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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2575/2015* ** ***

<i>Communication submitted by:</i>	Bayush Alemseged Araya (represented by counsel, Danish Refugee Council)
<i>Alleged victims:</i>	The author and her minor son
<i>State party:</i>	Denmark
<i>Date of communication:</i>	24 February 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 25 February 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	13 July 2018
<i>Subject matter:</i>	Deportation from Denmark to Italy
<i>Procedural issues:</i>	None
<i>Substantive issue:</i>	Risk of torture or other cruel, inhuman or degrading treatment
<i>Article of the Covenant:</i>	7
<i>Article of the Optional Protocol:</i>	5 (2) (a) and (b)

* Adopted by the Committee at its 123rd session (2 – 27 July 2018).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

*** A joint opinions (dissenting) by Committee members Ilze Brands Kehris, Sarah Cleveland, Christof Heyns and Yuval Shany is annexed to the present Views. An individual opinion (concurring) by Committee member Olivier de Frouville is also annexed.

Views under article 5 (4) of the Optional Protocol

1.1 The author of the communication dated 24 February 2015, is Ms. Bayush Alemseged Araya, born on 1 September 1984, submitting the complaint on her behalf and on behalf of her son Euas, born on 8 December 2014. The author sought asylum in Denmark, but her application was rejected; she has faced deportation to Italy since 26 February 2015. She claims that her deportation to Italy would constitute a violation by Denmark of her rights under article 7 of the International Covenant on Civil and Political Rights (“the Covenant”). The Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976. She is represented by counsel (the Danish Refugee Council).

1.2 On 25 February 2015, pursuant to rule 92 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 returning the author and her minor son to Italy while their case was under consideration by the Committee. On 27 February 2015, the Immigration Appeals Board suspended the time limit for the author’s departure until further notice.

1.3 On 8 June 2015, the State party submitted that the Danish Immigration Service decided on 25 April 2015 to examine the author’s application for asylum and consequently suspended her deportation. The State party therefore requested the Committee to discontinue the examination of the author’s communication. On 3 August 2015, the author’s counsel accepted the State party’s request for discontinuance as the case had been re-opened by the asylum authorities. On 25 April 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided that the consideration of the communication would be suspended, rather than discontinued, while the asylum proceedings remained pending. On 12 May 2016, the State party transmitted to the Committee a new request for discontinuance. On 13 May 2016, the Committee reiterated its decision on suspending the case while the asylum proceedings remained pending. On 21 June 2016, the State party informed the Committee that both the Danish Immigration Service and the Refugee Appeals Board rejected the author’s application for asylum. On 8 July 2016, the author transmitted to the Committee a request for lifting the suspension of the case, since her asylum application had been rejected.¹

The facts as submitted by the author

2.1 The author is an Eritrean citizen. She fled Eritrea when she refused the call to join the administration of the Army as she did not want to serve the government. She left Eritrea illegally and went to Sudan. Due to the illegal departure from the country and avoidance of the national service, she fears imprisonment and torture or death upon return to Eritrea.

2.2 The author arrived by boat in Lampedusa between July and August 2008 after being apprehended at sea by the Italian coastguard. She was transferred to a reception facility on the island and consequently registered there as an asylum seeker.

2.3 The author had difficulties in acquiring the residence permit as she had to approach the office of immigration service several times. The reason for this was a requirement of an address or a job in order to have the residence permit issued. However, after approximately 6 months in the asylum centre, the Italian authorities granted the author subsidiary protection, including a residence permit valid for 3 years (permit of stay for subsidiary protection).

2.4 The author went to Milan, where she sought help from the local authorities upon arrival. She received temporary accommodation for one week (she was only allowed to stay in the building overnight), and tried to find employment, without success. Due to absence of necessary financial resources, she was forced to live in an abandoned building with other refugees and immigrants in unsafe conditions for approximately one year. She submits that

¹ On 11 April 2017, the State party submitted its observations on the merits, without contesting the author’s request for lifting the suspension.

the environment was unsafe because of drug and alcohol abuse, and that the majority of the people sleeping in the building were men. According to her, the men living there often came drunk to the women's sleeping place to try to assault them sexually. She submits that she experienced daily fights and violence between the inhabitants, and on one occasion she was assaulted sexually when she refused a man, who hit her very hard.

2.5 After one year of living in the abandoned building, the author found an unofficial job, without a contract and not subject to taxation, in the informal sector. For several years,² she was working as a cleaner and lived in a room that she managed to rent with three other female refugees. Due to the economic crisis, she lost her job and was thrown out of the room she had rented. Meanwhile, she had found out that she was pregnant. She consequently tried to see a doctor but was refused medical examination.³ She was facing a situation where she had no accommodation and was facing having to return to live in the abandoned building, where she had previously been assaulted. As she feared for the safety of her unborn child and the living conditions in the abandoned building, she decided to leave Italy⁴ for Denmark. On 10 October 2014, she submitted an asylum application in Denmark. The author's son was born on 8 December 2014.⁵

2.6 On 30 November 2014, the Danish Immigration Service (the Service) requested the Italian authorities to accept to take the author back in accordance with the Dublin Regulation. On 15 December 2014, the Italian authorities informed the Service that the author had been granted subsidiary protection in Italy including a residence permit and thus could not be accepted in accordance with the Dublin Regulation. On 16 December 2014, the Service decided to refuse the author's and her son's entry into Denmark and to reject processing their application for asylum, as they had been granted international protection in Italy. Consequently, the author was ordered to leave Denmark immediately.⁶ The author and her 2 ½ month old son were scheduled to be deported to Italy on 26 February 2015.

2.7 After the case was brought to the attention of the Committee, the State party decided to re-open the author's asylum case for re-consideration by the Service. On 29 October 2015, the Service rejected the author's application for asylum once again. This decision was upheld by the Refugee Appeals Board (the Board) on 12 February 2016; the Board considered that the author would be able to access sufficient financial and social protection if returned to Italy, where, prior to her departure to Denmark, she was granted a residence permit.

2.8 The author claims that she has exhausted all available and effective domestic remedies, as the decisions of the Board cannot be appealed to administrative bodies or Danish courts, according to the Danish Alien Act. The author has not submitted her communication to any other procedure of international investigation or settlement.

The complaint

3.1 The author claims, in reference to article 7 of the Covenant, that her forcible return to Italy would amount to a violation of her and her child's rights by the State party, as she was not able to find adequate housing, legal work, sufficient food or any temporary or durable humanitarian solution despite receiving international protection in Italy.

3.2 She emphasizes the fear of being sent back to an unsafe environment with a new-born baby. In particular, she fears being forced to live on the streets with her son, without access to adequate medical assistance. The author also fears that she will not be able to access

² The author does not provide more details about the exact duration.

³ No further details or evidence have been provided.

⁴ The author has lived in Italy for six years, from July 2008 to October 2014.

⁵ The author attaches to her communication a Danish birth certificate attesting that her son was born on 8 December 2014.

⁶ The decision was made in accordance with The Danish Aliens Act § 48 a, section 1, para. 28.

adequate housing and food for herself and her child due to the reported shortcomings concerning the Italian reception conditions for asylum seekers and recognised refugees with residence permits.

3.3 The author therefore claims that their deportation to Italy would put them at a real risk of irreparable harm by exposing her, and in particular her son, to inhuman and degrading treatment by living in the streets in destitution, with no prospect for finding a durable humanitarian solution, contrary to the best interest of the child.

3.4 The author adds that according to the UNHCR “the principle of first country of asylum should only be applied if the applicant upon return to the first country of asylum is permitted to remain there and to be treated in accordance with recognized basic human rights standards until a durable solution is found for them”.⁷ The author alleges, supporting her claim with a report on the situation of refugees in Italy,⁸ that the domestic system of reception of asylum seekers and beneficiaries of international protection does not comply with basic human rights standards. She further relies on the jurisprudence of the European Court of Human Rights (ECtHR),⁹ considering that the State party has failed to ensure that she would not face a real risk of being exposed to inhuman and degrading treatments if returned to Italy.

Author’s further information

4.1 On 8 July 2016, the author informed the Committee that her Italian residence permit had expired.

4.2 In order to further substantiate her claim, the author invokes the Committee’s general comments Nos. 20 and 31¹⁰ to recall that States parties should not deport individuals to third countries 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. She submits that a State party may be in violation of the Covenant where it “takes a decision relating to a person within its jurisdiction, and the necessary and foreseeable consequence is that that person’s rights under the Covenant will be violated in another jurisdiction”.¹¹

4.3 The author alleges that, when determining the risk of a violation of her rights under article 7 of the Covenant if returned to Italy, the State party should have taken into consideration her particular vulnerability. She emphasizes that she is a single mother and that her deportation would significantly affect the life of her child. In this regard, the author refers to the decision in *Tarakhel*¹² of the European Court of Human Rights which reads: “A requirement of special protection is particularly important when the persons concerned by the deportation are children, in view of their specific needs and their extreme vulnerability”. In that connection, the author invokes the recent Committee’s Views in *Jasin v. Denmark*,¹³ which held that returning a single mother left without shelter nor means of subsistence from Denmark to Italy, although she had been granted subsidiary protection there, amounted to a violation of article 7 of the Covenant.

⁷ The author refers to the UNHCR’s EXCOM Conclusion No. 58 (1989).

⁸ See *Organisation Suisse d’Aide aux Réfugiés (OSAR) - Reception conditions in Italy – Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees*, October 2013.

⁹ The author refers to the European Court of Human Rights’ decision in *M.S.S. v. Belgium and Greece* (application no. 30696/09), judgment adopted on 15 December 2010.

¹⁰ See the General Comment No. 20 (1992), para. 9, and the General Comment No. 31 (2004), para. 12.

¹¹ See e.g. communication No. 470/1991, *Kindler v. Canada* (CCPR/C/48/D/470/1991), para. 6.2.

¹² See European Court of Human Rights, *Tarakhel v. Switzerland* (Application no. 29217/12) para. 118.

¹³ See communication No. 2360/2014, *Warda Osman Jasin et al. v Denmark*, (CCPR/C/114/D/2360/2014), paras. 8.4 and 8.10.

4.4 The author maintains that the Italian reception system for asylum seekers and beneficiaries of international protection is insufficient and does not comply with basic human rights standards. According to the available reports, hundreds of migrants, including asylum seekers, live in abandoned buildings, such as in Rome, and have limited access to public services.¹⁴ Due to the lack of reception facilities and housing, many asylum seekers and refugees in Italy live on the streets and only occasionally receive food or shelter from churches and non-governmental organizations. The author particularly insists on the fact that returnees who were granted international protection and benefited from the reception system when they first arrived in Italy are not entitled to accommodation in reception centres. The Jesuit Refugee Service, in its annual report for 2013, stated that there was a real problem as regards those who were sent back to Italy and who had already been granted some kind of protection. If someone voluntarily leaves one of the accommodation centres that are available upon arrival before the established time, they are no longer entitled to such accommodation.¹⁵ Most of those occupying abandoned buildings in Rome fall into this category. The author underlines that the lack of places in reception centres is a significant problem, especially for returnees who, like herself, have already benefited from international or subsidiary protection.

4.5 The author further claims that she and her child face a real, personal and foreseeable risk of homelessness if returned to Italy. She recalls that she previously experienced a complete lack of support from the Italian authorities when she was pregnant and homeless, and submits that refugees in Italy face serious barriers to access to health care. In this respect, the author submits that if she were returned to Italy, she will not have access to the basic health care services that are essential for her young child.

State party's observations on the merits

5.1 On 11 April 2017, the State party submitted its observations on the merits of the present communication, mainly submitting that article 7 of the Covenant will not be violated if the author and her child are deported to Italy. The State party did not challenge the admissibility of the communication.

5.2 Initially, the State party elaborates on the decision of the Board of 12 February 2016, rejecting the author's asylum application. The State party affirms that it agrees with the Board's decision, considering that the author will be entitled to adequate financial and social protection if returned to Italy, where, prior to her departure to Denmark, she was granted a residence permit. It underlines the Board's findings considering that most of the author's statements can be considered as facts except that she contacted the Italian authorities in relation to the abuse she allegedly suffered. In this respect, the Board considered that the author had made inconsistent statements.

5.3 The State party further describes the structure, composition and functioning of the Board, which it considers to be an independent and quasi-judicial body,¹⁶ and the legal basis of its decisions.¹⁷ It asserts that the Board is responsible not only for examining and bringing

¹⁴ See United States of America, Department of State, 2012 Country Reports on Human Rights Practices: Italy (Washington, D.C., 19 April 2013), available at: <https://www.state.gov/documents/organization/220503.pdf>.

¹⁵ See Jesuit Refugee Service, Protection Interrupted — The Dublin Regulation's Impact on Asylum Seekers' Protection (Brussels, June 2013), pp. 152 and 161, available at: https://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf.

¹⁶ See e.g. communication No. 2379/2014, *Obah Hussein Ahmed v. Denmark*, (CCPR/C/117/D/2379/2014), paras. 4.1–4.3.

¹⁷ Section 7(1) of the Aliens Act incorporates Article 1 of the Geneva Convention on the Status of Refugees into domestic law.

out information on the specific facts of the case, but also for providing the necessary background information, including on the situation in the asylum seeker's country of origin or country of first asylum.

5.4 The State party further refers to the recent Views adopted by the Committee,¹⁸ which considered that "in the absence of evidence establishing that the decisions of the Refugee Appeals Board were manifestly unreasonable or arbitrary with respect to the author's allegations, the Committee cannot conclude that the information before it shows that the author's removal would expose him to a real risk of treatment contrary to Article 7 of the Covenant". In the present case, the State party observes that the author did not establish in her communication to the Committee that the assessment made by the Board was arbitrary or amounted to a manifest error or denial of justice with regard to the finding that Italy is a safe country of first asylum.

5.5 The State party acknowledges that, when considering whether a country can serve as a country of first asylum, the analysis must include socio-economic aspects since asylum-seekers must be treated in accordance with basic international human rights standards. However, the State party claims that it is not required that asylum-seekers must have completely the same social living standards as the country's nationals.

5.6 The State party asserts that a residence permit in Italy serves as a travel document and entitles its holder to work, to access family reunification and to benefit from the general schemes for social assistance, health care, social housing and education. According to the State party, the duration of validity of residence permits has recently been extended to five years and can be renewed by the issuing authority upon re-entry. It affirms that its authorities contacted the Danish Embassy in Italy to ensure that recognized refugees or individuals with a protection status can have their residence permits renewed and will not be considered as asylum-seekers by Italian law. On 8 February 2008, the Danish Embassy in Italy confirmed that recognised refugees or individuals with a subsidiary protection status can apply for renewal of the residence permit after their entry to Italy, even if the residence permit has expired after entering Denmark.

5.7 Moreover, the State party relies on a report issued by the Swiss Refugee Council in 2016, from which it appears that in Italy "people with protection status have the same social rights as native Italians. This also applies to social benefits".¹⁹ The State party observes in that regard that the author has not produced any evidence that she contacted the authorities or that the authorities refused to help her, including in connection with her pregnancy.

5.8 The State party underlines the fact that the author had been living in Italy for more than six years. She worked in the informal sector for some years²⁰ and was able to rent a room in an apartment during this period. Therefore, there is no information available to indicate that the author would not be able to find a job again which would enable her to support herself and her child.

5.9 Furthermore, the State party refers to the decision of inadmissibility of the European Court in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*²¹ concerning the treatment of asylum seekers, persons granted subsidiary protection in Italy and returnees, in accordance with the Dublin Regulation. Taking into account the reports of governmental

¹⁸ See communication No. 2329/2014, *Z. v. Denmark* (CCPR/C/114/D/2329/2014).

¹⁹ See Swiss Refugee Council: Reception conditions in Italy - Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees, the Swiss Refugee Council in 2016, page 45.

²⁰ The State party does not provide additional information about the duration.

²¹ See European Court of Human Rights, *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* (application No. 27725/10), decision adopted on 2 April 2013, para. 78.

and non-governmental organizations, the European Court considered 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, as was the case in *M.S.S. v. Belgium and Greece*”.²² According to the State party, the European 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, apply for family reunification and benefit from the general schemes for social assistance, health care, social housing and education. Similarly, an alien is able to apply for the renewal of his or her residence permit upon its expiry. In that case, the European Court found the applicant’s allegations manifestly ill-founded and inadmissible and considered that the applicant could be returned to Italy.

5.10 With regard to the present case, the State party considers that, although the author has relied on the European Court’s findings in *M.S.S. v. Belgium and Greece* (2011), its decision in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* (2013) is more recent and specifically addresses the conditions in Italy. Therefore, the State party maintains that, as the European Court noted, 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, apply for family reunification and benefit from the general schemes for social assistance, health-care, social housing and education.

5.11 The State party further claims that the lack of social or financial assistance is generally not sufficient to trigger the minimum threshold for the application of Article 7. In regard to the Committee’s Views adopted in *Jasin v. Denmark*,²³ the State party recalls that that case involved extraordinary circumstances, namely the fact that the author suffered from a serious form of asthma and required medication. In the present case, the author has stated that she was in possession of an Italian health card. The State party also recalls that according to the author’s statements, she and her child are in good health. Accordingly, the State party submits that the Committee’s decision in *Jasin v. Denmark* cannot serve as a precedent for it to determine whether the present communication discloses any violation by the State party.

5.12 The State party also submits that the author has failed to establish that there are substantial grounds for believing that she and her child would face a real, personal and foreseeable risk of being subjected to inhuman or degrading treatment or punishment if deported to Italy.

5.13 Accordingly, the State party concludes that the author is trying to use the Committee as an appellate body to have the factual circumstances of her asylum application reassessed. Indeed, the author merely disagrees with the domestic decisions and fails to identify any irregularity in the decision-making process or any risk factors that the Board has failed to take properly into account. It argues that the Committee should instead give considerable weight to the facts established by the Board, which is better placed to assess the factual circumstances of the author’s case.

Author’s comments on the State party’s observations on the merits

6.1 On 20 November 2017, the author submitted additional comments on the State party’s observations. In the comments, the author recalls that her Italian residence permit has expired and that she previously had great difficulties renewing it. In addition, she is concerned about the fact that she might not be able to register her son, who was born in Denmark, and has no registration record or residence permit in Italy.

²² See fn. 8.

²³ See *Warda Osman Jasin et al. v Denmark*, para. 8.4, fn. 12.

6.2 The author recalls that she previously lived in Italy in extremely precarious conditions. Despite seeking assistance from the local Italian authorities on several occasions, the author did not receive any social or housing support and was left to find her own accommodation. Further, her situation is now very different from the time she was living there by herself since she now has to take care of her son, which will disadvantage her in finding a job.

6.3 The author also submits that people with protection status in Italy mostly live in precarious conditions. She relies on a report issued by the Swiss Refugee Council of 2016,²⁴ stating that it can be difficult for people with protection status in Italy to find housing and access social assistance. The report further states that most refugees would often end up living in squats or on the streets where there is a risk of danger and violence and concludes that: “conditions in the squats are inadequate for children and pose a risk for their development”.

6.4 According to the author, the State party has failed to seek effective assurances from the Italian authorities regarding the reception of the author and her son, similar to *Jasin v. Denmark*.²⁵ In this respect, the author claims that violations have been found by the Committee also in the cases *Hachi v. Denmark* and *Ahmed v. Denmark*²⁶ and that her case presents similar circumstances of a single mother with a child that previously experienced difficulties in Italy and has an expired residence permit.

6.5 Finally, the author submits that a foreseeable consequence of her deportation to Italy would be that she will not have an effective access to any integration support or housing. This will expose her and her minor son to a real risk of inhuman and degrading treatment, including threats to their personal integrity and risks of homelessness and destitution.

State party’s additional observations on the author’s comments

7.1 On 4 June 2018, the State party submitted that the authors’ additional observations of 20 November 2017 did not provide any new information on the personal circumstances of the adult author and her son, recalling the State party’s observations of 11 April 2017. It also indicated that the Refugee Appeals Board has been aware that the Committee had found in a number of cases against Denmark that the decisions of the Board on the transfer of authors with minor children to Italy amounted to a violation of the Covenant. However, in the opinion of the Board, such findings by the Committee cannot lead to a different outcome in the present case. It also submitted that the Board’s assessment of the conditions of authors with minor children to be transferred to Italy are consistent with the case-law of the European Court of Human Rights.²⁷

7.2 The State party claimed that, as can be seen from the case-law of the European Court, the ‘actual practice’ of Italy is consistent with the country’s international legal obligations. The State party found that the reference made by the adult author to her previous experiences in Italy and to the background information in general fails to demonstrate that there are substantial grounds for believing that, if deported to Italy, the authors would face a real risk of treatment contrary to Article 7 of the Covenant. Therefore, the State party still found that Italy can serve as the country of first asylum of the authors and that the deportation of the authors to Italy will not constitute a violation of Article 7 of the Covenant. The State party maintained that Article 7 of the Covenant would not be violated if the authors were deported to Italy.

²⁴ See fn. 19, pp. 41 to 44.

²⁵ See fn. 13, para. 8.9.

²⁶ See communication no. 2470/2014, *Hibaq Said Hachi v. Denmark* (CCPR/C/120/D/2470/2014), para. 10, and *Obah Hussein Ahmed v. Denmark* (CCPR/C/117/D/2379/2014), para. 14.

²⁷ European Court of Human Rights, *E.T. and N.T. v. Switzerland and Italy* (application No. 79480/13), decision of 30 May 2017.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

8.2 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.

8.3 The Committee notes the author's claim that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in that regard, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 As the Committee considers the author's claims under article 7 otherwise substantiated, it declares them admissible and proceeds with their consideration on the merits.

Consideration of the merits

9.1 The 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.

9.2 The Committee notes the author's claim that deporting her and her three-year-old son to Italy, based on the Dublin Regulation principle of "first country of asylum", would expose them to a risk of irreparable harm, in violation of article 7 of the Covenant. The author bases her arguments on, inter alia, the actual treatment she experienced after she was granted a residence permit in Italy in 2009, her particular vulnerability as a single mother with a small child; the general conditions in reception facilities for asylum seekers in Italy; and the failure of the Italian integration scheme in providing access to financial and social services for beneficiaries of international protection, as described in various reports. The Committee also notes the author's argument that she and her son would face homelessness, destitution, lack of access to health care and risks to their personal safety, as demonstrated by her previous experience in Italy. The Committee further notes the author's submission that her residence permit, received in the context of subsidiary protection, is now expired and that she fears, if returned to Italy, being unable to renew the permit, due to the difficulties she faced in acquiring it initially. The author further fears not to be able to obtain the residence permit for her son, who was born in Denmark and has no birth registration record or residence permit in Italy.

9.3 The Committee recalls its general comment No. 31,²⁸ 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 article 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.²⁹ The Committee further recalls its jurisprudence that considerable weight should be given to the assessment

²⁸ 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.

²⁹ See communications No. 2007/2010, *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; No. 692/1996, *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), para. 6.6; and No. 1833/2008, *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

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,³⁰ unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.³¹

9.4 The Committee notes the author's allegation that Italy granted her subsidiary protection in 2009 including a residence permit valid for three years, following which she was asked to leave the asylum centre; that she was denied access to medical examination in Italy although she was pregnant (para. 2.5); and that despite having allegedly sought assistance from the local authorities, she did not receive any social or housing support and was left without shelter or means of subsistence. The Committee further notes the author's previous experience of an unsafe environment and violence emblematic for the living conditions of homeless asylum seekers in Italy.

9.5 Furthermore, the Committee notes that the author has relied on various reports on the general situation of asylum seekers and refugees in Italy, highlighting the chronic lack of available places in the reception facilities for asylum seekers and beneficiaries of international protection.³² The Committee notes in particular the author's submission that returnees, like herself, who had already been granted a form of protection and benefited from the reception facilities when they were in Italy are no longer entitled to accommodation in the public reception centers for asylum seekers (para. 6.3), live instead in informal settlements and often face destitution.³³ The Committee notes the author's submissions that returnees also face severe difficulties in finding access to sanitary facilities and food in Italy, and that individuals should not be returned without specific guarantees of adequate accommodation.

9.6 The Committee also notes the finding of the Board that Italy should be considered the first country of asylum in the present case and the position of the State party that such a country is obliged to provide asylum seekers with basic human rights standards, although it is not required that such persons have the same social and living standards as nationals of the country (para. 5.5). The Committee also notes that the State party also referred to a decision of the European Court, in which the Court stated that, although the situation in Italy had its shortcomings, it had not disclosed a systemic failure to provide support or facilities catering for asylum seekers (para. 5.9).

9.7 The Committee recalls that States parties should, when reviewing challenges to decisions to remove individuals from their territory, give sufficient weight to the real and

³⁰ See communication No. 1957/2010, *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

³¹ See communications No. 2681/2015, *Y.A.A. and F.H.M. v. Denmark* (CCPR/C/119/D/2681/2015) para. 7.3; and No. 2512/2014, *Rezaifar v. Denmark* (CCPR/C/119/D/2512/2014), para. 8.3.

³² See e.g. fn. 24.

³³ See fn. 14, Jesuit Refugee Service: Protection Interrupted - The Dublin Regulation's Impact on Asylum Seekers' Protection (Brussels, June 2013), pp. 152 and 161, available at: https://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf. See also e.g. *Médecins sans frontières: Out of Sight*, page 8, available at: https://www.aerzte-ohne-grenzen.de/sites/germany/files/attachments/aerzte_ohne_grenzen_out_of_sight_report.pdf; and The Asylum Information Database, "National country report: Italy" (2017) of March 2018, pages 73-74, available at: http://www.asylumineurope.org/sites/default/files/report-download/aida_it_2017update.pdf. See also the Jesuit Refugee Service at: https://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf, page 152

personal risk such individuals might face if deported.³⁴ In particular, any evaluation of whether individuals are likely to be exposed to conditions constituting cruel, inhuman or degrading treatment in violation of article 7 of the Covenant must be based not only on an assessment of the general conditions in the receiving country, but also on the individual circumstances of the persons in question. Those circumstances include factors that increase the vulnerability of such persons and that could transform a situation that is tolerable for most into an intolerable one for others. They should also take into account, in cases considered under the Dublin Regulation, the previous experiences of the removed individuals in the first country of asylum, which may underscore the special risks that they are likely to face and may thus render their return to the first country of asylum a particularly traumatic experience for them.³⁵

9.8 The Committee notes the information provided to the State party by the Italian authorities in 2008, according to which an alien who has been granted residency in Italy as a recognized refugee or has been granted protection status may submit a request to renew his or her expired residence permit upon re-entry into Italy. However, the Committee considers that this information is not sufficient to ensure that, if returned to Italy, the Italian authorities will undertake to renew the author's residence permit and to issue a permit also to her child.

9.9 The Committee further notes the author's claims, based on her personal circumstances, that despite being previously granted residency in Italy, she would face intolerable living conditions there. In that connection, the Committee notes that the State party does not explain how, if returned to Italy, the renewable residence permit would actually protect the author and her child from exceptional hardship and destitution, similar to the ones the author has already experienced in Italy.³⁶

9.10 Noting the State party's assumption that, as the author had benefited from subsidiary protection in the past, she would, in principle, be entitled to the same level of subsidiary protection today, the Committee also observes the author's allegations, which have not been contested by the State party, that she faced precarious living conditions in Italy, where, without the necessary financial resources, she was forced to live in an abandoned building with other refugees for approximately one year in an unsafe environment surrounded by violence linked to drug and alcohol abuse. The Committee further notes the author's allegations that she was hit by a man who tried to assault her sexually. Reports before the Committee indicate that persons in a situation similar to that of the author often end up living on the streets or in precarious and unsafe conditions³⁷ that are unsuitable, in particular, for young children in these circumstances.³⁸

³⁴ See, e.g., communications No. 1763/2008, *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), paras. 11.2 and 11.4; and No. 2409/2014, *Ali and Mohamad v. Denmark* (CCPR/C/116/D/2409/2014), para. 7.8.

³⁵ See e.g. *Y.A.A. and F.H.M. v. Denmark*, para. 7.7., fn. 30.

³⁶ See e.g. *Warda Osman Jasin et al. v. Denmark*, para. 8.8, fn. 13.

³⁷ See the United States Department of State, 2017 Country Report on Human Rights Practices: Italy, available at: <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>. See also Médecins sans frontières: Out of Sight, page 8, available at: https://www.aerzte-ohne-grenzen.de/sites/germany/files/attachments/aerzte_ohne_grenzen_out_of_sight_report.pdf; and The Asylum Information Database, "National country report: Italy" (2017) of March 2018, pages 73-74, available at: http://www.asylumineurope.org/sites/default/files/report-download/aida_it_2017update.pdf.

³⁸ See e.g. Swiss Refugee Council: Reception conditions in Italy, August 2016, page 30 and part 9.1.1., page 57; and Danish Refugee Council & Swiss Refugee Council: Is mutual trust enough? The situation of persons with special reception needs upon return to Italy, February 2017, pages 5 and 21

9.11 In view of the above, the Committee considers that the State party failed to adequately assess the author's personal past experience in Italy, and the foreseeable consequences of forcibly returning her there, that it did not give due consideration to the special vulnerability of the author, a single mother, with a 3-year-old child, who previously experienced homelessness and destitution in Italy, and that it relied on the general information by the Italian authorities without verifying whether the author would have effective access to financial, medical and social assistance. Notwithstanding her formal entitlement to apply for a renewal of a residence permit as part of subsidiary protection in Italy, there is no indication that, in practice, the author would actually be able to find accommodation and provide for herself and her child in the absence of assistance from the Italian authorities, in particular as she is a single parent who has to look after her child.³⁹ The State party also failed to seek effective assurances from the Italian authorities that the author and her son would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and the guarantees under article 7 of the Covenant. In particular, the State party did not request Italy to undertake: (a) to renew the author's residence permit as part of subsidiary protection and to issue a permit to her child; and (b) to receive the author and her son in conditions adapted to the child's age and the family's vulnerable status that would enable them to remain in Italy.⁴⁰

9.12 Consequently, the Committee considers that the removal of the author and her son to Italy, in her particular circumstances and without the aforementioned assurances, would amount to a violation of article 7 of the Covenant by the State party.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the deportation of the author and her son to Italy without effective assurances would violate their rights under article 7 of the Covenant.

11. In accordance with article 2 (1) of the Covenant, which establishes that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the author's claim, taking into account the State party's obligations under the Covenant, the Committee's present Views and the need to obtain effective assurances from Italy, as set out in paragraph 9.11 above. The State party is also requested to refrain from expelling the author and her son to Italy while their request for asylum is being reconsidered.⁴¹

12. By becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant. In addition, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy when it has been determined that a violation has occurred. The Committee therefore requests the State party to provide, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views, to have them translated into the official language of the State party and to ensure that they are widely disseminated.

³⁹ See communications No. 2470/2014, *Hibaq Said Hashi v. Denmark*, para. 9.10, fn. 25.

⁴⁰ See e.g. *Warda Omar Jasin et. al. v. Denmark*, para. 8.9, fn. 12; *Ali and Mohamad v. Denmark*, paras. 7.8 and 9., fn. 32; and *Obah Hussein Ahmed v. Denmark*, para. 13.8, fn. 15.

⁴¹ See fn. 36. See also *Hibaq Said Hashi v. Denmark*, para. 11, fn. 25.

Annex 1

Joint opinion by Ms. Ilze Brands-Kehris, Ms. Sarah Cleveland, Mr. Christof Heyns and Mr. Yuval Shany (dissenting)

1. We regret that we cannot join the majority of the Committee in finding that, if the author were to be deported to Italy by Denmark, it would constitute a violation of the Covenant.

2. In paragraph 9.3 of the Views, the Committee recalls 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, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.” Despite this, the majority of the Committee rejected the factual conclusion of the DIS and RAB that the authors failed to establish grounds for asylum because “the author would be able to access sufficient financial and social protection if returned to Italy, where, prior to her departure to Denmark, she was granted a residence permit.” (para. 2.7). Instead, the majority criticized the State party for failing “to adequately assess the author’s personal past experience in Italy, and the foreseeable consequences of forcibly returning her there, that it did not give due consideration to the special vulnerability of the author, a single mother, with a 3-year-old child, who previously experienced homelessness and destitution in Italy, and that it relied on the general information by the Italian authorities without verifying whether the author would have effective access to financial, medical and social assistance” (para. 9.11).

3. We disagree with the analysis offered by the majority, as it has not been shown to us that any of the facts alleged by the author were not taken into account by the Danish authorities, which conducted two separate assessments of the author’s asylum request. Furthermore, we consider that the conclusion reached by the Danish authorities represents a reasonable application of the legal standards introduced by the Covenant.

4. According to the well-established case law of the Committee, States parties are obliged not to deport persons 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, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.”¹ Not every exposure to personal hardship in the country of removal would, however, fall within the scope of the removing State's non-refoulement obligations.²

5. With the possible exceptions of those individuals who face special hardship due to their particular situation of vulnerability³ which renders their plight exceptionally harsh and irreparable in nature, poor living conditions and difficulties in accessing available social services do not constitute in themselves grounds for non-refoulement. A contrary interpretation, recognizing all individuals facing poverty and limited social assistance as potential victims of article 7 of the Covenant, is inconsistent with the particularly serious nature of the protections of article 7 (which are absolute in nature) and would extend the non-refoulement principle to a breaking point.

¹ General Comment 31 (2004), para. 12

² Cf. *Vuolanne v. Finland*, Comm. No. 265/87, Views adopted on 7 April 1989

³ *Jasin v. Denmark*, Comm. No. 2360/2014, Views adopted on 22 July 2015.

6. Although we support the Views adopted by the Committee in *Jasin v Denmark*,⁴ the facts in that case were significantly different from the facts of the present case, which do not warrant the same legal conclusion. In *Jasin*, the author was in a particularly vulnerable situation, which made it nearly impossible for her to confront the exceptional hardships expected were she to be deported to Italy: a single mother of three small children, who herself suffered from serious asthma and required medication, had twice been denied access to medical care, who had lived homeless and destitute on the street after previously being returned to Italy, and whom the Italian welfare system had repeatedly failed to assist. Under these exceptional circumstances, the Committee was of the view that, without specific assurances of social assistance, Italy could not be considered a ‘safe country’ of removal for the author and her children.

7. In the present case, it is not disputed that the author, who has one child, is entitled to renewal of her residence permit and enjoys subsidiary protection in Italy, where she lived before for more than six years, and found employment and was able to rent a room in an apartment for several years. Neither she nor her son have any reported health issues, and she possesses an Italian health card (see para. 5.8, 5.11).

8. Although we consider that deportation to Italy may put the author in a more difficult situation than the one confronting her and her son in Denmark, we do not have before us information suggesting that their plight is different in nature than that of many other asylum seekers who have arrived in Europe in recent years. Nor are we in a position to hold on the basis on the information before us that the difficulties to which the author will be exposed upon deportation are likely to reach the exceptional level of harshness and irreparability that would result in a violation of article 7.

9. Under these circumstances, we cannot conclude that the decision of the Danish authorities to deport the authors to Italy was arbitrary or amounted to a manifest error or denial of justice that would entail a violation of article 7 of the Covenant by Denmark. Thus, although we regret the decision of the Danish authorities not to seek individual assurances from Italy prior to the deportation of the author, we do not consider such a failure to violate the Covenant in this case.

⁴ Ibid.

Annex 2

Opinion individuelle (concordante) de M. Olivier de Frouville

1. Ces constatations s'inscrivent dans la lignée d'une jurisprudence du Comité des droits de l'Homme désormais bien établie, qui concerne les renvois de personnes demandeurs du statut de réfugié ou bénéficiant d'une protection subsidiaire entre deux pays de l'Union européenne. Toutes les affaires présentées au Comité concernent un seul Etat partie, le Danemark. Dans une majorité de cas le pays de renvoi est l'Italie. Le Comité a fixé un certain nombre de principes applicables à ces affaires à partir de ses constatations dans l'affaire *Warda Osman Jasin c. Danemark*, adoptées le 22 juillet 2015¹. Ces principes sont acceptés par la majorité au sein du Comité, mais l'application à certains cas d'espèce continue de diviser ses membres.

2. Conformément à sa jurisprudence générale en matière d'éloignement du territoire, le Comité accorde un poids considérable à l'appréciation par les autorités nationales d'un risque réel et personnel de préjudice tel qu'envisagé aux articles 6 et 7 du Pacte. Le Comité considère qu'il appartient généralement aux organes de l'Etat d'apprécier les faits et les preuves en vue d'établir l'existence de ce risque, à moins que cette évaluation ne soit clairement arbitraire ou ne soit constitutive d'un déni de justice.

3. Par ailleurs, pour ces affaires en particulier, le Comité a défini quatre éléments d'appréciation. Le premier élément concerne *la situation dans le pays de renvoi* s'agissant de l'accueil et de la prise en charge des demandeurs d'asile ou des personnes bénéficiant de la protection subsidiaire. Le second élément a trait à *l'expérience passée des personnes concernées dans le pays de renvoi* et par conséquent au traitement auquel ces personnes peuvent s'attendre en cas de retour dans ce pays. Le troisième élément porte sur la *situation de vulnérabilité* dans laquelle l'auteur se trouve au moment de l'examen de la demande par le Comité, situation à laquelle participe le fait d'être responsable d'enfants mineurs, dont l'intérêt supérieur doit être dûment pris en compte dans la décision. Enfin, le quatrième et dernier élément est la question de savoir *si l'Etat partie a ou non cherché à obtenir de la part de l'Etat de renvoi des assurances* que les personnes concernées seront prises en charge dans des conditions compatibles avec leur situation mais aussi, lorsque les auteurs sont accompagnés d'enfants mineurs, qu'ils soient accueillis dans des conditions adaptés à l'âge des enfants et à la situation de vulnérabilité de la famille, sans les exposer à un risque de refoulement indirect.

4. Lorsque le Comité parvient à la conclusion que l'appréciation des autorités nationales est clairement arbitraire, il juge qu'il y *aurait violation* si l'Etat renvoyait les auteurs *sans demande d'assurance* telles que spécifiées par le Comité dans les motifs de ses constatations. Autrement dit, il s'agit toujours d'une violation potentielle, que l'Etat pourrait éviter en procédant à une demande d'assurances personnalisées, selon les conditions fixées par le Comité. Il faut remarquer que, malheureusement, depuis que le Comité est saisi de ce type d'affaires, le Danemark n'a jamais formulé de telles demandes.

5. J'estime que le Comité a correctement appliqué sa jurisprudence dans le cas d'espèce qui lui est soumis. Au titre des conditions dans le pays, le Comité prend note des différents rapports présentés par l'auteur et mentionnés dans les paragraphes 4.4. et 6.3, dont il ressort que les personnes qui retournent en Italie alors qu'elles y ont déjà reçu une forme de protection n'ont pas droit à un hébergement dans les structures d'accueil et qu'il n'existe pas

¹ Comm. n°2360/2014.

de procédure légale pour identifier les personnes en situation de vulnérabilité. Des rapports plus récents montrent qu'il n'y a pas eu d'amélioration à cet égard et qu'au contraire, des problèmes systémiques persistent².

6. L'expérience passée de l'auteur est malheureusement comparable à celle d'autres cas que le Comité a eu à examiner : après avoir reçu son permis de séjour, l'auteur a dû vivre dans des conditions d'extrême précarité et d'insécurité et cela pendant plusieurs années, jusqu'à ce qu'elle attende un enfant et se décide à quitter l'Italie pour le Danemark. Son permis de séjour en Italie est venu à expiration en juillet 2016 (par. 4.1.) L'auteur se trouverait particulièrement vulnérable si elle devait retourner en Italie, en tant que mère isolée d'un enfant en bas-âge né au Danemark, avec des risques réel et prévisibles pour leur santé et pour leur vie, sans pouvoir compter sur la protection des autorités italiennes.

7. Enfin, on ne peut pas considérer que l'Etat partie ait pris toutes les mesures pour prévenir les risques prévisibles de dommage, à partir du moment où aucune demande d'assurances personnalisées n'a été adressée à l'Italie quant à la prise en charge de l'auteur et de son enfant à leur arrivée.

6. En définitive, les autorités nationales n'ont pas pris en compte de manière satisfaisante la situation personnelle de l'auteur et de son enfant au regard de la situation générale des personnes bénéficiant d'une protection subsidiaire en Italie et de l'expérience passée de l'auteur dans ce pays. La décision est donc clairement arbitraire et il est justifié que le Comité constate une violation potentielle de l'article 7 en cas de retour sans demande d'assurance.

² Cf. par. 8.5. et note n°32.