No. 2345/2014).

the Convention owing to the clear procedural irregularity in failing to fully assess the cumulative risk he faces on return to Iran.

5.4 The author further asserts that the State party authorities refused to consider any of the risk factors and their implications by solely relying on the negative credibility finding and using this as a basis to dismiss all of the author's claims, including those objective facts and sur place activities, which place him at risk, even if his account of events prior to fleeing Iran is not believed. The author states that the State Party authorities failed to consider his clear, detailed and consistent explanation as to the genesis of his beliefs and consequent conversion, his extramarital relationship and in any case failed to consider facts he presented, which were not assessed and were not challenged including his illegal departure from Iran, his failure to submit for, and conscientious objection to, military service, his baptism in Denmark, his proselytizing to other asylum seekers, both in person and online, which Iranian authorities will have seen and which the interviewer reviewed and didn't challenge, his continued commitment to Christianity and ongoing religious education and attendance at church, which his witness could have further attested to and been questioned on, his obviously Christian themed tattoos, which would be discoverable upon a standard search upon arrival, a certainty were he to arrive on a *laissez passer*, indicating his illegal departure and his attendance at a demonstration against the regime, which was photographed and which the interviewer was aware of and did not question him to attain further details, all of which, taken together, place him at real risk of treatment contrary to the Covenant. The State Party failed to challenge these and yet did not consider the sequence of events, which would be triggered by his arrival in Iran. Upon discovering his tattoos, the authorities could not dismiss his conversion as for the purposes of an asylum claim and would force him to recant. If he later was seen to practice his religion, his faith requiring him to proselytize, he would have been seen to have undermined the recantation and would be persecuted and prosecuted. The author states that there are known to be court facilities at airports in Iran to deal expeditiously with such cases.²⁹

5.5 The author, therefore, claims that the failure by the State party to assess these factors cumulatively, as demonstrated by the lack of reasoning in the R.A.B.'s decision and repeated in the State party's rehearsal of the same in its observations, again without any specific reference to the risk presented by the facts, represents a manifest procedural error meaning that the risk he faces was not duly considered, amounting to a denial of justice and a violation of his rights under articles 6 and 7 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

6.3 The Committee observes that the State party has not objected to the admissibility of the communication under article 5 (2) (b) of the Optional Protocol Accordingly, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

²⁹ The December 2013 General Official Report of the Netherlands Ministry of Foreign Affairs, states: "A special court located in Tehran's Mehrabad Airport deals with [cases of people leaving the country without a valid passport or similar travel document] ... The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, their connection with any organizations or groups, and any other circumstances. This procedure also applies to people who are deported back to Iran and who are not in possession of a passport containing an exit visa. DFAT understands that illegal departure is often prosecuted in conjunction with other unrelated offence." https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/852768/cpin-iran-illegal-exit_-_ext.pdf, accessed 21 January 2021..

6.4 Finally, the Committee notes the State party's challenge to admissibility on the grounds that the author's claims under articles 6 and 7 of the Covenant are of a general nature and that he has not substantiated his claim that the decision of R.A.B. suffered from any procedural irregularity such as to imply a manifest error. It further notes the author's assertion that the State party failed in its procedural obligation to duly consider all the evidence in his case, dismissing all claims on the basis of a negative credibility finding, without considering objective evidence, the existence or authenticity of which was not challenged, such as his tattoos, and its failure to provide reasoning for any assessment that was carried out, or conclusion reached, in particular the absence of reasons for the refusal to hear oral testimony that goes to the substance of one of his primary claims. The Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated his allegations under articles 6 and 7 of the Covenant.

6.5 . The Committee notes that the author has implicitly invoked article 18, in addition to his claims under articles 6 and 7. The Committee further notes however, that the author does not advance any separate arguments to support this claim. Therefore, the Committee considers that this element of the communication is insufficiently substantiated as a stand-alone claim for the purposes of admissibility. Accordingly, it declares the article 18 claim as inadmissible under article 2 of the Optional Protocol. However, as this element is inextricably linked to the author's claims under article 6 and 7, the Committee will proceed to consider the issues raised insofar as they relate to the merits of his claims under articles 6 and 7.

6.6 In light of the above, the Committee declares the communication admissible insofar as it raises issues under articles 6 and 7 and proceeds to consideration on the merits.

Consideration of the merits

7.1 The Committee has considered the 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.

7.2 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 not to extradite, deport, expel or otherwise remove a person from their territory, to a country where there are substantial grounds to believe that there is a real risk of irreparable harm, such as contemplated under articles 6 and 7 of the Covenant.³⁰ The Committee has also indicated that the risk must be personal, with a high threshold for establishing substantial grounds for the existence of such a risk.³¹ Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the country of origin: The Committee further recalls its jurisprudence that significant weight should be given to the assessment conducted by the State party and that it is generally for the organs of the States party to examine the facts and evidence in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.³²

7.3 The Committee notes the author's claim that, if returned to Iran he faces routine detention and questioning at the airport and, having left Iran without documents or an exit visa and having evaded military service, he fears extended detention, questioning, being searched and arrested, as a result of his tattoos and therefore apparent conversion, his intelligence profile, as a result of his online and sur place activities, his connection to his mother's house church and his extra-marital relationship with the wife of a government official. . He claims he will be forced to recant his faith or face prosecution for apostasy. If his relationship with S is discovered he will also face charges of adultery and proselytizing along with charges for failure to perform military service. He asserts that these factors, taken together, place him at serious risk of ill-treatment during detention and interrogation and he

³⁰ Para. 12, General Comment 31.

³¹ X v. Denmark (CCPR/C/110/D/2007/2010), para. 9.2; A.R.J. v. Australia (CCPR/C/60/D/692/1996), Para. 6.6; and X v. Sweden (CCPR/C/103/D/1833/2008), para. 5.18.

³² X v. Denmark (CCPR/C/110/D/2007/2010), para. 9.2; and X v. Sweden (CCPR/C/103/D/1833/2008), Para. 5.18.

will face the death penalty and/or ill/degrading treatment. He also fears that S' husband will carry out his repeated threats to the life of the author and his family.

7.4 The Committee notes the State party's assertion that the above claims are of a general nature, are not sufficiently substantiated and that the author's claims contain no evidence of procedural irregularity. It further states, that, owing to inconsistencies in the author's statements, including discrepancies in relation to the dates on which key events occurred, his account of his relationship with S and his dealings with her husband the search at his mother's home and her injuries after being hit by a car, he was not found to be credible and therefore his central claims of conversion and his extra-marital relationship were not assessed to be genuine. It also notes that the decision-making authorities proceeded in its assessment, on the basis of certain misconceptions that are not reflected in the submissions before the Committee. The first is that the author's claim of conversion was secondary to the relationship with S when it appears clearly from the file that the conversion and relationship were both raise, the conversion first in fact, from the beginning of the asylum process. It also interpreted a statement the author made regarding his feelings about outwardly demonstrating his Christianity in Denmark or before he left Iran, as meaning that in any case he would "keep a low profile" if returned to Iran, which he clearly disputes but did not have the opportunity to expand upon. As a result of these assumptions, it was not accepted by the State Party that the author would face any serious risk upon his return. It was concluded that the author would not face a serious penalty for having left Iran illegally, having Christian tattoos, attending a protest or avoiding military service. His claim to conscientious objection was also not accepted as genuine based on the earlier credibility finding.

7.5 The Committee refers to UNHCR guidance,³³ that, while the burden of proof rests on the author, in principle, "the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. The cumulative effect of the applicant's experience must be taken into account and, although no single incident may be sufficient, all the incidents related by the applicant taken together, could make his fear 'well-founded'."³⁴ Further, as quoted by the State Party in its submission, "where particular credibility concerns arise, a rigorous and in depth examination of the circumstances and genuineness of the conversion will be necessary." The guidance also states that when an asylum seeker submits that he or she has become an atheist, or converted to another faith, even when this occurred after his or her initial asylum request has been dismissed, it may be reasonable for an in-depth examination of the circumstances of the conversion to be carried out by the authorities.³⁵

7.6 With regard to rejecting the application to hear oral testimony, the Committee notes the inconsistencies in the author's version of events, which led the State party to find that the author's account of events prior to leaving Iran was not credible, and therefore found the assertion that he had converted to Christianity whilst in Iran or that he had an affair with a married woman also not to be credible. . In these circumstances, in rebutting the negative credibility finding, the burden was on the author to explain how proffered oral evidence could cure these defects. The Committee notes that the author did not explain how such oral evidence could have cured the perceived lack of credibility and refers to the State party's argument that the same witness had already provided a written statement. The Committee notes the State Party's assertion, that hearing the witness' oral testimony could have made no difference to the outcome of the claim, as it pertains only to the credibility of the author. While this is not clearly supported by the facts, as the testimony did in fact relate to the central issue in the claim, the Committee, nevertheless, finds that the State Party's reasoning for the refusal to hear the testimony was sufficient to discharge its procedural obligations under the

³³ UN High Commissioner for Refugees (UNHCR), Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV. 4, available at: <https://www.refworld.org/docid/5cb474b27.html>.

³⁴ Para 196, Ibid.

³⁵ Para 34 of the Guidelines on International protection, Ibid.

Covenant. Therefore, the Committee does not seek to interfere with the findings of State Party authorities, in this regard.

7.7 Regardless, however, of the State Party's assessment of the credibility of the author or its consequent finding that the author's account of events in Iran had not been rendered probable, State party authorities were obliged to assess whether, in all of the circumstances, the behaviour and activities of the author prior to, or indeed after, arrival, in the State Party, individually or cumulatively, could have serious adverse consequences in the event of his return to Iran such as to put him at serious personal risk of irreparable harm.

7.8 In this connection, while it was for the author to raise facts capable of leading to a conclusion that his rights would be violated by his return, the State Party also has a duty to consider all of the separate risk factors and, where information is not readily available despite the applicant's best efforts, to seek out all reasonably ascertainable information in order to discharge its procedural obligation to comprehensively assess the risk. The Committee notes that the author provided sufficiently detailed explanations to substantiate the contention that he had converted to Christianity, left Iran illegally, evaded military service, been baptized in Denmark, publicly encouraged other Iranians to attend church services, has several tattoos of Christian iconography, attended and was photographed at an anti-regime demonstration and had repeatedly posted about his Christian beliefs on his Facebook page. Therefore, these factors necessitated an in depth examination, taken alone and together to determine whether any or all of them were capable of placing the author at risk of treatment contrary to the Covenant.

7.9 The State Party provides no evidence of its analysis of the risk the author faces if his tattoos were to be discovered, despite country information it relies on, which indicates that "The authorities could interrogate a convert on return, if it has come to the attention of authorities that he has converted....as regards public conversion, the system will react, but the numbers are limited...it was emphasized that nobody has been executed in Iran due to conversion."³⁶ The State Party asserts that on the basis of the above excerpt, "the author will not be at risk".

7.10 As to the information posted on the internet, there is again no apparent assessment, despite the State Party's quote from a report stating that "a photo of [an applicant's] conversion posted on the internet would be evaluated with along with his profile and activities...if the Facebook page was closed to the public or the photos were posted for a short time and then taken down and no further activities were carried out relating to Christianity, the person would not be of interest." This seems to leave open the possibility that should posts be open to the public, or left online for a prolonged period or posted in conjunction with other public activities, then a person could be of interest. It is this possibility that the State Party was obliged to explore. Despite the author showing the interviewer his tattoos and Facebook posts during his substantive interview, there is nothing in the interview record, at either the first or second instance or indeed elsewhere in the State Party's submission, to indicate that any further questions were asked except to confirm whether it appeared from his Facebook posts that he was a Christian, which he answered in the affirmative.

7.11 The RAB noted the author's claim that he participated in a demonstration in Denmark against the Iranian regime and that photos had been taken of the applicant at the event. However, at no point did the decision-maker attempt to establish the veracity of the statement, ask to see the photos, ask where they were posted or attempt to elicit any further information from the author as to the basis for his belief that he had been photographed.

7.12 The RAB concluded that "based on an overall assessment, the applicant has failed to render it probable that he would be at specific individual risk of persecution or abuse falling within section 7 of the Alien's Act in case of his return to Iran. The information that he left the country unlawfully and that he has not performed mandatory military service cannot lead to a different assessment." The Committee notes however, that there is no evidence that any such assessment was, in fact, carried out. The facts that the author left illegally and failed to

³⁶ Danish Immigration Service, Iran: House Churches and Converts, February 2018, 4/2018, available at: <https://www.refworld.org/docid/5ab8f2de4.html>.

attend for military service are mentioned after the “overall assessment” is concluded, without any consideration of the increased likelihood of prolonged detention these factors present. The assertion of the State party, without more, that the Board is “generally very attentive” to the cumulative consideration of factors, in accordance with UNHCR guidance, does not satisfy the Committee, on the basis of the information before it, that any assessment of cumulative factors was carried out in this case.

7.13 The Committee does not find the State Party’s position that no one has been executed for conversion reassuring. Execution is not the only outcome, which would trigger the State Party’s protection obligations under the Danish Aliens Act,³⁷ the Refugee Convention or the Covenant, O neither is conversion the only basis upon which a convert may be prosecuted.³⁸The fact that apostasy is not explicitly proscribed in Iranian criminal law, being punishable instead under provisions allowing hodud crimes to be punished under Sharia, and the different interpretations in Islamic law regarding apostasy, result in a lack of legal certainty for converts, and an opportunity to avoid apostasy as a charge where politically expedient. These elements were not considered by decision makers, nor addressed in the State Party’s submission.

7.14 In the absence of an assessment, which takes into consideration the consequences of all of the author’s sur place activities, the Committee considers that the State party has failed to demonstrate that the administrative and/or judicial authorities have conducted an individualized assessment of the author’s case sufficient to determine whether there are substantial grounds for believing there is a real risk of irreparable harm, as contemplated by articles 6 and 7 of the Covenant, if the author is removed to Iran.

8. 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 the authors’ removal to Iran, if implemented in the absence of a procedure which guarantees a proper assessment of the real and personal risk that he might face if deported, would violate the rights of the author under articles 6 and 7 of the Covenant.

9. In accordance with article 2(1) of the Covenant, which establishes that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the author’s case 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 until his request for asylum is properly considered.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure 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 wishes to receive from the State party, 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 and disseminate them widely in the official languages of the State party.

³⁷ Section 7 of the Danish Aliens Act provides the legal basis for refugee status eligibility in Denmark. 7 (1): Upon application, a residence permit will be issued to an alien if the alien falls within the provisions of the Convention relating to the Status of Refugees (28 July 1951). 7 (2): Upon application, a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin.

³⁸ Christian converts are typically not charged with apostasy; convert cases are usually considered as national security matters, which are handled by the Revolutionary Court. A source added that the authorities perceive activities related to conversion as political activities. Danish Immigration Service, Iran: House Churches and Converts , February 2018, 4/2018, available at: <https://www.refworld.org/docid/5ab8f2de4.html>