



# 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. 2378/2014<sup>\*</sup>,<sup>\*\*</sup>

<i>Communication submitted by:</i>	A.S.M. and R.A.H. (represented by counsel, Helle Hom Thomsen)
<i>Alleged victim:</i>	The authors and their three minor children
<i>State party:</i>	Denmark
<i>Date of communication:</i>	14 April 2014(initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 15 April 2014(not issued in document form)
<i>Date of adoption of Views:</i>	7 July 2016
<i>Subject matter:</i>	Deportation from Denmark to Italy
<i>Procedural issues:</i>	Failure to sufficiently substantiate allegations; incompatibility <i>ratione materiae</i>
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment or punishment; fair trial; right to privacy, family and reputation
<i>Articles of the Covenant:</i>	7, 17 and 24
<i>Articles of the Optional Protocol:</i>	2; 3

1.1 The authors of the communication are Mr A.S.M. and his wife Ms. R.A.H., born on 1 July 1985 and 1 January 1990, respectively. They submit the communication on behalf of

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\* Adopted by the Committee at its 117th session (20 June-15 July 2016).

\*\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

Three individual opinions signed by four Committee members are appended to the present Views.

themselves and their minor children, X, Y and Z, born in Italy on 13 October 2009 and 8 June 2011, and Denmark in July 2014, respectively.<sup>1</sup> The authors are Somali nationals. They claim that by forcibly deporting them and their children to Italy, the State party would violate their rights under articles 7, 17 and 24, of the International Covenant on Civil and Political Rights (the Covenant). The authors are represented by counsel. The Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976.

1.2 On 15 April 2014, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the authors and their children to Italy while their case was under consideration by the Committee. On 16 April 2014, the Refugee Appeals Board (RAB) suspended the time limit for the authors' departure from the State party until further notice in compliance with the Committee's request.

### **Factual background**

2.1 The authors married in 2007 in Somalia. They claim that Ms R.A.H. is an ethnic Hawiye, Murusade, and professes Muslim faith. She has not attended school and can neither read nor write. She has never had a job. Mr A.S.M. is an ethnic Garre Quranyow and professes the Sunni Muslim faith. In Somalia, he used to work in an NGO called Primary Alternative Education and as a headmaster of a school. Since June 2007 until their departure from Somalia, he was mayor of the town of Qorooley. The authors claim that on 11 November 2008, Al-Shabaab launched an attack against Mr A.S.M.'s work place during which security guards were killed, and that then Al-Shabaab members came to the authors' home to look for Mr A.S.M. Since they feared persecution from Al-Shabaab, which regarded them as unfaithful for having cooperated with the Somali government, they fled Somalia on 12 November 2008.

2.2 On 11 April 2009, the authors entered Italy and applied for asylum. In October 2009, they were granted asylum (refugee status under the 1951 Refugee Convention relating to the status of refugees) and subsidiary protection on humanitarian grounds, and they were issued a residence permit for 5 and 3 years, respectively. According to the authors' statement provided to the Danish Immigration Service, after their arrival in Italy Mr A.S.M. stayed in a refugee camp by himself for 7 months, whereas Ms R.A.H. had been hospitalised for a long time during her pregnancy and stayed in a different refugee camp. She gave birth to her first daughter at a hospital. Mr A.S.M. was not present at the delivery. They were not together until they were granted residence permits.

2.3 The authors received financial support and social housing from the Italian authorities. On 26 October 2009, they signed an agreement with the Community of Palagiano-*Integration and Protection Service in favour of international protection seekers and refugees*, and were given an apartment to live in Palagiano for 6 months, as part of a project called "Koine". Before that they lived in different asylum centres for 3 months. They were also given health insurance cards and access to medical treatment. However, they claimed that in practice they had limited access to health services, despite the fact that Ms R.A.H. needed to treat the effects of a car accident that she had in Somalia when she was a child. Likewise, while living in the apartment in Palagiano they had a rash on the skin for which they were only prescribed a cream. In June 2010, their housing contract expired and they had to leave the apartment. They were given 600 euro and left on their own.

2.4 In absence of any help from the authorities, on an unspecified date the authors decided to move to Bologna. However, since they had already received the 6-month assistance, pursuant to the Protection System for Asylum Seekers and Refugees (SPRAR-

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<sup>1</sup> At the moment the communication was submitted to the Committee the authors were expecting a third child. The third child was born in the State party.

*Sistema di Protezione per Richiedenti Asilo e Rifugiati*) they could not be granted housing in Bologna either. For a short period, they lived with a Somali and then decided to travel to Germany and applied for asylum there in July 2010. Their application was refused as they had already been granted residence in Italy and on 22 February 2011, they were transferred back to the airport in Rome, in accordance with the Dublin regulation. Ms R.A.H was at the time pregnant with her second child.

2.5 The authors claim that at their arrival in Rome, they were not provided with housing or social assistance; that Ms R.A.H. and their daughter were allowed to stay in a church the first night, while Mr A.S.M. had to sleep in the street. The next day they were referred to Caritas and Ms R.A.H. and their daughter were offered accommodation there for about 1-2 months. The authors also received a Caritas' voucher to get two meals per day for two months. They further claim that Mr A.S.M. continued living in the streets during this period and that he requested assistance to different "local administrators" without success, since the family was ineligible for assistance as they had already been provided with accommodation for six months.

2.6 Since Ms R.A.H. and their daughter could not stay longer in the accommodation in Rome, in April 2011 they moved to Perugia, where Ms R.A.H. and their daughter were provided with temporary accommodation by Caritas. Mr A.S.M. had to sleep in the streets or at homes of Somali persons, who allowed him to sleep in their gardens or balconies. The authors claim that he was only allowed to visit Ms R.A.H. and their daughter every fortnight; that he was not present when their second child was born in June 2011, and that he was allowed to visit Ms R.A.H. and their child at the hospital on the following evening.

2.7 The authors claim that Mr. A.S.M. was unable to get legal employment since he was told that he did not speak an adequate level of Italian and needed a driving license. As a result, he had to work illegally on different plantations, where he was underpaid. Sometimes he was not paid for his work and he could not complain to the police as his job was illegal.

2.8 Two months after the second child was born, Ms R.A.H. had to leave the Caritas shelter. The family returned to Rome and lived in the streets. For a while they also lived in an abandoned building occupied by refugees. However, this place was not fit for women and children due to violence, criminality and abuses among their inhabitants. On one occasion their belongings were stolen and Ms R.A.H. was almost assaulted.

2.9 The authors decided to move to Denmark where they arrived on 18 December 2012 and applied for asylum. They claimed that they feared persecution by the Al-Shabaab and that if returned to Somalia their life would be at serious risk. Likewise, if returned to Italy, they feared that they would have to live in the streets with their minor children. They further argued that the Italian authorities would be unable to protect them from any abuse from civilians; that they had received no benefits or services from the Italian authorities such as social assistance, health care, social housing and education; and that they would be unable to apply for assistance before the Italian authorities since they already benefited from the SPRAR for 6 months.

2.10 On 20 December 2013, the Danish Immigration Service (DIS) determined that since the authors and their children already had a residence permit in Italy, they were precluded from seeking asylum in Denmark and should be transferred to Italy, in accordance with section 7.3 of the Aliens Act. The DIS stated that the authors' allegations that they would be forced to live in the streets if returned to Italy could not lead to a different conclusion, as such socioeconomic factors fell outside the scope of section 7 of the Aliens Act. The authors appealed the decision before the Refugee Appeals Board (RAB). They claimed inter alia that they should be granted asylum protection pursuant to section 7(1) of the Aliens Act, since their situation fell within the Convention Relating to the Status of Refugees; that in assessing Italy, as a country of first asylum, the authorities should take into account that the UNHCR EXCOM Conclusion No. 58 (1989) according to which there

was an obligation to take socio-economic factors into consideration when assessing the application of the country of first asylum principle; and that their physical safety and freedom had not been sufficiently protected in Italy.

2.11 On 3 April 2014, the RAB upheld the decision of the DIS. It pointed out *inter alia* that according to the European Court of Human Rights in *Samsam Mohammed Hussein and Other v. the Netherlands and Italy*, persons who were granted refugee status, subsidiary protection or residence permit on humanitarian grounds in Italy were entitled to a renewable residence permit, and that its holder were entitled to work, to social assistance, health care, social housing and education under Italian law; that on 25 October 2013, the DIS informed the authors that they had received documents from the Italian authorities, from which it appeared that they held residence permits in Italy; and that Mr A.S.M. had been granted asylum as refugee.

2.12 The RAB also noted that Mr A.S.M. stated before it *inter alia* that in 2009, they were provided housing for six months in Palagiano and received money from the Italian authorities in connection with their integration process; they had health insurance cards and access to medical care; that although he did not remember the validity period of the health insurance card, he noted that it had been extended several times; that they had been registered with a family physician where they could go every month; and the physician had told them that they were fine and had therefore not referred them to specialists. He also submitted that in Palagiano he worked in an olive field, but he was fired from that job because of the colour of his skin; and that he was a victim of abuses in connection with another job. After they returned from Germany, Caritas provided accommodation for Ms R.A.H. and the child, whereas he stayed in various places, including Somali families' homes and on the streets. Mr A.S.M. also stated that in Perugia he contacted the job centre to get a job; and that there was a job, but was of seasonal character and poorly paid. Likewise, Ms R.A.H. stated before the RAB that she had been denied medical care in Rome in connection with her second pregnancy, but she had been examined once in Perugia before the delivery in hospital and twice at Caritas; that after the delivery, her son had been examined at the hospital; that they had to leave Caritas two months after her child's birth; and that the child had not subsequently been examined by doctors.

2.13 The RAB considered that the authors fell within the section 7 (2) of the Aliens Act as a result of the persecution by Al-Shabaab,<sup>2</sup> and that consequently, the question was if Italy could serve as their first country of asylum, in accordance with Section 7(3) of the Aliens Act.<sup>3</sup> The RAB found as facts that the authors may enter Italy and stay there legally while they apply for a renewal of their residence permits. It further stated that, "in case of return to Italy, the [authors] would be protected against *refoulement*, that their personal integrity and safety would be protected in Italy to the extent necessary, and that the financial and social conditions offered to them in Italy would be adequate. Based on the above and on the remaining background information available, the majority [found] that Italy [could] serve as the [authors'] country of first asylum, see section 7(3) of the Aliens Act, regardless of the [authors'] statements concerning their problems during their stay in Italy".

2.14 The authors claim that they have exhausted all domestic remedies, as the RAB decision of 3 April 2014 is final and cannot be challenged before a court.

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<sup>2</sup> Section 7(2) establishes: "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 (...)."

<sup>3</sup> Section 7(3) establishes: "A residence permit under subsections (1) and (2) may be refused if the alien has already obtained protection in another country, or if the alien has close ties with another country where the alien must be deemed able to obtain protection".

## The complaint

3.1 The authors submit that, by forcibly returning them and their children to Italy, the State party would violate their rights under articles 7, 17 and 24, of the Covenant.

3.2 The authors claim that the RAB should grant Mr. A.S.M. refugee protection pursuant to section 7(1) of the Aliens Act since he was at risk of persecution in Somalia by Al-Shabaab, due to her political activities and his position as major of the town Qoryoley. They further claim that if returned to Italy, the State party would violate their rights under article 7 of the Covenant since the conditions in which they lived in Italy amounted to inhuman and degrading treatment. If returned to Italy, they would have no social assistance from the authorities, since they already benefitted from the reception system when they first arrived, and therefore, they would be forced to live with their minor children in the streets. Against this background, they contend that their personal integrity is not reasonable protected in Italy.<sup>4</sup>

3.3 The authors' and their children's return to Italy would also constitute a violation of article 17 of the Covenant. On several occasions during their stay in Italy they were prevented from having a family life and living together. Likewise, it would amount to a violation of their children's rights under article 24 of the Covenant, since they would not have measures of protection. In its decision, the RAB did not take into account the best interest of their children and the fact that they may face abuses and social marginalization and lack access to school and adequate health care.

3.4 The *UNHCR Recommendations on important aspect of refugee protection in Italy*, of July 2013, pointed out that there were shortcomings in both Italian legislation and practice, which might hinder efforts of refugees to become self-reliant; that the SPRAR system, given its low capacity, was limited in its ability to assist beneficiaries of international protection in securing adequate accommodation to all in need; and that an increasing number of beneficiaries of international protection ended up homeless or squatting in abandoned buildings.<sup>5</sup> Likewise, a report's findings from The Law Students' Legal Aid Office, Juss-Buss and the Swiss Refugee Council, stated that persons with international protection status generally had no access to a FER accommodation (accommodation funded by the European Refugee Fund-*Fondo Europeo per i Rifugiati*), neither could they stay in a CARA accommodation (Accommodation Centres for Asylum Seekers-*Centri di Accoglienza per Richiedenti Asilo*); that it was extremely difficult for people who had been granted protection status and were returned to Italy to find accommodation; that although beneficiaries of protection had the same status as native Italians concerning social rights, the social system was in general insufficient; that the maximum length of stay in a SPRAR project was 6 months, which could be extended to one year or longer in the case of vulnerable persons; and that the length of stay was insufficient to enable people to provide for themselves subsequently – especially in view of the current situation of the job market. In Rome, there were a high number of asylum seekers and people with international protection status living in squats and slums; that these places were completely inadequate for children; and that in particular women and children faced threats and violence. Families with both parents were not considered vulnerable in Italy. Although Italian law provided that all children must have accommodation and that they have the right to live with their parents, this right is not always guaranteed and families

<sup>4</sup> The authors refer to UN High Commissioner for Refugees (UNHCR), *UNHCR Recommendations on Important Aspects of Refugee Protection in Italy*, July 2013; and The Law Students' Legal Aid Office, Juss-Buss and Swiss Refugee Council (OSAR), *Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees*, October 2013.

<sup>5</sup> *UNHCR Recommendations on Important Aspects of Refugee Protection in Italy*, July 2013, pp. 12-13.

are often separated. Vulnerable persons were given priority to the extent that there were special places for them in accommodation centres. However, due to limited number of suitable places and long waiting list, they risked ending up in the streets.<sup>6</sup>

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

4.1 On 15 October 2014, the State party provided observations on the admissibility and merits of the communication. It maintains that the communication should be declared inadmissible for non-substantiation. The State party also informed the Committee that in July 2014, Ms R.A.H, gave birth to her third child.

4.2 The State party considers that the authors failed to establish a prima facie case for the admissibility of their allegations under article 7 of the Covenant. There are no substantial grounds for believing that the authors risk being subjected to torture, or to cruel, inhuman or degrading treatment if returned to Italy, and therefore the communication is manifestly ill-founded and should be declared inadmissible.

4.3 As regards the authors' allegations under articles 17 and 24 of the Covenant, the State party submits that the authors are seeking to apply these obligations in an extraterritorial manner. The authors' allegations do not rest on any treatment that they and their children have suffered in Denmark, or in an area where Danish authorities are in effective control, but rather on consequences that they will allegedly suffer if returned to Italy. The Committee accordingly lacks jurisdiction over the relevant violations in respect of Denmark, and this part of the communication is incompatible with the provisions of the Covenant. Article 1 of the Optional Protocol states that the Committee has competence to receive and consider communications from individuals who are subject to the jurisdiction of a State party and who claim to be victims of a violation of any of the rights set forth in the Covenant committed by that State party. Further, extraditing, deporting, expelling or otherwise removing a person in fear of having his rights violated under articles 17 and 24 of the Covenant by another State will not cause such irreparable harm as that contemplated by articles 6 and 7 of the Covenant.<sup>7</sup> Accordingly, this part of the communication should be rejected as inadmissible *ratione loci* and *ratione materiae* pursuant to Rule 96 (d) of the Committee's Rules of Procedure read together with Rule 96 (a) of the Committee's Rules of Procedure and Article 2 of the Optional Protocol.

4.4 The State party provides a detailed description of the asylum proceedings under the Aliens Act and the RAB decision making process and functioning.<sup>8</sup>

4.5 Should the Committee declare the communication admissible, the State party maintains that article 7 of the Covenant would not be violated if the authors and their three minor children are returned to Italy. The authors did not provide the Committee with information or views on their circumstances beyond the information already relied upon during the asylum proceedings. The RAB found that the authors fell under section 7(2) of the Danish Aliens Act (protection status); that they had been granted temporary residence in Italy in 2009 as a consequence of their allegation of persecution in Somalia; and that they might enter Italy and take up a lawful residence while applying for a renewal of their residence permits. In this regard, the RAB referred to the background information on conditions for asylum-seekers in Italy, including the decision of 2 April 2013 delivered by the European Court of Human Rights in *Samsam Mohammed Hussein and Others v. the*

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<sup>6</sup> The Law Students' Legal Aid Office, Juss-Buss and Swiss Refugee Council (OSAR), Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, October 2013, pp. 21, 24, 35, 39, 41, 51, and 56.

<sup>7</sup> The State party refers to the Committee's General Comment No. 31: The nature of the General legal Obligation Imposed on States parties to the Covenant."

<sup>8</sup> For full description see communication No. 2379/2014, *Obah Hussein Ahmed v Denmark*, Views adopted on 7 July 2016, para. 4.1-4.4.

*Netherlands and Italy* (application No. 27725/10), and accordingly found that Italy could serve as the authors' "country of first asylum". Accordingly, it upheld the decision of 20 December 2013 of the DIS to refuse asylum to the authors pursuant to section 7(3) of the Aliens Act.

4.6 When applying the principle of country of first asylum, the RAB requires, at a minimum, that the asylum seeker is protected against *refoulement* and that he or she is able to enter legally and to take up lawful residence in the first country of asylum. Such protection includes certain social and economic elements, as asylum seekers must be treated in accordance with basic human standards and their personal integrity must be protected. The core element of such protection is that the person(s) must enjoy personal safety, both upon entering and while staying in the country of first asylum. However, the State party considers that it is not possible to require that asylum seekers have the exact same social and living standards as nationals of the country. It also is a mandatory minimum requirement that the asylum-seeker is protected against being returned to the country of persecution or to a country in which the asylum-seeker is not protected against return to the country of persecution.

4.7 In response to the author's allegations that they will not have access to accommodation in Italy and thus consequently have no way of creating a minimum living standard, the State party recalls that in *Mohammed Hussein and Others v. the Netherlands and Italy*,<sup>9</sup> the court observed that persons granted subsidiary protection will be provided with a residence permit valid for three years, renewable by the Territorial Commission that granted it. The Court ruled that in the absence of exceptionally compelling humanitarian grounds against removal, the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed is not sufficient in itself to give rise to breach of article 3 of the Convention. It held that "while the general situation and living conditions in Italy of asylum seekers, accepted refugees and aliens who have been granted a residence permit for international protection or humanitarian purposes, may disclose some shortcomings, it has not been shown to disclose a systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group of people."<sup>10</sup> The Court noted that a person granted subsidiary protection in Italy would be provided with a three-year renewable residence permit that allowed the holder to work, obtain a travel document for aliens, family reunification and benefit from the general schemes for social assistance, health care, social housing and education. Likewise, an alien is able, also after the expiry of a residence permit, to apply for renewal of the residence permit upon re-entry.

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

5.1 On 23 December 2014, the authors submitted their comments on the State party's observations and reiterated their allegations of violation of articles 7, 17 and 24, of the Covenant.

5.2 The authors claim that the Committee is competent *ratione loci* to examine their allegations under articles 17 and 24 of the Covenant. If there is a real, personal and foreseeable risk of violation of the right to family, to private life or to measure of protection of a child, States parties have a positive obligation to protect individuals from being exposed to such risk. In their case, the lack of accommodation in Italy had an impact in the family life and their children's rights since it prevented them from living together in the same place and forced them to live in the streets. Should the Committee consider that these

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<sup>9</sup> See *Mohammad Hussein and Others v. the Netherlands and Italy*, application No. 27725/10, decision adopted on 2 April 2013.

<sup>10</sup> *Ibid.*, para.78.

articles are not directly applicable, they should be read in conjunction with article 7 of the Covenant, as the allegations under these three provisions are closely interlinked.

5.3 The authors should be considered as asylum seekers and not as recognized refugees. At the moment their comments were submitted to the Committee, Mr A.S.M.'s residence permit had already expired, and Ms. R.A.H's residence permit would expire in July 2015. Moreover both authors were no longer in possession of their Italian residence permits. In this regard, the European Court of Human Rights in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* (application No. 27725/10) referred to a report and pointed out that "It is possible to renew a residence permit issued to an accepted refugee or granted for subsidiary protection or compelling humanitarian reasons by filing a request with the competent police immigration department. However, as such a request must in principle be accompanied by the original permit paper, this can be a serious problem for Dublin returnees who usually no longer have this permit in their possession when they are transferred to Italy."<sup>11</sup>

5.4 Asylum seekers and recognized refugees are to be considered members of a particular underprivileged and vulnerable group in need of special protection. The authors refer to the 2013 Jesuit Refugee Service report which states that the real problem concerns those who are sent back to Italy and who were already granted some kind of protection; they may have already stayed in at least one of the accommodation options available upon initial arrival, but, if they left the centre voluntarily before the established time, they are no longer entitled to accommodation in the Government reception centres for asylum seekers (CARAs).<sup>12</sup> Most people occupying abandoned buildings in Rome fall in this last category. The findings show that the lack of places to stay is a big problem especially for returnees who are, in most cases, holders of international or humanitarian protection.

5.5 The authors contend that they are fully dependent on State support due to their lack of languages skills, network, accommodation and work. However, there is no effective integration scheme in Italy and persons who are granted international protection are left by their own. There is no basis for assuming that the Italian authorities will prepare for their return in accordance with basic human rights standards.

5.6 The authors argue that the more recent European Court decision in *Tarakhel v. Switzerland* (4 November 2014), which allegedly involved similar facts, supports their claim that they should not be sent back to Italy.<sup>13</sup> The Court stated that the presumption that a State participating in the Dublin system will respect the fundamental rights in the European Convention on Human Rights is not irrebuttable. The Court found that, in the current situation in Italy, "the possibility that a significant number of asylum seekers may be left without accommodation or accommodated in overcrowded facilities without any privacy or even in insalubrious or violent conditions, cannot be dismissed as unfounded."<sup>14</sup> The Court required Switzerland to obtain assurances from its Italian counterparts that the applicants (a family) would be received in facilities and conditions adapted to the age of the children; if such assurances were not made, Switzerland would be violating article 3 of the European Convention by transferring them to Italy. The authors argue that, in the light of that finding, together with their previous own experience, it should be concluded that if returned to Italy they would be exposed to a situation amounting to a violation of article 7 of the Covenant. Further, the State party's assessment should also take into account the

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<sup>11</sup> Ibid, para. 48.

<sup>12</sup> Jesuit Refugee Service, *Protection Interrupted – The Dublin Regulation's Impact on Asylum Seekers' Protection*, June 2013, p. 148, 149 and 152.

<sup>13</sup> See European Court of Human Rights, *Tarakhel v. Switzerland*, application No. 29217/12, judgment adopted on 10 September 2014.

<sup>14</sup> Ibid., para. 120-122.



impact of their return to their rights under articles 17 and 24, in particular, whether the family will be able to live together in Italy.

#### State party's additional observations

6.1 On 18 May 2016, the State party provided additional observations and reiterated that its previous arguments on the admissibility and merits of the communication. The State party informed the Committee that according to consultation response received from the Italian authorities in the summer of 2015, an alien with a residence permit for Italy who is recognised as a refugee or has protection status can apply for a renewal of the residence permit upon re-entry into Italy – also after the expiry of the residence permit. Furthermore, the Italian authorities have stated that, upon re-entry into Italy, the alien must present himself or herself at the issuing police immigration department and submit a request for renewal. Subsequently, the request will be forwarded to the competent authority for verification that the conditions for renewal are met. In February 2016, the Italian authorities confirmed that also the current state of law is that an alien who has been granted residence in Italy as a recognised refugee or has been granted protection status may submit a request for renewal of his or her residence permit upon re-entry into Italy if, as in the case at hand, the residence permit has expired after the alien entered Denmark. Accordingly, the authors will be able to enter Italy and submit a request for renewal of their residence permits upon re-entry into Italy even though their residence permits have expired. The State party maintains that no further obligation can be imposed on it to ensure the authors' entry into and basis of residence in Italy.

6.2 With regard to *Warda Osman Jasin et al. v. Denmark*, the State party points out that it concerned the deportation of a single mother with three minor children to Italy. By contrast, the case at hand concerns the deportation of a family with three minor children. The circumstances that, by leaving Italy, the authors have placed themselves in a situation in which their residence permits have expired does not mean that they can be considered asylum-seekers today.

6.3 The case at hand differs markedly from *Naima Mohammed Hassan v. the Netherlands and Italy* as it appears from para. 6 of the decision in that case that the Italian authorities had dismissed the relevant applicant's application for international protection, having noted that the applicant had left for an unknown destination as confirmed by the local police headquarters. In the present, the authors were in fact issued with residence permits for Italy before leaving the country.

6.4 As regards the authors' reference to the judgment delivered by the Grand Chamber of the European Court of Human Rights on 4 November 2014 in *Tarakhel v. Switzerland* (application No. 29217/12), the State party submits that the *Tarakhel* judgment – which concerned a family with the status of asylum-seekers in Italy – does not deviate from the findings in previous case-law on individuals and families with a residence permit for Italy, as expressed in, *inter alia*, the admissibility decision delivered by the ECtHR on 2 April 2013 in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* (application No. 27725/10). Accordingly, the State party maintains that it cannot be inferred from the *Tarakhel* judgment that Member States are required to obtain individual guarantees from the Italian authorities before deporting to Italy individuals or families in need of protection who have already been granted residence in Italy.

6.5 The authors' allegations that, being recognised refugees, the family would be offered poorer conditions than asylum-seekers in Italy, do not accord with their previous statements on their stay in Italy. In this regard the State points out *inter alia* that when interviewed by the DIS and at the hearings before the RAB, the authors stated that Mr A.S.M. had lived in a refugee camp for seven months; that Ms R.A.H. had been hospitalised in Italy for a long period of time because she had felt unwell during her pregnancy; that they received

financial support for housing for six months and EUR 600 when the financial support for housing was discontinued; that Mr A.S.M. received six months of voluntary education; that they were issued with health insurance cards and that they had access to medical care and were registered with a family physician; that they had been given shelter by the Caritas organisation in both Rome and Perugia; that Mr A.S.M. contacted the job centre with a view to finding a job and that he was informed that there was a job, but that it involved being picked up by bus in the morning and returned again later, and that it was poorly paid; that before giving birth to her son, Ms. R.A.H. was examined at the hospital in Perugia; that she had given birth at a hospital; and that, when born, the baby was examined at the hospital; and that moreover, Ms. R.A.H. and the children could continue to stay with Caritas for two months after their son's birth.

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

#### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with article 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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

7.3 The Committee notes that the State party has not objected the admissibility of the communication under article 5 (2) (b) of the Optional Protocol. It also observes that the authors filed an application for asylum which was finally rejected by the RAB on 3 April 2014. Accordingly, the Committee considers that domestic remedies have been exhausted.

7.4 The Committee notes the State party's argument that the authors' claims with respect to article 7 should be held inadmissible owing to insufficient substantiation. However, the Committee considers that, for the purpose of admissibility, the authors have adequately explained the reasons for which they fear that their forcible return to Italy would result in a risk of treatment incompatible with article 7 of the Covenant.

7.5 The Committee takes notes of the authors' allegations that if deported to Italy, together with their children, they would suffer a treatment in violation of articles 17 and 24 of the Covenant. In this connection, the Committee notes that the State party has argued that these claims are inadmissible *ratione loci* and *ratione materiae*. The Committee recalls that article 2 of the Covenant imposes an obligation upon States Parties not to deport a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant in the country to which removal is to be effected.<sup>15</sup> Accordingly, to the extent that the authors' allegations of a violation of articles 17 and 24 rely on violations that they and their children will allegedly suffer after their return to Italy, the Committee considers that these authors' claims are incompatible *ratione materiae* with the provisions of the Covenant and declares them inadmissible under article 3 of the Optional Protocol.

7.6 In the light of the foregoing, the Committee considers that the communication is admissible insofar as it appears to raise issues under article 7 of the Covenant and proceeds to its consideration of the merits.

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<sup>15</sup> See General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

*Consideration of merits*

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

8.2 The Committee notes the authors' claim that deporting them and their three minor children to Italy, based on the Dublin Regulation principle of "first country of asylum", would expose them to treatment contrary to article 7 of the Covenant. The authors base their arguments on, inter alia, the socio-economic situation they would face and the lack of access to social assistance in Italy, as demonstrated by their experience after they were granted a residence permit in October 2009; as well as on the general conditions of reception for asylum seekers and refugees in Italy. They submit that since they already benefitted from the reception system when they first arrived in Italy, they would have no access to social housing or temporary shelters; that they would not be able to find accommodation and a job; and that, therefore, they would face homelessness again and be forced to live with their minor children in the streets.

8.3 The Committee recalls its general comment No. 31,<sup>16</sup> in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by 7 of the Covenant. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.<sup>17</sup> The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists,<sup>18</sup> unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>19</sup>

8.4 The Committee observes that it is not disputed that in October 2009 Italy granted Mr A.S.M. and Ms R.A.H. asylum and subsidiary protection, respectively; that they received residence permits; and that afterwards they received financial support and social assistance in the form of housing until June 2010. The authors allege that subsequently they received no help or assistance from the Italian authorities; and that they lived in homelessness and destitution. Against this background, they submit that if returned to Italy, they would have no social assistance from the authorities, since they already benefitted from the reception system when they first arrived in Italy; that they would not be able to find accommodation and a job; and that, therefore, they would face homelessness again and be forced to live with their minor children in the streets. In support of their claims, the authors relied on reports on the general situation of asylum seekers and refugees in Italy, that indicate *inter alia* that 6-month length of social housing/accommodation is insufficient to enable people to provide for themselves subsequently; that it is extremely difficult for people who have been granted protection status and are returned to Italy to find accommodation and a job; that although beneficiaries of protection have the same status as native Italians concerning social rights, the social system is in general insufficient; and that an increasing number of

<sup>16</sup> See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

<sup>17</sup> See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6; and No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>18</sup> See communication No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

<sup>19</sup> See, inter alia, *ibid.* and communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2.

beneficiaries of international protection end up homeless or squatting in abandoned buildings.<sup>20</sup>

8.5 The Committee notes the consultation held by the State party with the Italian authorities in the summer of 2015 and February 2016, who confirmed that an alien who has been granted residence in Italy as a recognised refugee or has been granted protection status may submit a request for renewal of his or her residence permit upon re-entry into Italy if the residence permit has expired after the alien entered Denmark.

8.6 The Committee observes that the material before it, as well as information in the public domain, indicates that there is a lack of available places in the reception facilities for asylum seekers and returnees under the Dublin Regulations; that returnees, like the authors, who have already been granted a form of protection and benefited from the reception facilities when they were in Italy, are not entitled to accommodation in the CARAs;<sup>21</sup> and that although beneficiaries of protection entitled to work and to social rights in Italy, its social system is in general insufficient to attend all persons in need, in particular in its current socio-economic situation.<sup>22</sup> Despite it and the difficulties confronting the authors, the Committee considers that the mere fact that the authors, who are a couple, may fall within this situation by itself does not necessarily mean that they would be in a special situation of vulnerability –and in a situation significantly different to many other families– so as to conclude that their return to Italy would constitute a violation of the State party's obligations under 7 of the Covenant. In the present case, the Committee observes that during their stay in Italy, the authors were given health insurance cards when they got asylum and had access to medical treatment; including for the birth of their two first children. Although they claim that they had limited access to this service, they have failed to identify before the Committee specific circumstances in which the authors or their children were denied medical services when they needed. Likewise, Mr A.S.M. was able to obtain some jobs in Italy in the past, and has not convincingly explained why he would be unable to work again or to seek the Italian authorities' protection in case of abuses from employers. In light of the foregoing, the Committee considers that although the authors disagree with the decision of the State party's authorities to return them to Italy, they have failed to explain why this decision is manifestly unreasonable or arbitrary in nature. Nor have they pointed out any procedural irregularities in the procedures before the Danish Immigration Service or the Refugee Appeals Board. Accordingly, the Committee cannot conclude that the removal of the authors to Italy by the State party would constitute a violation of article 7 of the Covenant.

9. The Committee, acting under article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the authors' and their children removal to Italy would not violate their rights under article 7 of the Covenant. The Committee, however, is confident that the State party will duly inform the Italian authorities of the authors' and their children's removal, in order for the authors and their children to be taken charge of, upon arrival, in a manner adapted to the age of the children and that the family would be kept together.

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<sup>20</sup> See footnote 4 above.

<sup>21</sup> See footnote 12 above.

<sup>22</sup> The Law Students' Legal Aid Office, Juss-Buss and Swiss Refugee Council (OSAR), Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, October 2013, pp. 21, 24, 35, 39, 41, 51, and 56.

## Annex I

### Dissenting opinion of Committee member Yadh Ben Achour

1. Je regrette de ne pouvoir me rallier aux constatations du comité dans l'affaire **A. S. M. et R. A. H.** contre Danemark, objet de la communication n° 2378/2014. La conclusion du comité est que "l'expulsion des auteurs et de leurs enfants vers l'Italie ne constituerait pas une violation des droits garantis par l'article 7 du Pacte." De mon point de vue, il existe dans cette espèce un risque de violation de l'article 7, en cas d'expulsion des auteurs vers l'Italie.

2. Comme dans l'affaire Yasin (communication 2360/ 2014), l'expulsion des auteurs et leurs trois enfants mineurs vers l'Italie les exposerait à un risque élevé de préjudice irréparable. Il est vrai que les auteurs ont reçu des autorités italiennes une aide financière et un logement social, qu'ils ont obtenu de la commune de Palagiano un appartement pour six mois dans le cadre du projet « Koiné », qu'ils ont vécu dans différents centres pour demandeurs d'asile pendant trois mois et qu'ils ont reçu des cartes d'assurance maladie et ont bénéficié de l'accès aux soins médicaux.

3. Cependant, d'un autre côté, cette famille a connu des conditions de vie déplorables en Italie comme cela est souligné dans les paragraphes 2.5 à 2.8 des constatations. La famille, en particulier le mari, a vécu dans la rue, le mari n'a pu assister à l'accouchement de sa femme, n'a pu obtenir un emploi ou a occupé des emplois illégaux sous-payés ou non payés.

4. Depuis son entrée au Danemark, la famille s'est agrandie d'un troisième enfant, ce qui est de nature à aggraver sa situation et sa vulnérabilité en cas d'expulsion. Comme je l'ai déjà indiqué dans mon opinion sur la communication No. 2402/2014, cette situation de vulnérabilité aggravée, associée aux insuffisances avérées des conditions d'accueil des demandeurs d'asile et des réfugiés en Italie, font apparaître pour les auteurs un risque réel d'être soumis à un traitement contraire à l'article 7 du Pacte. La présence d'enfants, la souffrance du déracinement et le degré de vulnérabilité de la famille antérieurement vécue dans le pays du premier accueil sont les critères déterminants pour évaluer le risque. Le comité n'a pas suffisamment tenu compte de ces critères.

## Annex II

### Individual opinion of Committee Members Sarah Cleveland and Nigel Rodley

1. We write separately in this case to comment on the Committee's inadmissibility determination with respect to the authors' claims under articles 17 and 24.
2. In paragraph 7.5, the Committee concludes that the authors' claims that Italy would violate their rights and those of their children under articles 17 and 24 are inadmissible under article 3 of the Optional Protocol, on grounds of incompatibility *ratione materiae* with the Covenant. This determination is correct, since Italy is not a party to the present communication.
3. We write, however, to note what this inadmissibility determination does not address. It does not address a situation in which the author alleges that the deporting State would itself violate articles 17 and 24, as a result of harms inflicted on the individual and the family as a result of the deportation. The Committee routinely addresses such claims on the merits.<sup>23</sup>
4. The Committee also does not address a situation in which the authors assert that the State party (in this case, Denmark) is deporting them to a situation in which there are substantial grounds for believing that they would face a real risk of irreparable harm for violations under articles 17 and 24, such as the harms contemplated by articles 6 and 7 of the Covenant.
5. As the Committee notes, in General Comment No. 31, the Committee observed that the article 2 obligation to respect and ensure Covenant rights imposes an obligation on States parties not to deport or otherwise transfer a person from their territory, "where there are substantial grounds for believing that there is a real risk of irreparable harm, *such as* that contemplated by articles 6 and 7 of the Covenant."<sup>24</sup>
6. Articles 6 and 7, of course, address the right to life and the prohibition on torture and cruel, inhuman, or degrading treatment or punishment. The Committee has never comprehensively addressed to what extent irreparable harm resulting from violation of Covenant rights other than articles 6 and 7 may give rise to the nonrefoulement obligation addressed by General Comment 31. However, the Committee has not foreclosed the possibility of recognizing such nonrefoulement obligations, nor has it taken the position that nonrefoulement claims based on other articles are *per se* incompatible *ratione materiae* with the Covenant. To the contrary, the Committee previously has accepted as adequately substantiated and admissible claims under article 18 that an individual would face a real risk of irreparable harm as a result of violations of the right to freedom of religion in the receiving country.<sup>25</sup> In other cases, the Committee has concluded that allegations under articles 18 and 19 "cannot be dissociated from" claims under article 7 for purposes of admissibility.<sup>26</sup> The Committee, however, generally has not addressed such claims on the

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<sup>23</sup> See, e.g., Communication No. 2081/2011, D.T. and A.A. v. Canada (Views adopted July 2016), paras. 7.2-7.11; Communication No. 1959/2010, Warsame v. Canada (Views adopted 21 July 2011), para. 8.10.

<sup>24</sup> See General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12 (emphasis added).

<sup>25</sup> See, e.g., Communication No. 2291/2013, A and B v. Denmark (Views adopted June 2016), paras. 7.4 and 8.7 (finding article 18 claim adequately substantiated for purposes of admissibility and resolving it on the merits consistent with the determination under articles 6 and 7).

<sup>26</sup> See Communication No. 2329/2014, Z v. Denmark (Views adopted 15 July 2015), paras.

merits separately from parallel claims under articles 6 and 7. The Committee similarly has recognized nonrefoulement claims under article 9 as potentially admissible.<sup>27</sup>

7. We therefore do not read paragraph 7.5 as foreclosing the possibility that an author may validly advance a claim that he or she would face a real risk of irreparable harm for violations under articles 17 and 24 (or other Covenant rights). Certainly, at least where such a claim involves harms that might also constitute irreparable harm regarding the right to life under article 6 or torture or cruel, inhuman or degrading treatment or punishment under article 7, such a claim should, if adequately substantiated, be admissible and subject to resolution on the merits, in conjunction with a violation of one or both of those articles.

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6.4, 7.4 (addressing articles 18 and 19); accord Communication No. 2007/2010, X v. Denmark (Views adopted 26 March 2014), paras. 8.4, 9.4 (addressing article 18); see also *id.* (Individual Opinion of Gerald L. Neuman).

<sup>27</sup> Communication No. 2443/2014, S.Z. v. Denmark (Views adopted June 2016), para. 8.4 (addressing author's claim under article 9 regarding risk of arbitrary detention post-deportation as inadmissible for lack of sufficient substantiation); cf. General Comment No. 35, Article 9 (Liberty and security of person), para. 57 ("Returning an individual to a country where there are substantial grounds for believing that the individual faces a real risk of a severe violation of liberty or security of the person such as prolonged arbitrary detention may amount to inhuman treatment prohibited by article 7 of the Covenant.").

## **Annex III**

### **Individual opinion of Committee member Fabián Salvioli (concurring)**

Adhiero al voto conjunto realizado por Sarah Cleveland y Nigel Rodley en el caso ASM y RAH contra Dinamarca, el cual expresa en sus fundamentos el mejor abordaje jurídico para el tratamiento del asunto examinado por el Comité en aplicación del Pacto y el Protocolo Facultativo.