



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. 3188/2018*, **

<i>Communication submitted by:</i>	M.N. (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	22 May 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 2 December 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	22 July 2021
<i>Subject matter:</i>	Deportation from Denmark to the Islamic Republic of Iran
<i>Procedural issues:</i>	Admissibility; issues raised under article 18
<i>Substantive issues:</i>	Risk to life; risk of torture; risk of cruel, inhuman or degrading treatment or punishment; non-refoulement
<i>Articles of the Covenant:</i>	6 and 7
<i>Article of the Optional Protocol:</i>	5 (2) (b)

1.1 The author of the communication is M.N., a national of the Islamic Republic of Iran of Persian ethnicity born on 23 February 1997 into a Shia Muslim family. He claims that the State party would violate his rights under articles 6 and 7 of the Covenant, read in conjunction with article 18, if it deported him to the Islamic Republic of Iran. The Optional Protocol entered into force for the State party on 6 January 1972. The author is represented by counsel.

1.2 On 24 May 2018, 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 pending before the Committee.

* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobayuh Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



1.3 On 28 May 2018, the Danish Refugee Appeals Board confirmed the suspension of the execution of the author's deportation order until further notice.

Facts as presented by the author

2.1 The author converted to Christianity from Islam in 2013, while still in the Islamic Republic of Iran. He had become interested in Christianity through his mother, who taught him about the Bible, and he started to participate in the weekly church meetings she organized at their home. The author began recounting stories he had learned from the Bible to his (Christian) uncle's clients.

2.2 During one of those home church services, the author met a woman, S, and they started a relationship. He did not know at that time that she was married, although she indicated that she had been previously. They met regularly at her home and had a physical relationship, although he did not see some parts of the house, which he later understood to have been because she was, in fact, still married.

2.3 One day, in 2015, the author returned home to learn that his mother had been arrested, having been accused of contravening sharia law by converting to Christianity. His father, a Muslim, who had been unaware of her conversion and worship at their home, as he worked away most of the time, blamed the author for not having stopped the activity and beat the author unconscious. When he regained consciousness, the author fled and called S, who did not answer her telephone. He found out from a mutual friend that S had also been arrested because her husband, a high-ranking government official, had found photographs of her and the author together on her telephone.

2.4 The author began receiving calls from the husband of S, accusing him of trying to convert S to Christianity and threatening the author and his family. The harassment continued even after the author changed his telephone number, leading him to the conclusion that the husband had connections with government intelligence services.

2.5 The author's mother was released after a week. Two days later, however, she was driven into by a car in the street and badly injured. She was taken to hospital and later discharged to the home of sympathetic relatives for ongoing care. The husband of S continued telephoning the author, claiming responsibility for his mother's injuries and demanding that the author meet him, threatening further harm if he did not comply.

2.6 Fearing for his younger brother's life, the author took him to stay with relatives and, on 11 October 2015, at the age of 18, the author fled the Islamic Republic of Iran without a passport or any other documentation, evading compulsory military service.¹ Following his departure, his mother received further threats and three men arrived at the house with an arrest warrant.

2.7 On 16 December 2015, the author arrived in Denmark, applying for asylum on the same day. His claim was based on both his conversion to Christianity and his relationship with a married woman. On 27 March 2017, the Immigration Service rejected the author's application, finding that his account of events in the Islamic Republic of Iran lacked credibility, owing to inconsistent statements made at different times during the course of the asylum process regarding the timing and certain details of events. On 27 March 2018, the Refugee Appeals Board rejected the author's appeal.² The Board held that, since the author had failed to substantively demonstrate that he converted to Christianity prior to his entry into Denmark, his conversion could not be accepted as genuine. The author challenged the decision, requesting permission to call a witness to provide oral testimony that would support the authenticity of the conversion and therefore his credibility. The request was denied with no reason being provided.

2.8 While in Denmark, the author consistently participated in church services and religious instruction. He encouraged other Iranian asylum-seekers to attend church services.

¹ In the Islamic Republic of Iran, minors are free to leave the country until the age of 18, when their passport is confiscated and returned to them only if they perform 24 months of military service.

² The author indicates that that was the final domestic decision.

On 28 February 2016, he was baptized.³ The author had an angel, a cross and an excerpt from the Bible, in Farsi, tattooed on his body. He also published Christian messages on his Facebook page, which, as noted in the interview transcript, were seen and reviewed during his substantive asylum interview. However, no further questions were put to him on any of those matters.

2.9 The author also took part in a demonstration against the Iranian regime, in Denmark, where pictures of him were taken. He informed the asylum interviewer of that. Again, that line of questioning was not pursued.

Complaint

3.1 The author claims that his deportation to the Islamic Republic of Iran would violate his rights under articles 6 and 7 of the Covenant. Under article 6, he fears that his life will be at risk owing to the fact that apostasy and adultery both carry the death penalty under sharia law. He fears that he will be killed by the husband of S or those commissioned by him. Under article 7, he fears that he will be subjected to torture or cruel, inhuman or degrading treatment or punishment as a detainee, as he will be questioned immediately upon his arrival in the Islamic Republic of Iran for having left illegally⁴ because he left without any permission, visa or identity documents and will face charges for not appearing for military service.⁵ He claims that, once detained, he will be subjected to a routine body search, during which his tattoos will be clearly visible. This will immediately raise the issue of his conversion and he will face questioning and persecution for apostasy. He fears that he will be arrested and charged with apostasy and, if he fails to recant, will be prosecuted. He further fears that, as a result of questioning, his identity in connection with his mother's detention and his relationship with S through her husband's government links will be discovered, placing him at risk of being charged with adultery and proselytizing in relation to S. Owing to his presence at a political demonstration against the Iranian regime in Denmark, which he knows will have been closely monitored by the Iranian security apparatus, he further fears persecution and prosecution as an opponent of the regime. The author also asserts that he would be forced to perform military service, which is against his beliefs, and that he would in any case be forced to suppress or deny his faith, contrary to his rights under article 18 of the Covenant. The author alleges that he also fears being killed, extrajudicially, by the husband of S, in accordance with repeated threats.

3.2 The author claims that the State party failed in its procedural obligations to carry out a thorough assessment of the risk he faces upon return, having regard to either the individual elements explained above, or their cumulative effect on his risk profile. He claims that the

³ In the Refugee Appeals Board decision, the State party disputes the credibility of the author concerning the timing of the conversion.

⁴ According to article 34 of the Penal Code, the penalty for leaving the country without a valid passport (or similar travel document) is between one and three years' imprisonment, or a fine of between 100,000 and 500,000 rials. A special court located in the Mehrabad Airport in Tehran deals with cases of people leaving the country without a valid passport or similar travel document. The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, their connection with any organizations or groups, and any other circumstances. This procedure also applies to people who are deported back to the Islamic Republic of Iran and who are not in possession of a passport containing an exit visa (Reza Molavi and Mohammad M. Hedayati-Kakhki, *Evaluation of the August 2008 Country of Origin Information Report on Iran* (London, Advisory Panel on Country Information, Home Office of the United Kingdom of Great Britain and Northern Ireland), p. 76). Available at <https://webarchive.nationalarchives.gov.uk/ukgwa/20090413205116/http://www.apci.org.uk/APCINEIeventMeeting.html>.

⁵ In the general official report of the Ministry for Foreign Affairs of the Netherlands from December 2013 it was noted that evasion of military service was punishable under article 40 of the Armed Forces Penal Law by imprisonment of six months to two years, or an extension of the service (Austrian Red Cross and Austrian Centre for Country of Origin and Asylum Research and Documentation, *Iran: Political Opposition Groups, Security Forces, Selected Human Rights Issues, Rule of Law – COI Compilation* (Vienna, 2015), p. 211).

judicial process is therefore marred by procedural irregularities, which amount to a denial of justice.

State party's observations on admissibility and the merits

4.1 On 26 November 2018, the State party submitted its observations on the admissibility and merits of the author's communication, along with a request to lift interim measures, a request that was not granted. On 11 March 2021, it submitted additional observations.

4.2 The State party asserts that the author's communication is inadmissible. It refers to the reasoning of the Refugee Appeals Board delivered on 27 March 2018, in which it held that it did not accept the author's account, owing to "inconsistent" statements made during the course of the asylum process. It states that the author, during his initial screening interview, gave September 2015 as the approximate time during which the events causing him to flee the Islamic Republic of Iran had taken place. However, at his substantive interview, he stated that the events had taken place in March and April 2015. The State party refers to the Refugee Appeals Board's finding of inconsistent statements as to the existence of an arrest warrant the first time that members of the authorities came to the author's residence, and the fact that it had only been mentioned later in the asylum process that the author's mother had needed to use a wheelchair after being hit by a car. The State party also refers to the finding that the author told the Immigration Service that S was married but had been divorced six months earlier, but later, before the Refugee Appeals Board, stated that she had been married for six months and that he had assumed she was divorced. It also refers to inconsistent comments regarding the timeline of his interactions with the husband of S. At his substantive interview with the Immigration Service, the author claimed that he had changed his telephone number after finding out that S was married, but that her husband had only called him after that. However, before the Board, he stated that he had received a call from the husband first, and had then changed his telephone number. In addition, the State party points to the observation of the Refugee Appeals Board that, in his initial interview with the Immigration Service, the author stated that, prior to his departure from the Islamic Republic of Iran, the husband of S, accompanied by three men, had come to his mother's home. At his second interview with the Immigration Service, he stated that his mother's house had first been searched after he left the country.

4.3 Owing to those inconsistencies, the Refugee Appeals Board assessed that the author was not a credible witness and, therefore, had failed to render it probable that his statement affirming his Christianity prior to leaving the Islamic Republic of Iran was reliable. Although it was accepted that the author had been baptized while in Denmark, it was not accepted that the conversion had taken place in the Islamic Republic of Iran and, therefore, the conversion itself was not found to be genuine.

4.4 Furthermore, the State party refers to the reasoning of the Refugee Appeals Board that the author had indicated that he planned to keep a low profile in terms of his faith if returned to the Islamic Republic of Iran and that he had therefore relied primarily on his extramarital relationship as grounds for his asylum claim. It did not accept that his baptism or religious belief was sufficient to trigger the State party's protection obligations.

4.5 The State party refers to the Refugee Appeals Board assessment that, as the facts leading to the author's departure from the Islamic Republic of Iran were disregarded on the basis of the negative credibility finding, the author had not rendered it probable that there was a specific and individualized risk of harm within the definition of section 7 of the Aliens Act in the event of his return to the Islamic Republic of Iran. It also held that neither the fact that he had left illegally nor the fact that he had evaded military service, taken individually or cumulatively, was sufficient to lead to a different conclusion. Therefore, the State party echoes the reasoning given by the Refugee Appeals Board for upholding the first decision, stating that the author presented no new facts leading it to question the decision of the Board.

4.6 The State party asserts that the author has failed to establish a prima facie case of violation of articles 6 or 7 of the Covenant and invites the Committee to find the communication inadmissible for being manifestly ill founded on the basis that it lacks merit.

4.7 The State party refers to the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant. It notes the

importance of establishing that the risk of harm under articles 6 and 7 is personal, with the threshold for providing substantial grounds to establish a real risk of irreparable harm being high.⁶

4.8 Further, the State party refers to its domestic legislation, which reflects its obligations under the Covenant in relation to articles 6 and 7, in sections 7 (1) and 7 (2) of the Aliens Act,⁷ and notes the Committee's previous findings of no irregularity in the State party's decision-making process.⁸ It refers to the Committee's established position that it is generally for the organs of States parties to review and evaluate facts and evidence in order to determine whether a risk of harm exists, unless it is found that the assessment was clearly arbitrary or amounted to a denial of justice. It provides further support for this contention with the precedent of the European Court of Human Rights.⁹

4.9 The State party asserts that the author has failed to establish that the assessment of the Refugee Appeals Board was arbitrary or amounted to a manifest error or denial of justice. It submits that the author has failed to identify any irregularity in the decision-making process or any risk factor that the Board failed to take into account in reaching its decision. It states that the author challenges only the assessment of the circumstances of his case and the factual conclusions reached. The State party therefore submits that the author is attempting to use the Committee to have the facts and circumstances of his asylum claim reassessed in the hope of achieving a more favourable outcome.

4.10 The State party notes that the author's case was considered before two bodies and, in the second case, the author was allowed to submit evidence orally and in writing and was provided with legal counsel. It states that the Refugee Appeals Board carried out a comprehensive and thorough examination of the author's statements along with all the other evidence in the case.

4.11 It explains that, while the decisions of the Refugee Appeals Board are final, judicial review of its determinations can be applied where errors of law or procedure or the exercise of unlawful discretion may exist.

4.12 The State party contends that the Refugee Appeals Board's assessment of the author's credibility comprised an implicit overall assessment of the asylum-seeker's statements and demeanour during proceedings before the Board, as well as all the other material in the case, including country information. In making its assessments, the State party asserts that the Board considers whether the statements are coherent, likely and consistent. If it is found that the claimant's explanation cannot be adjudged credible, it will typically provide, in its reasoning, examples of some, but not necessarily all, inconsistencies found.

4.13 With regard to the author's activities in Denmark, including his baptism, his religious tattoos and his comments on Facebook, the State party echoes the assessment by the Refugee Appeals Board that they do not risk putting the author in danger of treatment contrary to the Covenant, on the basis of its assessment that his conversion was not genuine. In support, the State party quotes guidance from the Office of the United Nations High Commissioner for Refugees (UNHCR) on asylum procedures, in which it is stated that: "Where individuals convert after their departure from the country of origin, this may have the effect of creating a *sur place* claim. In such situations, particular credibility concerns tend to arise and a

⁶ *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2.

⁷ Pursuant to section 7 (1) of the Aliens Act, a residence permit will be issued to an alien upon application if the alien falls within the definition of a person in need of protection under the Convention relating to the Status of Refugees. Under section 7 (2), a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in the case of return to the country of origin.

⁸ *A.S.M. and R.A.H. v. Denmark* (CCPR/C/117/D/2378/2014), paras 8.3 and 8.6; *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.3; *N v. Denmark* (CCPR/C/114/2426/2014); *Z v. Denmark* (CCPR/C/114/D/2329/2014), para. 7.4; *Mr. X and Ms. X v. Denmark* (CCPR/C/112/D/2186/2012), para 7.5; and *H.A. v. Denmark* (CCPR/C/123/D/2328/2014).

⁹ European Court of Human Rights, *M.O. v. Switzerland*, Application No. 41282/16, Judgment of 20 June 2017, para. 80.

rigorous and in-depth examination of the circumstances and genuineness of the conversion will be necessary.”¹⁰

4.14 In this context, the State party asserts that the Refugee Appeals Board made a careful assessment of the author’s statements, as well as all other circumstances in the case, in accordance with procedures found to be adequate by the European Court of Human Rights in *M.E. v. Denmark*.¹¹

4.15 The State party reaffirms that, in the case of the author, his general credibility and the circumstances of his alleged conversion were included in the Refugee Appeals Board’s assessment of the evidence.

4.16 In this connection, the State party also draws the Committee’s attention to the public debate in Denmark, in general and among asylum-seekers, which has been focused on the significance of conversion, typically from Islam to Christianity, and its positive effects on the outcome of asylum claims.

4.17 As to the author’s claims that he will have to hide his religion in the Islamic Republic of Iran, the State party reiterates the Refugee Appeals Board’s finding that, as he has failed to substantiate that his conversion to Christianity was sincere, it cannot be assumed that he would face persecution in the Islamic Republic of Iran and, furthermore, that he has an existing profile with Iranian authorities. The Board found that the author’s Christian tattoos alone were not enough to trigger the State party’s protection obligations, as the author had failed to render probable that those tattoos would place him in opposition to the Iranian authorities or that any sanctions resulting from the discovery of his tattoos would be disproportionate. In any case, the State party notes that, regardless of the sincerity of his conversion, the Board implicitly assessed whether, in the circumstances, the author’s behaviour and activities could have adverse consequences that would put him at risk, and it found that they would not.

4.18 The State party refers to country information that it claims indicates that, while the Iranian authorities are aware that Iranian nationals use conversion as grounds for asylum, such conversion, in itself, does not result in sanctions amounting to persecution. The State party notes that no one in the Islamic Republic of Iran has been executed for conversion and that there is some flexibility from the authorities on such matters.¹²

4.19 Concerning the demonstration, the State party posits that it does not see this as being capable of changing the assessment, as the author does not in any way appear to have been profiled by the Iranian authorities and, therefore, it is unlikely that his participation has come to the attention of authorities.

4.20 In connection with his illegal departure from the Islamic Republic of Iran and his lack of passport, the State party avers that this does not of itself present a risk of persecution. It refers to a decision of the Upper Tribunal of the United Kingdom of Great Britain and Northern Ireland¹³ in which it is stated that: “(a) An Iranian male whom it is sought to be returned to Iran, who does not possess a passport, will be returnable on a *laissez passer*, which he can obtain from the Iranian Embassy on proof of nationality and identity; and (b) an Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of article 3 rights on return to Iran because of having left illegally or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and failed asylum claim) have been established. In particular, there is not a real risk of prosecution leading to imprisonment.”

¹⁰ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, revised ed. (Geneva, 2019), p. 131. See also *ibid.*, p. 26.

¹¹ Application No. 58363/10, Judgment of 8 July 2014.

¹² Denmark, Ministry of Immigration and Integration, Danish Immigration Service, “Iran: house churches and converts” (Copenhagen, 2018).

¹³ Upper Tribunal (Immigration and Asylum Chamber), *SSH and HR v. Secretary of State for the Home Department*, Case No. 00308, Decision and Reasons Promulgated, 29 June 2016, para. 33.

4.21 Further reference is made by the State party to background information published by the Home Office of the United Kingdom in which the State party claims it is confirmed that asking for asylum abroad is not illegal in the Islamic Republic of Iran and that persons who have left the country illegally, if they are not on the list of persons banned from leaving, will not face problems with the authorities upon their return, although they may face a fine and, if they left having previously committed a crime, it is only for the crime itself that they will be punished.¹⁴

4.22 With regard to the author's assertions of conscientious objection to military service on the basis of his Christian beliefs, the State party refers to information that sanctions for not complying with mandatory national service are generally limited to not being able to obtain a driving licence and do not usually lead to imprisonment.¹⁵ Further, simultaneous illegal departure is noted to have no bearing on the penalty. The State party also submits that, since the conversion is not thought to be sincere, religious belief is not deemed to be a genuine basis for avoiding military service.

4.23 As regards the author's claim that the Refugee Appeals Board failed to consider all the risk factors cumulatively, the State party indicates that the Board is generally very attentive to the cumulative significance of circumstances in each case, in accordance with UNHCR guidelines, which underline the importance of considering factors that alone may not lead to a risk of persecution but, when taken together with other adverse elements, may lead to a well-founded fear of such for the individual.

4.24 As to the refusal by the Refugee Appeals Board to allow the author to call a witness and his contention that there was insufficient reasoning given in support of the refusal in the Board's decision of 27 March 2018, the State party recalls that, in accordance with section 54 (1) of the Aliens Act, it is for the Board to decide upon the examination of asylum-seekers and witnesses and upon the provision of other evidence. Furthermore, it refers to the Board's jurisprudence that witnesses are generally called only if their evidence relates to the central asylum claim, rather than in support of general credibility. Even in cases where their testimony is directly supportive of the central claim, if the Board considers that the testimony would not be of relevance to the outcome, the request may still be refused. The State party notes that the proposed witness had already provided written testimony prior to the hearing, which had been included in the Board's assessment of the author's credibility. The State party concludes that, in accordance with general principles of the administration of law and justice¹⁶ regarding the presentation of evidence, a witness who is intended to substantiate the general sincerity and credibility of the author cannot be attributed any significance. It is therefore submitted that the refusal to hear the oral evidence of the witness was justified and in line with established law and practice, including Committee jurisprudence, and that the reasoning appears implicitly from the decision of the Board.¹⁷ The Board concluded that the statements provided in June 2019 by two individuals who were known to the author through his Christian activities and church attendance were not necessarily able to better assess the genuineness of his beliefs owing to the context in which they had met him.

4.25 The State party characterizes the fears expressed by the author to be of a general nature and states that they are not based on specific facts that would put him at personal risk. It therefore supports the conclusions reached by the Refugee Appeals Board after a thorough assessment.

¹⁴ "Country policy and information note: Iran – Christians and Christian converts", 6th ed. (London, 2020), para 5.

¹⁵ United Kingdom, Home Office, "Country policy and information note: Iran – military service", 2nd ed. (London, 2020). It is also noted in that document that the evasion of military service is punishable under article 40 of the Armed Forces Penal Law by imprisonment of six months to two years, or an extension of the service and that young men from the age of 18 who are called for military service but do not present themselves to the authorities are considered as draft evaders. There is no alternative military service in the Islamic Republic of Iran and conscientious objection is not recognized. Draft evasion is liable for prosecution (para. 6.1.4).

¹⁶ Administration of Justice Act (Retsplejeloven) of Denmark, sect. 341.

¹⁷ *X v. Norway* (CCPR/C/115/D/2474/2014), paras. 7.4–7.5 and 7.7.

4.26 It is also noted that the case law supplied by the author in support of his claim before the Committee¹⁸ is irrelevant in the current context, as each case can be distinguished on the individual facts and circumstances and could be countered with numerous cases¹⁹ in which the State party was found not to be in violation.²⁰

4.27 The State party therefore reiterates that, should the Committee find the communication admissible, it is submitted that the claim lacks merit as the author does not present substantial grounds for his contention that his removal to the Islamic Republic of Iran would be in violation of articles 6 and 7 of the Covenant.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 30 December 2019, the author submitted comments on the State party's observations on the admissibility and merits of the communication.

5.2 In response to the State party's contention that the communication is inadmissible, the author notes that, where the Danish authorities accepted the genuineness of an asylum-seeker's conversion to Christianity, in previous cases, they also accepted the contention that the person in question faced serious risk upon return to the Islamic Republic of Iran and it is established practice that they are awarded refugee status. The underlying question on which the case turns is whether the determination made by the State party authorities of the genuineness of the author's conversion to Christianity was well grounded, which can only be assessed on the merits. The author has explained the nature of his beliefs, conversion and other risk factors in detail and has set out the separate elements of his claim. He has explained why he believes that they were not fully assessed, either individually or cumulatively, leading to a failure to fully assess the risk he faces and therefore a denial of justice. Therefore, the author submits that the communication is well founded in fact and is thus admissible.

5.3 The author asserts that the State party has provided no specific arguments as to the inadmissibility of the communication, merely stating that the communication is inadmissible and referring the reader to its reasoning in the subsequent section on the merits. The author therefore reads this as tacit acceptance that the controversy in the case relates to the merits only. The author therefore submits that he has a *prima facie* case with regard to his claim that the State party has violated his rights under articles 6 and 7 of the Covenant owing to the clear procedural irregularity in failing to fully assess the cumulative risk he faces upon return to the Islamic Republic of Iran.

5.4 The author also asserts that the State party's authorities refused to consider any of the risk factors and their implications by relying solely on the negative credibility finding and using this as a basis to dismiss all of the author's claims, including the objective facts and *sur place* activities that place him at risk, even if his account of events prior to fleeing the Islamic Republic of Iran is not believed. The author states that the State party's authorities failed to consider his clear, detailed and consistent explanation as to the genesis of his beliefs and consequent conversion and his extramarital relationship and, in any case, failed to consider, assess or challenge facts he presented, including his illegal departure from the Islamic Republic of Iran, his failure to appear for, and conscientious objection to, military service, his baptism in Denmark, his proselytizing to other asylum-seekers, both in person and online, which the Iranian authorities will have seen and which the interviewer reviewed and did not challenge, his continued commitment to Christianity and ongoing religious education and attendance at church, which his witness could have further attested to and been questioned about, his obviously Christian-themed tattoos, which would be discoverable upon a standard search upon arrival, a certainty were he to arrive on a *laissez-passer*, indicating his illegal departure, and his attendance at a demonstration against the regime, which was photographed and which the interviewer was aware of and did not question him about to attain further details. All of the foregoing, taken together, place him at real risk of treatment contrary to the Covenant. The State party failed to challenge those elements and yet did not consider the

¹⁸ Including *A.E. v. Denmark* (CCPR/C/115/D/2320/2013).

¹⁹ For example, *E.K. v. Denmark* (CCPR/C/126/D/2346/2014), *I.K. v. Denmark* (CCPR/C/125/D/2373/2014), *M.B.S. v. Denmark* (CCPR/C/125/D/2439/2014) and *S.F. v. Denmark* (CCPR/C/125/D/2494/2014).

²⁰ *M.M. v. Denmark* (CCPR/C/125/D/2345/2014).

sequence of events that would be triggered by his arrival in the Islamic Republic of Iran. Upon discovering his tattoos, the authorities could not dismiss his conversion as being only for the purposes of an asylum claim and would force him to recant. If he was later seen to practise his religion, his faith requiring him to proselytize, he would have been seen to have undermined the recantation and would be persecuted and prosecuted. The author states that there are known to be court facilities at airports in the Islamic Republic of Iran to deal expeditiously with such cases.²¹

5.5 The author, therefore, claims that the failure by the State party to assess these factors cumulatively, as demonstrated by the lack of reasoning in the Refugee Appeals Board's decision and repeated in the State party's endorsement of the same in its observations, again without any specific reference to the risk presented by the facts, represents a manifest procedural error meaning that the risk he faces was not duly considered, amounting to a denial of justice and a violation of his rights under articles 6 and 7 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 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 and has not been examined under another procedure of international investigation or settlement.

6.3 The Committee observes that the State party has not objected to the admissibility of the communication under article 5 (2) (b) of the Optional Protocol. Accordingly, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee notes the State party's challenge to admissibility on the grounds that the author's claims under articles 6 and 7 of the Covenant are of a general nature and that he has not substantiated his claim that the decision of the Refugee Appeals Board suffered from any procedural irregularity such as to imply a manifest error. It also notes the author's assertion that the State party failed in its procedural obligation to duly consider all the evidence in his case, dismissing all claims on the basis of a negative credibility finding, without considering objective evidence, the existence or authenticity of which were not challenged, such as his tattoos, and its failure to provide reasoning for any assessment that was carried out, or conclusion reached, in particular the absence of reasons for the refusal to hear oral testimony that goes to the substance of one of his primary claims. The Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated his allegations under articles 6 and 7 of the Covenant.

6.5 The Committee notes that the author has implicitly invoked article 18, in addition to his claims under articles 6 and 7. The Committee also notes, however, that the author does not advance any separate arguments to support this claim. Therefore, the Committee considers that this element of the communication is insufficiently substantiated as a stand-alone claim for the purposes of admissibility. Accordingly, it declares the article 18 claim to be inadmissible under article 2 of the Optional Protocol. However, as this element is inextricably linked to the author's claims under articles 6 and 7, the Committee will proceed to consider the issues raised insofar as they relate to the merits of his claims under articles 6 and 7.

²¹ A special court located in Mehrabad Airport in Tehran deals with cases of people leaving the country without a valid passport or similar travel document. The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, their connection with any organizations or groups, and any other circumstances. This procedure also applies to people who are deported back to the Islamic Republic of Iran and who are not in possession of a passport containing an exit visa. (Molavi and Hedayati-Kakhki, *Evaluation of the August 2008 Country of Origin Information Report on Iran*).

6.6 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 refers to the obligation not to extradite, deport, expel or otherwise remove a person from their territory to a country where there are substantial grounds to believe that there is a real risk of irreparable harm, such as that contemplated under articles 6 and 7 of the Covenant (para. 12). The Committee has also indicated that the risk must be personal, with a high threshold for establishing substantial grounds for the existence of such a risk.²² Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the country of origin. The Committee recalls its jurisprudence that significant weight should be given to the assessment conducted by the State party and that it is generally for the organs of the State party to examine the facts and evidence in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.²³

7.3 The Committee notes the author's claim that, if returned to the Islamic Republic of Iran, he would face routine detention and questioning at the airport and, having left the country without documents or an exit visa and having evaded military service, he fears extended detention, questioning and being searched and arrested as a result of his tattoos and therefore apparent conversion, his intelligence profile, as a result of his online and *sur place* activities, his connection to his mother's house church and his extramarital relationship with the wife of a government official. He claims he will be forced to recant his faith or face prosecution for apostasy. If his relationship with S is discovered he will also face charges of adultery and proselytizing, along with charges for failure to perform military service. He asserts that these factors, taken together, place him at serious risk of ill-treatment during detention and interrogation and that he will face the death penalty and/or ill- or degrading treatment. He also fears that the husband of S will carry out his repeated threats to the life of the author and his family.

7.4 The Committee notes the State party's assertion that the above claims are of a general nature and are not sufficiently substantiated and that the author's claims contain no evidence of procedural irregularity. According to the State party, owing to inconsistencies in the author's statements, including discrepancies in relation to the dates on which key events occurred, his account of his relationship with S and his dealings with her husband, the search at his mother's home and her injuries after being hit by a car, he was found not to be credible and therefore his central claims of conversion and his extramarital relationship were not assessed to be genuine. It also notes that the decision-making authorities proceeded in their assessment on the basis of certain misconceptions that are not reflected in the submissions before the Committee. The first is that the author's claim of conversion was secondary to the relationship with S, when it appears clearly from the file that the conversion and relationship were both raised, the conversion first in fact, from the beginning of the asylum process. It also interpreted a statement that the author made regarding his feelings about outwardly demonstrating his Christianity in Denmark or before he had left the Islamic Republic of Iran as meaning that he would "keep a low profile" if returned to the Islamic Republic of Iran, which he clearly disputes but did not have the opportunity to expand upon. As a result of those assumptions, it was not accepted by the State party that the author would face any serious risk upon his return. It was concluded that the author would not face a serious penalty for having left the Islamic Republic of Iran illegally, having Christian tattoos, attending a

²² *X v. Denmark*, para. 9.2; *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), para. 6.10; and *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

²³ *X v. Denmark*, para. 9.3; and *X v. Sweden*, para. 5.18.

demonstration or avoiding military service. His claim to conscientious objection was also not accepted as genuine, on the basis of the earlier credibility finding.

7.5 The Committee refers to UNHCR guidance that, while the burden of proof rests on the author, in principle, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his or her disposal to produce the necessary evidence in support of the application. The cumulative effect of the applicant's experience must be taken into account and, although no single incident may be sufficient, all the incidents related by the applicant taken together, could make the fear "well-founded".²⁴ Further, as quoted by the State party in its submission, where particular credibility concerns arise, a rigorous and in-depth examination of the circumstances and genuineness of the conversion will be necessary. The guidance also states that, when an asylum-seeker submits that he or she has become an atheist, or converted to another faith, even when this occurred after his or her initial asylum request has been dismissed, it may be reasonable for an in-depth examination of the circumstances of the conversion to be carried out by the authorities.²⁵

7.6 With regard to rejecting the application to hear oral testimony, the Committee notes the inconsistencies in the author's version of events, which led the State party to find that the author's account of events prior to leaving the Islamic Republic of Iran was not credible, and therefore found the assertion that he had converted to Christianity while in the Islamic Republic of Iran and that he had had an affair with a married woman also not to be credible. In these circumstances, in rebutting the negative credibility finding, the burden was on the author to explain how proffered oral evidence could cure those defects. The Committee notes that the author did not explain how such oral evidence could have cured the perceived lack of credibility and refers to the State party's argument that the same witness had already provided a written statement. The Committee also notes the State party's assertion that hearing the witnesses' oral testimony would have made no difference to the outcome of the claim as it pertained only to the credibility of the author. While this is not clearly supported by the facts, as the testimony did in fact relate to the central issue in the claim, the Committee, nevertheless, finds that the State party's reasoning for the refusal to hear the testimony was sufficient to discharge its procedural obligations under the Covenant. Therefore, the Committee does not seek to interfere with the findings of the State party authorities in this regard.

7.7 Regardless, however, of the State party's assessment of the credibility of the author or its consequent finding that the author's account of events in the Islamic Republic of Iran had not been rendered probable, State party authorities were obliged to assess whether, in all of the circumstances, the behaviour and activities of the author prior to, or indeed after, arrival in the State party, individually or cumulatively, could have serious adverse consequences in the event of his return to the Islamic Republic of Iran such as to put him at serious personal risk of irreparable harm.

7.8 In this connection, while it was for the author to raise facts capable of leading to a conclusion that his rights would be violated by his return, the State party also has a duty to consider all of the separate risk factors and, where information is not readily available despite the applicant's best efforts, to seek out all reasonably ascertainable information in order to discharge its procedural obligation to comprehensively assess the risk. The Committee notes that the author provided sufficiently detailed explanations to substantiate the contention that he had converted to Christianity, left the Islamic Republic of Iran illegally, evaded military service, been baptized in Denmark, publicly encouraged other Iranians to attend church services, had several tattoos of Christian iconography, attended and been photographed at an anti-regime demonstration and repeatedly posted about his Christian beliefs on his Facebook page. Therefore, these factors necessitated an in-depth examination, taken alone and together, to determine whether any or all of them were capable of placing the author at risk of treatment contrary to the Covenant.

²⁴ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, pp. 43–44.

²⁵ *Ibid.*, p. 131.

7.9 The State party provides no evidence of its analysis of the risk the author would face if his tattoos were to be discovered, despite country information upon which it relies indicating that “The authorities could interrogate a convert on return, if it has come to the authorities’ attention that he has converted. [...] As regards public conversion the system will react, but the numbers are limited. [...] It was emphasized that nobody has been executed in Iran due to conversion.”²⁶ The State party asserts that, on the basis of the above excerpt, the author will not be at risk.

7.10 As to information posted on the Internet, there is again no apparent assessment, despite the State party’s quote from a report stating that a photo indicating an applicant’s conversion posted on the Internet would be evaluated along with his profile and activities and that if a Facebook page was closed to the public or the photos were posted for a short time and then taken down and no further activities were carried out relating to Christianity, the person would not be of interest.²⁷ This seems to leave open the possibility that, should posts be open to the public, left online for a prolonged period or posted in conjunction with other public activities, a person could be of interest. It is this possibility that the State party was obliged to explore. Despite the author showing the interviewer his tattoos and Facebook posts during his substantive interview, there is nothing in the interview record, at either the first or second court or indeed elsewhere in the State party’s submission, to indicate that any further questions were asked except to confirm whether it appeared from his Facebook posts that he was a Christian, which he answered in the affirmative.

7.11 The Refugee Appeals Board noted the author’s claim that he participated in a demonstration in Denmark against the Iranian regime and that photos had been taken of him at the event. However, at no point did the decision maker attempt to establish the veracity of the statement, ask to see the photos, ask where they were posted or attempt to elicit any further information from the author as to the basis for his belief that he had been photographed.

7.12 The Refugee Appeals Board concluded that “based on an overall assessment, the applicant has failed to render it probable that he would be at specific individual risk of persecution or abuse falling within section 7 of the Aliens Act in case of his return to Iran. The information that he left the country unlawfully and that he has not performed mandatory military service cannot lead to a different assessment.” The Committee notes, however, that there is no evidence that any such assessment was, in fact, carried out. The facts that the author left illegally and failed to appear for military service are mentioned after the “overall assessment” is concluded, without any consideration of the increased likelihood of prolonged detention these factors present. The assertion of the State party, without reference to attentiveness in the case at hand, that the Board is “generally very attentive” to the cumulative consideration of factors, in accordance with UNHCR guidance, does not satisfy the Committee that, on the basis of the information before it, any assessment of cumulative factors was carried out in this case.

7.13 The Committee does not find the State party’s position that no one has been executed for conversion reassuring. Execution is not the only outcome that would trigger the State party’s protection obligations under the Aliens Act, the Convention relating to the Status of Refugees or the Covenant, neither is conversion the only basis upon which a convert may be prosecuted.²⁸ The fact that apostasy is not explicitly proscribed in Iranian criminal law, being punishable instead under provisions allowing *hudud* offences to be punished under sharia law, and the different interpretations in Islamic law regarding apostasy, result in a lack of legal certainty for converts, and an opportunity to avoid apostasy as a charge where politically expedient. These elements were not considered by decision makers, nor addressed in the State party’s submission.

²⁶ “Danish Immigration Service, Iran: house churches and converts”, paras. 82 and 88.

²⁷ *Ibid.*, para. 82.

²⁸ “Christian converts are typically not charged with apostasy; conversion cases are usually considered as national security matters, which are handled by the Revolutionary Court. A source added that the authorities perceive activities related to conversion as political activities.” (“Iran: House Churches and Converts”, p. 9).

7.14 In the absence of an assessment that takes into consideration the consequences of all of the author's *sur place* activities, the Committee considers that the State party has failed to demonstrate that the administrative and/or judicial authorities have conducted an individualized assessment of the author's case sufficient to determine whether there are substantial grounds for believing that there is a real risk of irreparable harm, as contemplated by articles 6 and 7 of the Covenant, if the author is 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 authors' removal to the Islamic Republic of Iran, if implemented in the absence of a procedure that guarantees a proper assessment of the real and personal risk that he might face if deported, would violate the rights of the author under articles 6 and 7 of the Covenant.

9. 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 review the author's claims, taking into account the State party's obligations under the Covenant and the present Views. The State party is also requested to refrain from expelling the author to the Islamic Republic of Iran while his request is under reconsideration.

10. Bearing in mind that, 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 and that, 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 wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.
