



# International Covenant on Civil and Political Rights

Advance unedited version

Distr.: General  
4 April 2017

Original: English

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## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2473/2014<sup>\*,\*\*</sup>

<i>Communication submitted by:</i>	A.H.S. (represented by Mr. Tage Gottsche)
<i>Alleged victim:</i>	A.H.S.
<i>State party:</i>	Denmark
<i>Date of communication:</i>	24 October 2014 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 October 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	28 March 2017
<i>Subject matter:</i>	Non-refoulement; arbitrary arrest and detention
<i>Procedural issue:</i>	Substantiation of claims
<i>Substantive issues:</i>	Torture; arbitrary arrest-detention
<i>Articles of the Covenant:</i>	7 and 9
<i>Article of the Optional Protocol:</i>	2

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\* Adopted by the Committee at its 119th session (6-29 March 2017).

\*\* The following members of the Committee participated in the examination of the communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V. J. Kran, Duncan Mahumuza Laki, Photini Pazartzis, Mauro Politi, Jose Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany, and Margo Waterval.

1.1 The author of the communication is A.H.S., a stateless person from Gaza, born in 1982. He is residing in Denmark and risks deportation to Gaza. He claims that by deporting him Denmark will violate his rights under articles 7 and 9 of the Covenant. He is represented by counsel, Mr. Tage Gottsche.

1.2 On 29 October 2014, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided not to grant the author's request for interim measures.

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

2.1 In 2007-2008, the author worked as a teacher in a university in Gaza. On 30 June 2008, he was fired by Hamas-affiliated staff allegedly for instructing students who had problems with Hamas. The author himself has never had political affiliations, but was a sympathizer of Fatah. In 2010, he received a summons to appear before the Security Service Section of the city he lived in. He did not go and left his home for a few days. After returning he was attacked by Hamas and had to be hospitalized with a head trauma. From the hospital he was taken by Hamas to a prison and kept there for 2 weeks, during which he was tortured, namely hit, hung up and hit on his feet. He was released under a condition that he would cooperate and deliver information about Fatah. Approximately one month later the author travelled to Egypt with the help of a smuggler and returned 2 months later back home, again with the help of a smuggler. In December 2011, he travelled again to Egypt and on 10 December 2011, he married there a Danish citizen of Palestinian origin. In February 2012, he travelled again to Gaza in order to arrange a Danish visa. On 25 April 2012, he arrived in Denmark. On 2 October 2012, he was granted a residence permit on family reunification grounds. On 4 January 2013, the author and his wife separated. On 25 January 2013, he applied for asylum. On 4 March 2013, his residence permit was revoked.

2.2 The reasons for asylum invoked by the author were his fear to be detained and tortured by Hamas because he fled and failed to provide them with information, as arranged upon his release from detention; and his fear to be killed by the family of his wife, who are high positioned in Hamas, due to a conflict with his former father-in-law. On 6 December 2013, the Danish Immigration Service rejected his asylum application. On 19 June 2014, the Danish Refugee Appeals Board (RAB) confirmed the decision of the Danish Immigration Service, having found the facts of his story inconsistent and lacking credibility. Thus, among others, the RAB specified that the author has not had any conflict with Hamas for 2 years after being fired, although he alleged that Hamas was looking for him because of the advice he was providing to the students; the author has travelled in and out the area of Gaza repeatedly; that the information on abuse in detention cannot in itself justify granting of asylum; and that the claims about attacks by the in-law-family are not credible. The RAB came to the conclusion that the author has not established that he would be under the risk of personal persecution, inhuman treatment or punishment which would justify granting him a residence permit.

2.3 The author claimed before the RAB that the human rights situation in the Gaza in itself justifies international protection. The RAB found it unnecessary, in the view of the facts of the case, to adopt a general position on the situation in Gaza.

2.4 The author claims to have exhausted all available domestic remedies since the decisions of the RAB cannot be invoked before the domestic courts.

### **The complaint**

3. The author alleges that if returned to Gaza, he would face a risk of assault from Hamas and a threat to his life from the relatives of his ex-wife in violation of articles 7 and 9 of the Covenant.

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

4.1 By Note verbale of 29 April 2014, the State party submitted its observations on the admissibility and merits of the communication. The State party, first, claims that the communication should be considered inadmissible as the author has failed to establish a prima facie case under articles 7 and 9 of the Covenant. He has not provided substantial grounds to believe that he would be in danger of being subjected to torture or other forms of cruel, inhuman or degrading treatment or punishment if returned to Gaza. The author has failed to establish in any way how he risks treatment in violation of article 9 of the Covenant.

4.2 The State party alleges that, should the communication be considered admissible, the facts as presented by the author do not reveal a violation of article 7 and 9 of the Covenant. The State party cites the Committee jurisprudence according to which the risk of being subjected to torture or ill-treatment must be personal and the author must provide substantial grounds to establish that a real risk of irreparable harm exists.<sup>1</sup>

4.3 The State party provided a detailed description of the asylum proceedings under the Aliens Act and the RAB decision-making process and functioning.<sup>2</sup> It notes that in the present case the RAB concluded that the author's statements about his conflict with Hamas due to the circumstances during his employment at the university were fabricated for the occasion, as well as his allegations about the conflict with the family of his former wife. The State party observes that the author's statements on several crucial points were inconsistent, vague, incoherent and elaborating and appeared unlikely. The author appears as a very low-profile individual, neither him nor his family have ever been involved in any political activities, and he has failed to give a coherent and logical account of why he was allegedly persecuted by Hamas. The State party further observes that the author has not provided any credible reasons for his conflict with the family of the former wife.

4.4 The State party submits that the author has failed to specify why the general conditions in Gaza are of such nature that it would constitute a violation of article 7 of the Covenant to return him. He also failed to refer to any specific background information. The State party refutes the author's allegation to the effect that the RAB has refused to review the situation in Gaza. It submits that the RAB has a comprehensive collection of general background material on the situation in the countries of origin of asylum seekers, which is continually updated. Having analysed the situation in Gaza, the State party agrees with the conclusion of the RAB that the situation alone cannot justify granting a residence permit.<sup>3</sup>

4.5 The State party observes that the author has not provided any explanation of why his return would constitute a violation of article 9 of the Covenant.

4.6 The State party further submits that the author has failed to provide any new, specific details about his situation to the Committee and that his communication merely reflects his disagreement with the assessment of his credibility by the RAB. He has failed to identify any irregularity in the decision-making process or any risk factors that the RAB has failed to properly take into account. The State party concludes that the author in fact is

<sup>1</sup> The State party cites the Committee's views in Communication No. 1302/2004, *Dawood Khan v. Canada*, Views adopted on 25 July 2006, para. 5.4.

<sup>2</sup> See communication No. 2186/2012, *X and X v. Denmark*, Views adopted on 22 October 2014, paras. 4.8-4.11.

<sup>3</sup> The State party refers to *Thematic Memorandum Palestine: The Gaza Strip after the War 7 July to 26 August 2014*, published by Landinfo on 9 December 2014 and the *Israel and the Occupied Palestinian Territories (OPTs) – Country of Concern, latest update, 30 September 2014*, a report published by the UK Foreign and Commonwealth Office on 16 October 2014.

trying to use the Committee as an appellate body to have the factual circumstances of his claim reassessed.

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

5. On 27 August 2015, the author submitted his comments to the State party's observations. He argues that he has established a prima facie case under articles 7 and 9 of the Covenant on account of his fear of persecution by Hamas on one hand, due to the previous persecution and imprisonment, and on the other hand, due to a conflict with his former father-in-law who had high-positioned relatives in Hamas. He also reiterates his claim regarding the failure of the State party to assess the general situation in Gaza, which has severely deteriorated while he was in Denmark.

#### **State party's additional observations**

6. On 1 September 2015, with reference to its observations of 29 April 2014, the State party added that it had no additional observations.

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

##### *Consideration of admissibility*

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

7.2 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.

7.3 The Committee takes note of the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b), of the Optional Protocol have been met.

7.4 The Committee notes the State party's challenge to the admissibility of the communication pursuant to article 2 of the Optional Protocol on the ground the author has failed to establish a prima facie case under articles 7 and 9 of the Covenant. The Committee notes the author's contentions that he has established a prima facie case on account of his fear of persecution by Hamas due to his previous persecution and imprisonment and due to his conflict with his former father-in-law.

7.5 The Committee recalls its general comment No. 31,<sup>4</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 articles 6 and 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>5</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

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<sup>4</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>5</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.

States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such risk exists unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>6</sup>

7.6 The Committee notes that the RAB thoroughly examined the author's claim and considered his personal and family circumstances. It found that the author or his family have never been involved in any political activities, that the author has not provided any credible reasons for his conflict with the family of the former wife, that his statements on several crucial points were inconsistent and vague and that he has failed to give a coherent and logical account of why he was allegedly persecuted by Hamas. On the basis of personal interviews with the author, the RAB concluded that the author's statements about his conflict with Hamas due to the circumstances during his employment at the university were fabricated for the occasion, that his claims about attacks by the in-law-family were not credible and that the author would not be at an actual and personal risk of persecution by Hamas if returned to Gaza. The Committee also notes the State party's submission that it had reviewed the general situation in Gaza on the basis of the constantly updated country background information and has not found indications that the author would be at risk if returned there. The author has not explained why the decision of the RAB would be manifestly unreasonable or arbitrary in nature. The Committee accordingly concludes that the author has failed to sufficiently substantiate his claim that his forcible removal would amount to a violation of article 7 of the Covenant and finds it is inadmissible under article 2 of the Optional Protocol. For the same reasons it finds the claim under article 9 of the Covenant to be inadmissible under article 2 of the Optional Protocol.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That the decision shall be communicated to the State party and to the author.

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<sup>6</sup> See communication No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.