



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. 2623/2015

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<i>Communication submitted by:</i>	S.K. (represented by counsel, Lina Anani)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Canada
<i>Date of communication:</i>	23 June 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 94 of the Committee's rules of procedure, transmitted to the State party on 23 June 2015 (not issued in document form)
<i>Date of adoption of views:</i>	27 October 2021
<i>Subject matter:</i>	Deportation to Iran
<i>Procedural issues:</i>	Exhaustion of domestic remedies; level of substantiation of claims
<i>Substantive issues:</i>	Right to life; torture; cruel, inhuman or degrading treatment or punishment; liberty of person; right to defence; right to freedom of thought, conscience and religion; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (3), 6, 7, 10, 14 (3) (b) and 18
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author of the communication is Mr. S.K., a national of Iran born in 1983. His application for asylum has been rejected. The author claims that his deportation to Iran would amount to a violation of his rights under articles 2 (3), 6, 7, 10, 14 (3) (b) and 18 of the

* Adopted by the Committee at its 133rd session (11 October – 5 November 2021).

** The following members of the Committee participated in the examination of the communication:

Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Mahjoub El Haiba, Shuichi Furuya, Carlos Gomez Martinez, Duncan Laki Muhamuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Kobayyah Kpatcha Tchamdfa, Hélène Tigroudja, Imeru Tamare Yigezu and Gentian Zyberi. Pursuant to rule 108 (1) (a) of the Committee's rules of procedure, Marcia V.J. Kran did not participate in the examination of the communication.

*** Individual opinions by Committee members Yadh Ben Achour, Duncan Laki Muhamuza, José Manuel Santos Pais, Kobayyah Kpatcha Tchamdfa and Hélène Tigroudja (dissenting) are annexed to the present Views.

Covenant. The Optional Protocol entered into force for the State party on 19 August 1976. The author is represented by counsel.

1.2 On 23 June 2015, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from deporting the author to Iran while his case was under consideration by the Committee.¹

The facts as presented by the author

2.1 The author claims that his family has a history of persecution in Iran because they are Sufi and pro-monarchist. The author's father has previously been arrested in Iran, his maternal uncle was executed and other extended family members have fled the country and obtained protection elsewhere. The author's brother was executed in 2006. The brother had socialist views and had spoken out against the regime.

2.2 The author was detained and mistreated for five days in Iran in 2002, for defending his female cousin from Basij members. He also experienced other incidents of harassment and coercion. He left Iran for Greece in 2005, where he submitted an application for asylum but did not receive any information on the outcome. In Greece, he started attending church. He also participated in a demonstration in front of the Iranian embassy in Athens in 2009, to protest the Iranian post-election crackdown by the regime.

2.3 In 2012, the author was informed that his mother was suffering from severe depression as she had not recovered from the execution of her son. The author was very concerned and decided to visit her in Iran. He was arrested when he tried to renew his passport in Iran. He was interrogated about his participation in the protest in front of the Iranian embassy in Athens in 2009. He was told that the authorities had information that he had attended church in Greece and demanded to know if he had converted to Christianity. He denied having converted. The author believes that the authorities had obtained the information about him from an informant in the Iranian refugee community in Athens.

2.4 The author was eventually released. He fled to Norway, where he had some relatives. He applied for asylum but fearing that it would be denied, he tried to travel to Canada but was stopped in Denmark, where he was detained for 70 days, after which he was returned to Norway.

2.5 While in Norway, he became involved with a pro-monarchist group called 'Ashty-e Melli'. His application for asylum was denied by Norwegian immigration authorities in 2013. The author travelled to Canada where he applied for asylum in January 2014. He met an Iranian woman who had converted to Christianity and who read the Bible to him in Farsi, which had a profound effect on him as it was the first time that Christianity was explained to him in his own language. He started attending church and was baptized. He has become an active and involved member of his church.

2.6 In May 2014, the author was injured in a car accident. He suffered neck and back injuries and, as a result, the hearing on his asylum application was postponed to October 2014. At the date of the hearing the author was in pain and had to seek treatment at the hospital. He informed the interpreter, who in turn informed his counsel. His counsel also had some ongoing health issues and was unable to attend the hearing. She informed the Immigration and Refugee Board (IRB) and was told the hearing would be rescheduled and that the IRB would call her to schedule the new hearing. However, in November 2014, the author and his counsel received notice that the application had been declared abandoned by the IRB. The author claims that the case was scheduled for an abandonment hearing without notice being sent to the author or his counsel. The author's request to re-open the application was denied, without reasons, by the IRB in June 2015.

¹ The communication was suspended from 27 April 2016 to 6 June 2018 due to a pending PRRA application, and subsequent application for leave to appeal before the Federal Court.

The complaint

3.1 The author claims that the State party authorities had ordered his removal to Iran without having conducted a risk assessment as to his claims in violation of his rights under article 2 (3) of the Covenant. He claims that his conversion to Christianity would put him at risk of being executed in Iran and of being subjected to torture or other cruel, inhuman or degrading treatment or punishment. He further claims that he would be unable to practice his faith if deported to Iran.

3.2 The author also argues that as he does not have a valid Iranian passport he would be issued Canadian travel documents and Iranian authorities would therefore be aware that he is being returned as a failed asylum seeker, which would put him at further risk. He notes that Iranians returned to Iran without valid exit visas in their passports are subject to mandatory arrest and that the punishment for leaving the country illegally is one to three years imprisonment, or a fine. He claims that he would risk being subjected to ill-treatment while in detention and that he would not be able to practice his faith, in violation of his rights under article 18 of the Covenant.

3.3 The author claims a violation of articles 10 and 14 (3) (b) of the Covenant because he was subjected to threats and intimidation by Canadian immigration officials while in detention and told that he would be transferred to jail unless he complied with the deportation order. He further claims that he was denied access to his counsel.

State party's observations on admissibility and the merits

4.1 On 4 July 2018, the State party submitted its observation on the admissibility and merits of the communication. It submits that the communication is inadmissible as manifestly unfounded and for failure to exhaust domestic remedies. The State party submits that the author has failed to exhaust domestic remedies by failing to: *i*) appear at his refugee determination hearing and the hearing into the abandonment of his claim; *ii*) seek judicial review of the finding that he was inadmissible due to criminality; and *iii*) apply for permanent residence based on humanitarian and compassionate considerations. In the alternative, should the Committee find the communication to be admissible, the State party submits that it is without merit.

4.2 The State party notes that the author initiated his claim for refugee protection in Canada in November 2013, but he was turned away and told to obtain his refugee documents from Norway and Denmark. On 17 January 2014, the author submitted an application for refugee protection, and his claim was referred to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) on 23 January 2014. The author described a series of events that allegedly took place in Iran in his 30 September 2013 Basis of Claim form; however, he did not disclose the fact that he had not been living in Iran during the period from 2005 to 2012, and that therefore many of the incidents described in the form could not have occurred. The author subsequently revised his narrative and completed a second Basis of Claim form in January 2014.

4.3 The State party argues that the author failed to appear for numerous scheduled refugee claim hearings. The author and his counsel did not appear at the RPD hearing scheduled for 11 October 2014. The author and his counsel were also informed of a special hearing dated 6 November 2014 to give him an opportunity to explain why the RPD should not determine that the claim had been abandoned. The author did not appear at that hearing either. On 18 November 2014 the RPD determined that the claim was abandoned. The State party notes that the author alleges that he did not attend the scheduled refugee hearing at the RPD in October 2014 because he was experiencing pain from a car accident that had occurred in May 2014. It argues that the author does not provide an explanation as to why he did not attend a special hearing on 6 November 2014 to give him an opportunity to explain why the RPD should not determine that his claim has been abandoned. The author's application for the case to be re-opened was dismissed by the RPD on 22 June 2015. The author sought judicial review of the RPD's decision, which was dismissed by the Federal Court on 12 November 2015. The author also failed to appear for a pre-removal interview on 17 December 2014, and a warrant was issued for his arrest on 2 March 2015. The author was found and arrested on 28 April 2015.

4.4 On 19 June 2015, the Canada Border Services Agency (CBSA) found the author to be inadmissible to Canada pursuant to section 36 (2) (c) of the ‘Immigration and Refugee Protection Act’. This section provides that an applicant is inadmissible if there are reasonable grounds to believe that the applicant is a foreign national who is inadmissible on grounds of criminality for committing an act outside of Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament. The author was convicted by a judge in Denmark for the crime of using a fraudulent passport and was sentenced to 70 days imprisonment. This crime, if committed in Canada, would constitute a crime under section 403 of the Criminal Code of Canada and is punishable as an indictable offence. The CBSA’s finding of inadmissibility was not referred to the Immigration Division of the IRB for determination because the author’s claim was already determined to be abandoned by the RPD.

4.5 The author was scheduled to be removed on 23 June 2015. On 22 June 2015, the author applied for an administrative deferral of removal, which was denied on that same date. A foreign national who is subject to an enforceable removal order may apply to the CBSA to have his or her removal deferred to allow for a full assessment of risk prior to removal. Although CBSA enforcement officers have limited discretion as to the timing of a removal, the Federal Court of Appeal has repeatedly stated that enforcement officers must defer removal if proceeding with the removal would expose the person to “the risk of death, extreme sanction or inhumane treatment.” When an applicant makes a request for a deferral of removal, the enforcement officer does not conduct a full assessment of the alleged risks, but rather considers and assesses whether there is new risk-related evidence. If so, removal will be deferred to allow for a full pre-removal risk assessment (PRRA). A decision denying a request for a deferral of removal may be judicially reviewed by the Federal Court, with leave. A judicial stay of removal pending the outcome of an application for leave and for judicial review of a negative deferral decision may also be available.

4.6 The CBSA enforcement officer in the author’s case considered all of the documents submitted by him in the deferral request, and the submissions of counsel both separately and cumulatively. The officer determined that removal to Iran would not expose the author to risk of death, extreme sanction or inhumane treatment. The officer noted the fact that the author had submitted refugee claims in Greece and Norway, and that there was no evidence to show that any of those claims were positive. The officer also noted that the author had resided in Europe for many years. Given the conclusion that the author would not be exposed to risk if removed to Iran, the officer denied the author’s request for an administrative deferral of removal. The author applied for judicial review of the refusal to grant an administrative deferral of removal, which was dismissed by the Federal Court on 2 November 2015

4.7 The author made an application for a PRRA assessment in February 2016, after he became eligible. The PRRA officer considered the author’s 2013 Basis of Claim form, claiming that he was in Iran up to 2012. The author did not provide his 2014 Basis of Claim form to the PRRA officer, and therefore it was not considered. The author’s PRRA was rejected on 17 February 2017. The PRRA officer noted that the author had not provided corroborating evidence in regards to his narrative. The officer noted that there were no affidavits from family members, no police or medical reports demonstrating that the author or his family had been arrested, detained, threatened, beaten or tortured in Iran. The officer noted that the author had submitted a burial certificate indicating that his brother was executed by hanging in 2006. The officer however noted that the documents submitted by the author did not indicate the reason for the hanging and he found that the author had not indicated on what objective evidence he based his belief that he would suffer the same fate if returned to Iran. The PRRA officer afforded low weight to the author’s assertion that he faced risk in Iran for his past political or religious activities.

4.8 The PRRA officer also considered that the author was able to freely enter and exit Iran during his travels. The author resided in Greece from July 2005 until August 2012. In August 2012, the author returned to Iran from Greece. He left Iran again in September 2012 and travelled to Norway. The officer concluded that it was reasonable to find that the Iranian authorities had little interest in the author. The officer accepted that the author had converted to Christianity, but noted that objective country reports on Iran indicate that many converts to Christianity can return to Iran quietly and not encounter any problems. If the person is

already monitored by the authorities, he or she could risk consequences upon return to Iran. The officer found that there was no reliable evidence that the author was monitored by Iranian authorities. The officer found that documentary evidence supported that ordinary converts to Christianity who are discreet about their faith are of little or no interest to the authorities, although they may experience some social and cultural ostracism. Since the author would not be public about his conversion, he would not face risk upon return.

4.9 The Federal Court dismissed the author's judicial review application of the PRRA decision on 14 December 2017. The Court found it reasonable for the PRRA officer to have concluded that the author faced no personal risk since he did not carry out any activities related to his Christian faith in public, and did not have any official duties on behalf of the church.

4.10 The State party further submits that the communication is inadmissible due to being manifestly unfounded. Regarding the author's claim of a violations of article 2 (3) of the Covenant, the State party argues that the author has not clearly stated what violations of the article has taken place, either on their own or in combination with the other articles. It argues that the author's allegations of risk have been dealt with in multiple domestic proceedings. Each proceeding considered the facts and evidence and determined that the author would not be at risk if returned to Iran.

4.11 The State party submits that the author has not substantiated, even on a *prima facie* basis, his allegations with respect to his claims under articles 6 and 7 of the Covenant. Neither the author's personal profile nor his status as a failed asylum seeker places him at a real and personal risk of irreparable harm in Iran. The State party argues that, according to objective sources, “[a] conversion and an anonymous life as a converted Christian in itself do not lead to an arrest but if the conversion is followed up by other activities as for instance proselytizing and training others, the case differs...”.² Objective reports also state that “converted returnees who do not carry out activities related to Christianity upon return will not be of interest to the authorities”,³ except if the convert had been known by the authorities before leaving. Where an individual has come to the attention of the authorities previously for reasons other than their religion, then that in combination with their religion, may put them at increased risk.⁴ Those persons who return to Iran having converted while abroad, who do not actively seek to proselytize, and who do not publicly express their faith, may be able to continue practicing Christianity discreetly.⁵ In the case of *A. v. Switzerland*, the European Court of Human Rights confirmed that converts who have not come to the attention of the authorities, including for reasons other than their conversion, and who practiced their faith discreetly, do not face a real risk of ill-treatment upon return.⁶ Objective country reports indicate that there are 285,000 Christians in Iran, and there may be many more. While the majority of Christians are ethnic Armenians, there are Protestant denominations, including evangelical groups in Iran, with an estimated Protestant community of less than 10,000.⁷

4.12 The State party argues that the author's personal profile does not support the conclusion that there is a real risk of irreparable harm if he were returned to Iran. There is no evidence that Iranian authorities are monitoring the author because of his conversion to Christianity while he resided in Greece, nor is there any evidence that authorities are monitoring him for any other reason. The author's own evidence demonstrates that he can return to Iran without incident. If the author had been of interest to the Iranian authorities, he would not have been able to enter and exit Iran, renew his passport in 2012, and he would not have been released from detention and without any harm.

² *Iran, House churches and converts*, Danish Refugee Council, Danish Immigration Service, Copenhagen, February 2018, p.7.

³ Ibid. p. 8.

⁴ UK Visas & Immigration, Country Policy and Information Note, Iran: Christians and Christian converts, March 2018, section 2.2.3.

⁵ UK Visas & Immigration, Country Policy and Information Note, Iran: Christians and Christian converts, March 2018, section 2.2.12.

⁶ *A. v. Switzerland*, Application no. 60342/16, European Court of Human Rights, 19 December 2017, paras.43-36.

⁷ U.S. Department of State, International Religious Freedom Report for 2016, Iran, section 1.

4.13 The State party further argues that the author's communication does not demonstrate that, if he were to return to Iran, he would not be discreet about his conversion, as he was in Canada. The author's own evidence demonstrates that he did not attempt to proselytize in Canada, including to this close friends. Rather the author was discreet about his faith, and would continue to be discreet in Iran. The author was discreet when he returned to renew his passport and was questioned about his conversion. The author has not demonstrated that he is at personal risk due to proselytizing. The author's pastor did not state that he is required to proselytise his faith. Given the author's lack of evidence of proselytizing in Canada, and his lack of an official role within his church, and no evidence that he would seek to have an official role in a church in Iran – which would put him at a higher risk – the author has failed to establish that he would be at personal risk in Iran because of his conversion to Christianity.

4.14 The State party argues that the author has also failed to establish that he would face risk as a failed asylum seeker. Objective country reports indicate that Iranians who return with passports from a long stay abroad will not be an issue as long as the person left the country legally.⁸

4.15 The State party notes the author's claims that CBSA officers allegedly threatened and intimidated him. It argues that these claims are completely unsubstantiated and inadmissible. It categorically denies these allegations, and notes that the author did not raise these allegations before domestic-decision makers.

4.16 Regarding the author's claims under article 18 of the Covenant, the State party notes that he has not alleged that the State party itself has directly violated his Covenant rights. Rather, the author's argument is based on the treatment that he alleges he could face upon his return to Iran. The State party submits that even if the author could establish that he would be subject to discrimination or ill-treatment in Iran for his religious beliefs, this would not engage Canada's obligations under article 18 of the Covenant. It is only if the ill-treatment which the author might face was of such a serious nature so as to engage rights protected by articles 6 or 7 of the Covenant that the State party's obligations under the Covenant would be at issue.

Author's comments on the State party's observations

5.1 On 8 April 2019, the author submitted his comments on the State party's observations. He reiterates that neither he nor his counsel were informed of the Refugee Board's decision to hold an abandonment hearing on his asylum application. He was therefore unable to attend said hearing. He notes that the State Party alleges that he has failed to exhaust domestic remedies due to him not challenging the finding that he was inadmissible in Canada. The author claims that he was not informed of this decision and he additionally notes that he does not have a criminal conviction in Denmark. He was merely held in immigration detention there. He notes that the State party authorities did not present any evidence that he had been convicted in Denmark, and he notes that should he have been, it would have been contrary to article 31 of the UN Refugee Convention which forbids the punishment of asylum seekers for illegal entry, via use of false passports. He submits that he has exhausted domestic remedies with respect to the inadmissibility finding, adding that the inadmissibility finding has nothing to do with a risk assessment and whether he should be granted status due to his risk. He submits that an application on humanitarian and compassionate grounds is not an effective remedy.

5.2 The author argues that he submitted extensive evidence to support his claim in his PRRA application, including his brother's burial certificate, which confirmed that he had been executed by hanging in jail by the Iranian authorities. He also included his baptism certificate and other photos and documents confirming his conversion as well as a letter from his pastor stating that the author was a witnessing and evangelizing member of the congregation. The author notes that his name and conversion to Christianity had been made public on the internet by church activists who were trying to prevent his deportation. He argues that this in itself established, *prima facie*, a risk upon return to Iran. He notes that the

⁸ Immigration and Refugee Board of Canada, Responses to Information Requests, Treatment of Failed Refugee Claimants by Iranian Authorities, page 1, 10 March 2015.

PRRA officer accepted that he had converted to Christianity. However, the officer concluded that as the author was a Sufi, and as such not a follower of Islam, he would therefore not face persecution for converting to Christianity. The author argues that the officer erred in this finding as the Sufi faith is a sect of Islam and, additionally, Sufis are persecuted by the Iranian regime for not following the state sanctioned religion, which would increase the risk the author is facing if returned.

5.3 The author notes that Amnesty International has stated that interrogation and harassment of Iranians who may have been asylum seekers appears to have become state policy.⁹ He notes that Amnesty International has expressed the view that the treatment of failed asylum seekers is unpredictable and depends on an individual's profile and previous activities, including previous periods of detention. A person returned to Iran by way of an expired passport or one way travel document will almost certainly be questioned upon arrival about his reasons for departure from the country and the nature of his stay abroad. The author further notes that Amnesty International has also found that, while much depends on an individual's profile and previous activities in Iran, should such a person be suspected of "constructing" an asylum claim, he could face vaguely worded charges relating to "propaganda against the system", leading to detention, criminal prosecution, ill-treatment and torture.¹⁰ The author also notes that Amnesty International continues to have concerns about the continued persecution of Christian converts in Iran. Conversion from Islam, or apostasy, may be punished by death if the convert refuses to reconvert to Islam.¹¹

5.4 This author further notes that he is a member of a congregation that is expected to proselytize. He notes that the PRRA officer found that he could practice his faith in secret. He argues that this finding is erroneous because even if he was not required to proselytize, he should not be required to practice his faith in secret, in fear, and without a church or fellowship with others. Even having a Bible in Iran would place him at risk should the regime ever find it.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

6.3 The Committee notes the State party's submission that the communication is inadmissible for failure to exhaust domestic remedies as the author has failed to exhaust domestic remedies by failing to: *i*) appear at his refugee determination hearing and the hearing into the abandonment of his claim; *ii*) seek judicial review of the finding that he was inadmissible due to criminality; and *iii*) apply for permanent residence based on humanitarian and compassionate considerations. It notes the author's argument that he informed the State party authorities of his inability to attend the first hearing due to health reasons following a car accident and that neither he nor his counsel were informed of the Refugee Board's decision to hold an abandonment hearing on his asylum application. The Committee further notes the author's claims that he was not informed of the finding that he was inadmissible due to criminality and his claim that he does not have a criminal conviction in Denmark but was merely held in immigration detention in that country and his argument that a finding of inadmissibility due to criminality does not contain a risk assessment. The Committee notes that the parties have provided contradicting submissions as to whether the author was informed of the abandonment hearing in November 2014. Based on the information on file, the Committee finds that it has not been established that the author was duly notified of the

⁹ Letter from Amnesty International, dated June 18, 2015.

¹⁰ Ibid.

¹¹ Ibid.

hearing into the abandonment of his claim or the inadmissibility hearing. The Committee further notes that the author has subsequently, once he became eligible, pursued a PRRA application and an application for judicial review before the Federal Court regarding the claims raised in his complaint before the Committee. It notes that an application for a residence permit on the basis of humanitarian and compassionate considerations does not have suspensive effect and would thus not provide an effective relief against the deportation order against the author.¹² The Committee therefore finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present complaint.

6.4 The Committee further notes the State party's submission that the communication is inadmissible due to being manifestly unfounded. It notes the State party's argument that the author has not clearly stated how article 2 (3) of the Covenant would have been violated, and its argument that the author's claims have been examined under several domestic procedures. The Committee recalls its jurisprudence, according to which the provisions of article 2 set forth a general obligation for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.¹³ Accordingly, it concludes that this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The Committee further notes the author's claims that he was subjected to threats and intimidation by Canadian immigration officials while in detention and his claim that he was denied access to his counsel while in immigration detention. It however notes that the author has not provided any further specific argumentation or substantiation of these claims. It therefore finds that the author has failed to substantiate, for purposes of admissibility, his claims under articles 10 and 14 (3) (b) of the Covenant, and declares these claims inadmissible under article 2 of the Optional Protocol.

6.6 The Committee notes the author's claims that his conversion to Christianity would put him at risk of being executed subjected to torture or other cruel, inhuman or degrading treatment or punishment in Iran, in violation of his rights under articles 6 and 7 of the Covenant. It further notes the author's claims that he would be unable to practice his faith if deported to Iran. The Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated his allegations under articles 6 and 7 of the Covenant. Regarding the author's claims under article 18 of the Covenant, the Committee considers that this element is inextricably linked to the his claims under article 6 and 7, and it proceeds to consider the issues raised under said article insofar as they relate to the merits of his claims under articles 6 and 7.¹⁴

6.7 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 referred to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there were substantial grounds for believing that there was a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.¹⁵ The Committee has also indicated that the risk must be personal¹⁶ and that there is a high threshold

¹² *Budlakoti v. Canada*, (CCPR/C/122/D/2264/2013), para. 8.4.

¹³ See *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4.

¹⁴ *M.N. v. Denmark*, (CCPR/C/132/DR/3188/2018), para. 6.5.

¹⁵ Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

¹⁶ *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3; *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2; and *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; *Q.A. v Sweden* (CCPR/C/127/D/3070/2017), para. 9.3; *A.E. v Sweden* (CCPR/C/128/D/3300/2019), para 9.3.

for providing substantial grounds to establish that a real risk of irreparable harm exists.¹⁷ All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹⁸ The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists,¹⁹ unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.²⁰

7.3 The Committee notes the author's claims that his conversion to Christianity would put him at risk of being executed in Iran and of being subjected to torture or other cruel, inhuman or degrading treatment or punishment in detention. It notes the author's claims that his brother was executed as an opponent of the Iranian regime in 2006, and that he himself was detained and questioned as to whether he had converted to Christianity when he visited Iran in 2012. It also notes his claims that, as he does not have a valid Iranian passport or exit visa, he would be subjected to detention and questioning upon return.

7.4 The Committee notes the State party's argument that the fact that the author was able to travel to and depart from Iran in 2012 indicates that the Iranian authorities had little interest in him. It notes that the State party authorities found that the author had converted to Christianity, but noted that as the author would not be public about his conversion, he would not face risk upon return. The Committee notes the author's argument that a letter from his pastor supports his claim that he is a witnessing and evangelizing member of his congregation and that his name and conversion to Christianity has been made public on the internet by church activists who were trying to prevent his deportation. It notes his claim that he is a member of a congregation that is expected to proselytize and his argument that he should not be required to practice his faith in secret, in fear, and without a church or fellowship with others.

7.5 Concerning the author's claims that he would be at risk of persecution if returned to Iran on the basis of his conversion, the Committee recalls its jurisprudence that the test is whether there are substantial grounds for believing that such a conversion may have serious adverse consequences in the country of origin such as to create a real and personal risk of irreparable harm as that contemplated by articles 6 and 7 of the Covenant. Therefore, the authorities should proceed to assess whether, in the circumstances of the case, the behaviour and activities of the asylum seeker in connection with his or her conversion or convictions, could have serious adverse consequences in the country of origin so as to put him or her at risk of irreparable harm.²¹

7.6 In the present case, the Committee observes that it is not contested that the author's conversion was considered to be genuine by the State party authorities. The Committee however notes that in assessing the author's PRRA application the domestic authorities found, based on country reports, that the author did not have such a profile that would indicate that he would be of interest to the Iranian authorities. The Committee further notes the information that the author travelled to and from Iran in 2012, and that, while claiming to be lacking a valid Iranian passport and exit visa, he has provided no information on how he entered and departed from Iran during the visit with his mother in 2012. The Committee further notes that, while the author disagrees with the findings of the State party authorities as to the risk of harm he claims he would face in Iran because of his conversion, he has failed to provide any pertinent information to the Committee to justify his claim that his alleged conversion would be known to the Iranian authorities, that he would practise Christianity in Iran that would draw the attention of the authorities, or that he has been targeted by the Iranian authorities on the basis of his conversion.

¹⁷ *X v. Denmark*, para. 9.2; *X v. Sweden*, para. 5.18; *Q.A. v Sweden*, para. 9.3; *A.E. v Sweden*, para 9.3.

¹⁸ Ibid. See also *X v. Denmark*, para. 9.2; *Q.A. v Sweden*, para. 9.3 *A.E. v Sweden*, para 9.3.

¹⁹ *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4.

²⁰ For example, *K v. Denmark*, para. 7.4; *Y.A.A. and F.H.M. v. Denmark* (CCPR/C/119/D/2681/2015) para. 7.3; and *Rezaifar v. Denmark* (CCPR/C/119/D/2512/2014), para. 9.3; *Q.A. v Sweden*, para. 9.3 *A.E. v Sweden*, para 9.3.

²¹ *S.A.H. v. Denmark* (CCPR/C/121/D/2419/2014), para. 11.8. *Q.A. v Sweden*, (CCPR/C/127/D/3070/2017), para. 9.5, *J.I. v Sweden* (CCPR/C/128/D/3032/2017), para 7.5. See also European Court of Human Rights, *F.G. v. Sweden*, para. 156.

7.7 The Committee considers that the information at its disposal demonstrates that the State party took into account all claims raised by the author before its domestic authorities and all elements available when evaluating the risks invoked by the author and that the author has not identified any irregularity in the decision-making process. The Committee further considers that, while the author disagrees with the factual conclusions of the State party authorities, he has not shown that their decisions were clearly arbitrary or amounted to a manifest error or denial of justice. Consequently, the Committee considers that the evidence and circumstances invoked by the author have not adduced sufficient grounds for demonstrating that he would run a real and personal risk of being subjected to treatment contrary to articles 6 and 7 of the Covenant if returned to Iran. In view thereof, the Committee is not able to conclude that the information before it shows that the author's rights under articles 6 and 7 of the Covenant would be violated if he were to be removed to Iran.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not permit it to conclude that the author's removal to Iran would, if implemented, violate his rights under articles 6 and 7 of the Covenant.

Annex

Joint opinion by Committee members Yadh Ben Achour, , Duncan Laki Muhumuza, José Santos Pais, Kobauyah Kpatcha Tchamdjia and Hélène Tigroudja (dissenting)

1. We regret not being able to concur with the Committee's decision that the facts before it do not permit it to conclude that the author's removal to Iran would, if implemented, violate his rights under articles 6 and 7 of the Covenant (para 8). There are in fact several elements in the present case that unmistakably lead to the opposite conclusion.

2. The author of the communication is Mr. S.K., a national of Iran born in 1983. His application for asylum has been rejected by Canadian authorities. However, the author's family has a history of persecution in Iran not only because they were Sufi, the mystical expression of Islamic faith, particularly harassed by the Islamic Republic of Iran, but also because they were pro-monarchist. The author's father had previously been arrested, his maternal uncle was executed and other extended family members fled the country and obtained protection elsewhere. The author's brother was executed in 2006, for having socialist views and for speaking out against the regime (paras 2.1, 4.7, 5.2).

3. The author himself was detained and mistreated for five days in Iran in 2002, for defending his female cousin from Basij members. He also experienced other incidents of harassment and coercion. He left Iran for Greece in 2005, where he stayed until 2012 and where he started attending church (paras 2.2, 4.8). In August 2012, having been informed that his mother was suffering from severe depression as she had not recovered from the execution of her son, the author decided to visit her in Iran. He was arrested there when he tried to renew his passport and was told that the authorities had information that he had attended church in Greece and demanded to know if he had converted to Christianity. The author believes that the authorities had obtained the information about him from an informant in the Iranian refugee community in Athens (para 2.3).

4. The author then fled to Norway, in September 2012, where he had some relatives (paras 2.4, 4.8) and there, he became involved with a pro-monarchist group called 'Ashty-e Melli'. The author later travelled to Canada where he applied for asylum in January 2014, started attending church and was baptized. He has in the meantime become an active and involved member of his church (para 2.5).

5. The author claims that his conversion to Christianity would put him at risk of being executed in Iran and of being subjected to torture or other cruel, inhuman or degrading treatment or punishment. He would be unable to practice his faith if deported to Iran (para 3.1). The author also argues that he does not have a valid Iranian passport and notes that Iranians returned to Iran without valid exit visas in their passports are subject to mandatory arrest and that the punishment for leaving the country illegally is one to three years imprisonment, or a fine (para 5.3). He would risk being subjected to ill-treatment while in detention and not be able to practice his faith (para 3.2).

6. The Canadian Federal Court dismissed the author's judicial review application of the PRRA decision on 14 December 2017, finding it reasonable for the PRRA officer to have concluded that the author faced no personal risk since he did not carry out any activities related to his Christian faith in public, and did not have any official duties on behalf of the church (para 4.9). However, the State party also acknowledges (para 4.11) that, according to objective sources, "[a] conversion and an anonymous life as a converted Christian in itself do not lead to an arrest but if the conversion is followed up by other activities as for instance proselytizing and training others, the case differs...". Objective reports also state that "converted returnees who do not carry out activities related to Christianity upon return will not be of interest to the authorities", except if the convert had been known by the authorities before leaving. Where an individual has come to the attention of the authorities previously for reasons other than their religion, then that in combination with their religion, may put them at increased risk.

7. The author contests in this regard (para 5.2) that he submitted extensive evidence to support his claim in his PRRA application, including his brother's burial certificate, which confirmed that he had been executed by hanging in jail by the Iranian authorities. He also included his baptism certificate and other photos and documents confirming his conversion as well as a letter from his pastor stating that the author was a witnessing and evangelizing member of his congregation. Furthermore, his name and conversion to Christianity had been made public on the internet by church activists and the PRRA officer himself accepted that he had converted to Christianity. However, the officer concluded that the author was a Sufi, and as such not a follower of Islam, which is an error, as the Sufi faith is indeed a sect of Islam and Sufis are persecuted by the Iranian regime for not following the state sanctioned religion, thereby increasing the risk the author would be facing if returned to Iran. The author further notes that Amnesty International continues to express concerns about the continued persecution of Christian converts in Iran, since conversion from Islam, or apostasy, may be punished by death if the convert refuses to reconvert to Islam (para 5.3). Finally, the author refers to the fact he is a member of a congregation that is expected to proselytize and that even if he was not required to proselytize, he should not be required to practice his faith in secret, in fear, and without a church or fellowship with others. Even having a Bible in Iran would place him at risk should the regime ever find it (para 5.4).

8. According to the Committee's jurisprudence, in order to assess whether a person is at risk of persecution, on the basis of his/her conversion, if returned, the test is whether there are substantial grounds for believing that such a conversion may have serious adverse consequences in the country of origin such as to create a real and personal risk of irreparable harm as that contemplated by articles 6 and 7 of the Covenant.

9. In the present case, the Committee observes that it is not contested that the author's conversion was considered to be genuine by the State party authorities (para 7.6). However, the parties disagree as to whether the author has been a public and proselytizing member of his congregation. In this respect, one has to take into account the information from the author's pastor that he is a witnessing and evangelizing member of his congregation, and therefore accept the author's argument that he should not be expected to conceal his faith and religious activities in order not to be subjected to persecution and also accept his claim that his name and conversion to Christianity has been made public on the internet in relation to membership of his congregation. One has moreover to take into account the fact that the author was previously detained and questioned about his conversion in 2012 while visiting Iran for just one month, as well as his claim that his brother was executed as an opponent to the regime and several members of his family have been persecuted.

10. In view of all these elements, considered together with country reports on the situation of Christian converts who may have come to the attention of the authorities, we are of the view that the State party failed to conduct a sufficiently individualized assessment of the author's case to determine whether there were substantial grounds for believing the existence of a real and personal risk of irreparable harm, as contemplated by articles 6 and 7 of the Covenant, were the author to be removed to Iran.
