

# ICCPR Case Digest

CCPR/C/114/D/2360/2014

Communication  
No. 2360/2014

Submission: 17.03.14  
Adoption: 22.07.15

## Osman Jasin v. Denmark

*Non-refoulement* obligations: deportation from Denmark to Italy

### Substantive Issues

- Prohibition of torture or other cruel, inhuman or degrading treatment

### Relevant Articles

- Art. 7

### Violations

- Art. 7

### Facts

The author, a Somali national born in 1990, fled from Somalia to escape her 70-year-old husband who she was forced to marry when she was 17. Before successfully escaping she was subjected to rape, abuse and harassment by him. After leaving she discovered she was pregnant and she gave birth to her daughter in a detention centre in Libya. The author then sailed on a ship to reach Europe after she was released; the ship ran out of fuel and was rescued by an Italian coastguard in May 2008. The author was granted a residence permit on 3 September 2008 but she was informed she had to leave the reception centre where she resided on the same day and that she would not receive any help to find another shelter. Consequently, the author lived on the street with her daughter and survived by begging.

Since her situation was desperate in Italy, she travelled to the Netherlands to apply for asylum there. During her stay, she got pregnant again. The author travelled then to Sweden in October 2011 in order to seek asylum. The Swedish authorities had the intention to deport her to Italy so she went to Denmark and applied for asylum on 25 June 2012. The Danish Immigration service decided on 19 November 2013 that the author should be returned to Italy. The decision was confirmed by the Refugee Appeals Board on 6 February 2014. A few weeks prior to the decision, the author gave birth to a third child. The author claims that by deporting her to Italy, the State Party would violate her and her children's rights under article 7 of the Covenant.

### Committee's View

#### Consideration of admissibility

Since the State Party did not challenge the exhaustion of domestic remedies, the Committee considers it can examine the communication under article 5 (2) of the Optional Protocol. The Committee chooses to consider the inadmissibility claim raised by the State Party in the consideration of merits. The claim of the author is thus admissible insofar.

#### Consideration of merits

The Committee notes that the majority of the Danish Refugee Appeals Board members ruled that the humanitarian conditions for asylum seekers who have been granted a temporary

permit in Italy were deteriorating and that it would soon be no longer safe to consider Italy as the first country of asylum. The Committee is of the view that the State Party failed to consider the detailed information submitted by the author regarding the extreme deprivation and vulnerability she had to face on two instances. The (expired) residence permit granted to the author would most likely not prevent such hardship from occurring again. The State party did not ensure that the author and her three children would benefit from conditions that should apply to her status as an asylum seeker. The State party should have requested from the Italian authorities that they renew the residence permits of the author and her children, that they refrain from deporting them and that they provide conditions adapted to the family's vulnerable situation. In these circumstances, the Committee considers that the deportation of the author and her three children to Italy would amount to a violation of the article 7 of the Covenant.

## Recommendation

In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide Warda Osman Jasin, the author of the present communication, with an effective remedy

- a. including full reconsideration of her claim, taking into account the State party's obligations under the Covenant, the Committee's present Views, and the need to obtain assurance from Italy, as set out in paragraph 8.9 above, if necessary.
- b. The State party is also requested to refrain from expelling the author to Italy while her request for asylum is being reconsidered
- c. The State party is also under an obligation to avoid exposing others to similar risks that would constitute a violation of article 7 of the International Covenant on Civil and Political Rights.

## Appendix 1

Individual Committee member Seetulsingh has a dissenting opinion on the matter and considers that the removal of the author and her three children to Italy would not constitute a breach of article 7. According to him, ruling a violation of article 7 in this case would widen its ambit and it would then apply to thousands of destitute migrants in the world. In other words, it would set a dangerous precedent since there is no jurisprudence of the Committee to support such extension of the article 7. Committee member Seetulsingh is also of the view that the author showed irresponsible behaviour by giving birth to three children and thereby aggravating her precarious situation. Mr. Seetulsingh disagrees with the Committee when it assessed that the State Party "failed to devote sufficient analysis to the author's personal experience". Since the State Party specified that it is not possible to conclude that the author would suffer irreparable harm if deported, he is of the view that the issue was satisfactorily addressed.

Mr Seetulsingh adds that the concerns voiced by Messrs. Shany and Vardzelashvili in the Appendix II regarding the eventual deportation of the author and her children to Somalia are not relevant since the deportation was not even considered by the Italian authorities during her initial stay in Italy from 2008 to 2011.

## Appendix 2

Individual Committee members Yuval Shany and Konstantine Vardzelashvili are of concurring opinions regarding the deportation of the author and her children to Italy. Messrs. Shany and Vardzelashvili consider that the Committee should have grounded their decision on the distinctive status of the author and her children as "asylum seekers entitled to subsidiary protection" instead of ruling on the economic hardship that the family experienced in Italy. They refer to the UNHCR and Dublin Regulation legislation that assess the *non-refoulement* rule (persons with subsidiary protection should not be deported to their countries of origin) and the ability to "enjoy basic economic and social rights in the receiving countries". If these basic rights

cannot be exercised the asylum seeker might be forced to return to the country of origin and thus voiding the right to *non-refoulement*. According to Shany and Vardzelashvili, the State parties under the Covenant should follow the *non-refoulement* obligations but for this particular case, the very harsh conditions experienced by the family in Italy do not equate to a violation of the most basic rights such as deprivation of life or torture.

However, the exceptional circumstances of this particular case – the unclear legal situation in Italy, the extreme vulnerability of the family, the failure of the Italian social welfare system and the lack of guarantees regarding the subsidiary protection following the potential deportation – question the appropriateness of Italy being regarded as a safe country for the specific author and children. The precariousness of her situation might very well compel her to return to Somalia where there is a real risk of torture awaiting her. In this regard, since the State Party did not consider the eventual inability of the author to exercise her right of *non-refoulement*, Messrs Shany and Vardzelashvili agree that a deportation of the author to Italy would violate Denmark obligations under article 7.

## Deadline to Submit the Report on the Implementation of the Recommendations

180 days from the adoption of the views: 18 January 2016