



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2623/2015\*, \*\*, \*\*\*

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

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

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

\*\* The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi. Pursuant to rule 108 (1) (a) of the Committee's rules of procedure, Marcia V.J. Kran did not participate in the examination of the communication.

\*\*\* A joint opinion by Committee members Yadh Ben Achour, Duncan Laki Muhumuza, José Manuel Santos Pais, Kobauyah Tchamdja Kpatcha and Hélène Tigroudja (dissenting) is annexed to the present Views.



7, 10, 14 (3) (b) and 18 of the Covenant. The Optional Protocol entered into force for the State party on 19 August 1976. The author is represented by counsel.

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

### **Facts as submitted by the author**

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

2.2 In 2002, the author was detained and mistreated for five days in the Islamic Republic of Iran, for defending his female cousin from members of the Basij militia. He also experienced other incidents of harassment and coercion. He left the Islamic Republic of Iran in 2005 for Greece, where he submitted an application for asylum but received no information as to the outcome. In Greece, he began attending church. He also participated in a demonstration outside the Iranian embassy in Athens, in 2009, to protest the post-election crackdown in the Islamic Republic of Iran by the regime.

2.3 In 2012, the author was informed that his mother, who had not recovered from the execution of her son, was suffering from severe depression. He was very concerned and decided to visit her in the Islamic Republic of Iran. When he tried to renew his passport in the Islamic Republic of Iran, he was arrested. He was interrogated about his participation in the protest outside the Iranian embassy in Athens in 2009. He was told that the authorities had information that he had attended church in Greece, and his interrogators demanded to know whether he had converted to Christianity, which he denied. The author believes that the authorities had obtained their information from an informant in the Iranian refugee community in Athens.

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

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

2.6 In May 2014, the author was injured in a car accident. He suffered neck and back injuries, and the hearing on his asylum application was consequently postponed to October 2014. On the date of the hearing he was in pain and had to seek hospital treatment. He informed the court interpreter, who in turn informed his counsel. His counsel also had some ongoing health issues and was unable to attend the hearing. She informed the Immigration and Refugee Board and was told that the hearing would be rescheduled and that the Board would call her to schedule the new hearing. However, in November 2014, the author and his counsel received notice that the application had been declared abandoned by the Board. The author claims that the case was scheduled for a hearing on the abandonment of his asylum

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<sup>1</sup> The communication was suspended from 27 April 2016 to 6 June 2018 owing to a pending pre-removal risk assessment application and a subsequent application for leave to appeal before the Federal Court.

application without notice being sent to him or his counsel. The author's request to reopen the application was denied without reasons by the Board in June 2015.

### **Complaint**

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

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

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

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

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

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

4.3 The State party argues that the author failed to appear for numerous scheduled refugee claim hearings. The author and his counsel did not appear at the Refugee Protection Division hearing scheduled for 11 October 2014. The author and his counsel were also informed of a special hearing scheduled for 6 November 2014, to give him an opportunity to explain why the Division should not determine that the claim had been abandoned. The author did not appear at that hearing. On 18 November 2014 the Division determined that the claim had been abandoned. The State party notes that the author alleges that the reason that he did not attend the scheduled refugee hearing at the Division in October 2014 was that he was experiencing pain from a car accident that had occurred in May 2014. It argues that the author does not provide an explanation as to why he did not attend the special hearing on 6 November 2014 to give him an opportunity to explain why the Division should not determine that his claim had been abandoned. The author's application for the case to be reopened was dismissed by the Division on 22 June 2015. The author sought judicial review of the

Division's decision, which was dismissed by the Federal Court on 12 November 2015. He also failed to attend a pre-removal interview on 17 December 2014, and, on 2 March 2015, a warrant was issued for his arrest. He was located and arrested on 28 April 2015.

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

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

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

4.7 The author made an application for a pre-removal risk assessment in February 2016, after he became eligible. The pre-removal risk assessment officer considered the author's 2013 Basis of Claim form, in which he claimed that he was in the Islamic Republic of Iran until 2012. The author did not provide his 2014 Basis of Claim form to the pre-removal risk assessment officer, and therefore it could not be considered. The author's pre-removal risk assessment was rejected on 17 February 2017. The pre-removal risk assessment officer noted that the author had not provided corroborating evidence in regard to his narrative. The officer noted that there were no affidavits from family members, and no police or medical reports to testify that the author or his family had been arrested, detained, threatened, beaten or tortured in the Islamic Republic of Iran. The officer noted that the author had submitted a burial certificate indicating that his brother was executed by hanging in 2006. The officer noted however that the documents submitted by the author did not indicate the reason for the hanging, and he found that the author had not indicated on what objective evidence he based his belief that he would suffer the same fate if returned to the Islamic Republic of Iran. The

pre-removal risk assessment officer gave a low weight to the author's assertion that he faced a risk in the Islamic Republic of Iran on account of his past political or religious activities.

4.8 The pre-removal risk assessment officer also considered that the author had been able to enter and exit the Islamic Republic of Iran freely during his travels. He resided in Greece from July 2005 until August 2012, when he returned to the Islamic Republic of Iran. He left the Islamic Republic of Iran again in September 2012 to travel to Norway. The officer concluded that it was reasonable to find that the Iranian authorities had little interest in the author. The officer accepted that the author had converted to Christianity, but noted that objective country reports on the Islamic Republic of Iran indicated that many converts to Christianity can quietly return to the Islamic Republic of Iran and not encounter any problems. If the person is already being monitored by the authorities, he or she could risk consequences upon return to the Islamic Republic of Iran, but the officer found that there was no reliable evidence that the author was being monitored by the Iranian authorities. The officer found that documentary evidence indicated that ordinary converts to Christianity who are discreet about their faith are of little or no interest to the authorities, although they may experience some social and cultural ostracism. Since the author would not be making his conversion public, he would not face any risk upon return.

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

4.10 The State party further submits that the communication is inadmissible as manifestly unfounded. Regarding the author's claim of a violation of article 2 (3) of the Covenant, the State party argues that the author has not clearly stated what violations of the article have occurred, either on their own or in combination with the other articles cited. It argues that his allegations of risk have been dealt with in multiple domestic proceedings. The facts and evidence were considered at each hearing, and it was determined that he would not be at risk if returned to the Islamic Republic of Iran.

4.11 The State party submits that the author has not substantiated, even on a prima facie basis, his allegations with respect to his claims under articles 6 and 7 of the Covenant. Neither the author's personal profile nor his status as a failed asylum seeker places him at a real and personal risk of irreparable harm in the Islamic Republic of Iran. The State party argues that, according to objective sources, "a conversion and an anonymous life as a converted Christian in itself do not lead to an arrest, but if the conversion is followed up by other activities as for instance proselytizing and training others, the case differs".<sup>2</sup> It is also stated in objective reports that "converted returnees who do not carry out activities related to Christianity upon return will not be of interest to the authorities",<sup>3</sup> except where a convert had been known to the authorities prior to leaving. Where an individual has come to the attention of the authorities previously for reasons other than their religion, then that, in combination with their religion, may put them at increased risk.<sup>4</sup> Those persons who return to the Islamic Republic of Iran having converted to Christianity while abroad, who do not actively seek to proselytize and who do not publicly express their faith may be able to continue practising Christianity discreetly.<sup>5</sup> In the case of *A. v. Switzerland*, the European Court of Human Rights confirmed that converts who have not come to the attention of the authorities, including for reasons other than their conversion, and who practised their faith discreetly, do not face a real risk of ill-treatment upon return to the Islamic Republic of Iran.<sup>6</sup> Objective country reports

<sup>2</sup> Danish Refugee Council and Danish Immigration Service, "Iran, house churches and converts" (Copenhagen, February 2018), p. 7.

<sup>3</sup> *Ibid.*, p. 8.

<sup>4</sup> United Kingdom of Great Britain and Northern Ireland, Home Office, "Country Policy and Information Note, Iran: Christians and Christian converts", March 2018, para. 2.2.3. Available at [www.refworld.org/docid/5aa2aa2e7.html](http://www.refworld.org/docid/5aa2aa2e7.html).

<sup>5</sup> *Ibid.*, para. 2.2.12.

<sup>6</sup> European Court of Human Rights, *A. v. Switzerland* (application No. 60342/16), judgment of 19 December 2017, paras. 43–36.

indicate that there are 285,000 Christians in the Islamic Republic of Iran, and there may be many more. While the majority of Christians are ethnic Armenians, there are Protestant denominations, including evangelical groups, in the Islamic Republic of Iran, with an estimated Protestant community of less than 10,000.<sup>7</sup>

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

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

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

4.15 The State party notes the author's claims that Canada Border Services Agency officers allegedly threatened and intimidated him. It argues that these claims are completely unsubstantiated and inadmissible. It categorically denies the allegations and notes that he did not raise them before domestic decision makers.

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

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

5.1 On 8 April 2019, the author submitted his comments on the State party's observations. He reiterates that neither he nor his counsel had been informed of the decision of the Immigration and Refugee Board to hold a hearing on the abandonment of his asylum application. He had therefore been unable to attend that hearing. He notes that the State party alleges that he has failed to exhaust domestic remedies as he had not challenged the finding

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<sup>7</sup> United States of America, Department of State, "2016 report on international religious freedom: Iran", sect. 1.

<sup>8</sup> Immigration and Refugee Board of Canada, "Iran: treatment by Iranian authorities of failed refugee claimants and family members of persons who have left Iran and claimed refugee status (2011–February 2015)", sect. 1, 10 March 2015. Available at <https://irb.gc.ca/en/country-information/rir/Pages/index.aspx>.

that he was inadmissible to Canada. The author claims that he was not informed of the decision and also notes that he does not have a criminal conviction in Denmark, but was merely held in immigration detention there. He notes that the State party authorities submitted no evidence that he had been convicted in Denmark and that, should he have been, it would have been contrary to article 31 of the Convention relating to the Status of Refugees, which forbids the punishment of asylum seekers for illegal entry by means of the use of false passports. He submits that he has exhausted domestic remedies with respect to the finding of inadmissibility, adding that the finding did not include a risk assessment and whether he should be granted status owing to the risk that he would face if removed to the Islamic Republic of Iran. He submits that an application on humanitarian and compassionate grounds is not an effective remedy.

5.2 The author argues that he submitted extensive evidence to support his claim in his pre-removal risk assessment application, including his brother's burial certificate, which confirmed that the latter had been executed by hanging in jail by the Iranian authorities. He also included his baptism certificate and other photographs and documents confirming his conversion to Christianity, as well as a letter from his pastor stating that the author was a witnessing and evangelizing member of the congregation. The author notes that his name and conversion to Christianity had been made public on the Internet by church activists who were trying to prevent his deportation. He argues that this in itself established, *prima facie*, that he faced a risk upon return to the Islamic Republic of Iran. He notes that the pre-removal risk assessment officer accepted that he had converted to Christianity. However, the officer had concluded that, as the author was a Sufi, and as such not a follower of Islam, he would therefore not face persecution for converting to Christianity. The author argues that the officer erred in this finding, as the Sufi faith is a sect of Islam and, in addition, Sufis are persecuted by the Iranian regime for not following the State-sanctioned religion, which would increase the risk that the author would be facing if returned.

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

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

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<sup>9</sup> Letter from Amnesty International, dated 18 June 2015.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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

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

6.3 The Committee notes the State party's submission that the communication is inadmissible on the grounds of failure to exhaust domestic remedies as the author has failed to exhaust domestic remedies by failing (a) to appear at his refugee determination hearing and the hearing on the abandonment of his claim; (b) to seek judicial review of the finding that he was inadmissible to Canada due to criminality; and (c) to apply for permanent residence on humanitarian and compassionate grounds. It notes the author's argument that he informed the State party authorities of his inability to attend the first hearing due to health reasons following a car accident and that neither he nor his counsel was informed of the decision of the Immigration and Refugee Board to hold an abandonment hearing on his asylum application. The Committee further notes the author's claims that he was not informed of the finding that he was inadmissible due to criminality and that he does not have a criminal conviction in Denmark, but was merely held in immigration detention in that country, and his argument that a finding of inadmissibility due to criminality does not include a risk assessment. The Committee notes that the parties have provided contradictory submissions as to whether the author was informed of the abandonment hearing in November 2014. In the light of the information on file, the Committee finds that it has not been established that he was duly notified of the abandonment hearing or the inadmissibility hearing. The Committee further notes that the author has subsequently, once he became eligible, pursued a pre-removal risk assessment application and an application for judicial review before the Federal Court regarding the claims raised in his complaint before the Committee. It notes that an application for a residence permit on the basis of humanitarian and compassionate considerations does not have suspensive effect and would thus not provide effective protection against the deportation order against the author.<sup>12</sup> The Committee therefore finds that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present complaint.

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

6.5 The Committee notes in addition the author's claims that he was subjected to threats and intimidation by Canadian immigration officials while in detention and that he was denied access to his counsel while in immigration detention. It notes, however, that the author has provided no further specific argumentation or substantiation as to these claims. It therefore finds that he has failed to substantiate, for the purposes of admissibility, his claims under articles 10 and 14 (3) (b) of the Covenant and declares these claims inadmissible under article 2 of the Optional Protocol.

6.6 The Committee notes the author's claims that his conversion to Christianity would put him at risk of being executed or subjected to torture or other cruel, inhuman or degrading

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

<sup>13</sup> *Shumilina and others v. Belarus* (CCPR/C/120/D/2142/2012), para. 5.4; *Zhukovsky v. Belarus* (CCPR/C/127/D/2724/2016), para. 6.4; and *Reviako v. Belarus* (CCPR/C/129/D/2455/2014), para. 7.4.



treatment or punishment in the Islamic Republic of Iran, in violation of his rights under articles 6 and 7 of the Covenant. It further notes the author's claims that, if deported to the Islamic Republic of Iran, he would be unable to practise his faith. The Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated his allegations under articles 6 and 7 of the Covenant. Regarding the author's claims under article 18 of the Covenant, the Committee considers that this element is inextricably linked to his claims under article 6 and 7 and therefore proceeds to consider the issues raised under article 18 insofar as they relate to the merits of his claims under articles 6 and 7.<sup>14</sup>

6.7 In the light of the above, the Committee declares the communication admissible insofar as it raises issues under articles 6 and 7 and proceeds with its consideration of the merits.

#### *Consideration of the merits*

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

7.2 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it referred to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory 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>15</sup> The Committee has also indicated that the risk must be personal<sup>16</sup> and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>17</sup> All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>18</sup> The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists,<sup>19</sup> unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>20</sup>

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

7.4 The Committee notes the State party's argument that the fact that the author was able to travel to and depart from the Islamic Republic of Iran in 2012 indicates that the Iranian authorities had little interest in him. It notes that the State party authorities found that the author had converted to Christianity but also notes that, as the author would not be making his conversion public, he would not face any risk upon return. The Committee notes the author's argument that a letter from his pastor supports his claim that he is a witnessing and evangelizing member of his congregation and that his name and conversion to Christianity have been made public on the Internet by church activists who were trying to prevent his deportation. It notes his claim that he is a member of a congregation that is expected to

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

<sup>15</sup> Human Rights Committee, general comment No. 31 (2004), para. 12.

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

<sup>17</sup> *X v. Denmark*, para. 9.2; *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18; *Q.A. v. Sweden*, para. 9.3; and *A.E. v. Sweden*, para. 9.3.

<sup>18</sup> See *X v. Denmark*, para. 9.2; *Q.A. v. Sweden*, para. 9.3; and *A.E. v. Sweden*, para. 9.3.

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

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

proselytize and his argument that he should not be required to practise his faith in secret, in fear and without a church or fellowship with others.

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

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

7.7 The Committee considers that the information at its disposal demonstrates that the State party took into account all claims raised by the author before its domestic authorities and all elements available when evaluating the risks cited by him and that he has identified no irregularity in the decision-making process. The Committee further considers that, while the author disagrees with the factual conclusions of the State party authorities, he has not shown that their decisions were clearly arbitrary or amounted to a manifest error or denial of justice. Consequently, the Committee considers that the evidence and circumstances adduced by the author do not constitute sufficient grounds to demonstrate that he would run a real and personal risk of being subjected to treatment contrary to articles 6 and 7 of the Covenant if returned to the Islamic Republic of Iran. In view thereof, the Committee is not able to conclude that the information before it shows that the author's rights under articles 6 and 7 of the Covenant would be violated were he to be removed to the Islamic Republic of Iran.

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

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<sup>21</sup> *S.F. v. Denmark* (CCPR/C/125/D/2494/2014), para. 8.6; *Q.A. v. Sweden*, para. 9.5; and *J.I. v. Sweden* (CCPR/C/128/D/3032/2017), para. 7.5. See also European Court of Human Rights *F.G. v. Sweden* (application no. 43611/11), judgment of 23 March 2016, para. 156.

## Annex

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

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

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

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

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

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

6. On 14 December 2017, the Federal Court of Canada dismissed the author's application for judicial review of the pre-removal risk assessment decision, finding it reasonable for the pre-removal risk assessment officer to have concluded that he faced no personal risk since he did not carry out any activities related to his Christian faith in public, and had no official duties on behalf of the church (para. 4.9). However, the State party also acknowledges (para. 4.11) that, according to objective sources, "a conversion and an anonymous life as a converted Christian in itself do not lead to an arrest but if the conversion is followed up by other activities as for instance proselytizing and training others, the case differs...". It is also stated in objective reports that "converted returnees who do not carry out activities related to Christianity upon return will not be of interest to the authorities", except

where a convert has been known to the authorities prior to departure. Where an individual has come to the attention of the authorities previously for reasons other than their religion, then that, in combination with their religion, may put them at increased risk.

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

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

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

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