



## International Covenant on Civil and Political Rights

Distr.: General  
11 December 2017

Original: English

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2770/2016\*, \*\*

<i>Communication submitted by:</i>	O.A. (represented by counsel, Cecilia Vejby Andersen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	27 May 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure transmitted to the State party on 29 January 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	7 November 2017
<i>Subject matter:</i>	Deportation to Greece of an unaccompanied minor
<i>Procedural issue:</i>	Lack of substantiation
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment or punishment; refoulement; rights of the child
<i>Articles of the Covenant:</i>	7 and 24
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is O.A., a national of the Syrian Arab Republic. He claims that he was born on 1 June 2000<sup>1</sup> and that his deportation to Greece by the State party would constitute a violation of articles 7 and 24 of the Covenant. He is represented by counsel, Cecilia Vejby Andersen of the Danish Refugee Council.

1.2 On 30 May 2016, pursuant to rule 92 of the Committee's rules of procedure, the Special Rapporteur on new communications and interim measures, on behalf of the Committee, requested the State party to refrain from deporting the author to Greece while his case was under consideration by the Committee. On 1 June 2016, the Refugee Appeals Board suspended the time limit for the author's departure from Denmark in accordance with the Committee's request.

\* Adopted by the Committee at its 121st session (16 October–10 November 2017).

\*\* The following members of the Committee participated in the examination of the communication: Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

<sup>1</sup> See paras. 2.5 and 4.4.



**Factual background**

2.1 The author is from Damascus. He submits that he fled the Syrian Arab Republic in March 2015 because of the war and that he entered Greece in April of the same year as an unaccompanied minor. Upon arrival on the Greek island of Chios, the author was apprehended by the local authorities and placed in a closed facility where his fingerprints were taken because of his illegal entry. After a few days on Chios, he was allowed to travel to Athens where he stayed in a hostel for four months, covering the costs himself. When he ran out of funds, he became homeless and lived on the streets for about two months. He indicates that he spent most of the nights in a large park, where he met a Syrian refugee who advised him to file a request for asylum in Greece in order to require accommodation from the Greek authorities. He did so on an unspecified date.

2.2 The author indicates that he filed his asylum request but that his attempts to secure the support of the Greek authorities in finding accommodation failed. Local authorities were extremely aggressive when contacted, and the author felt rejected. During those months, the author witnessed other people being exposed to violence and robberies. He spent many nights awake in order to avoid attacks. In June 2015, the author passed his asylum interview with the Greek authorities. He received refugee status but never received official notice of that decision, which he was informed of later by the Danish authorities.<sup>2</sup>

2.3 Due to the very difficult living conditions in Greece and the lack of prospects for improvement, the author left Greece on 20 July 2015 and travelled to Denmark in August and lodged an application for asylum. Once in Denmark, he was informed by the Danish authorities that he had been granted asylum in Greece on 27 July. The author also claims that due to the stress caused by the personal situation he has had to face, he is emotionally vulnerable, and he has inflicted harm upon himself while in Denmark.<sup>3</sup>

2.4 On 29 March 2016, the Danish Immigration Service rejected the author's request for asylum on the grounds that Greece was his first country of asylum and, under section 29b of the Danish Aliens Act, he could not be granted asylum in Denmark. The DIS indicated that given that he had been granted refugee status in Greece, the author could legally enter the country and settle there. The Service further indicated that the fact that the author was not aware that he had been issued a residence permit in Greece did not affect the outcome of his asylum claim. The author appealed this decision to the Refugee Appeals Board, while aware that such appeal is not an effective remedy as it does not have suspensive effect<sup>4</sup> and that it does not provide an opportunity to submit and substantiate new information.

2.5 On 20 May 2016, the author informed his counsel that his correct birth date was 1 June 2000. To substantiate this information, he provided Syrian identity documents, indicating that his brother had sent the documents to him electronically.<sup>5</sup> On 23 May, the author submitted an official request to the Danish Immigration Service indicating his real age and providing a copy of the documents that he had received from his brother. The author submits that he had initially provided false information concerning his age to the Greek authorities because he had been advised that he should identify himself as an adult, as unaccompanied migrant minors were systematically detained in Greece. Additionally, as he was not sure whether the legal adult age in Greece was 18 or 21, he opted for stating that he was 21 years old. Consequently, he was registered by the Greek authorities as an adult with the false birth date of 1 June 1995. The author further submits that he provided the same false information to the Danish authorities for the same reasons and because he had already been registered in Greece as having been born on 1 June 1995.

2.6 On an unspecified date, the author's counsel submitted supplementary information to the Refugee Appeals Board in support of the author's age claim. She reported that she had been in contact with the staff at the asylum centre dealing with the author's case, who observed that the author's friends were all about 15 or 16 years old. They further

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<sup>2</sup> See para. 2.3.

<sup>3</sup> The author does not provide further information in this regard.

<sup>4</sup> The Danish Immigration Service in its decision indicates that the author cannot stay in Denmark while a possible appeal against its decision is reviewed by the Board.

<sup>5</sup> The author has provided a copy of the documents to the Committee.

considered that, taking into account the author's general demeanour and physical appearance, they were not surprised to learn that the author was himself 16 years old. Counsel also reported that the author's closest friend had told her a month before the communication was submitted to the Committee that he was aware of the author's correct age and that the author was afraid of telling the truth about his age as he feared that that information could have a negative impact on his asylum application.

2.7 On 30 May 2016, the Refugee Appeals Board rejected the author's appeal of the decision of the Danish Immigration Service. It reiterated that under section 29b of the Danish Aliens Act, as the author had been granted refugee status in Greece for three years on 12 June 2015, together with a residence card and travel documents, his first country of asylum was Greece. It further indicated that according to domestic legislation,<sup>6</sup> the requirements for the first country of asylum were that the asylum seeker must be protected against refoulement and that he or she can lawfully stay there. In addition, the asylum seeker's personal integrity and safety must be protected. However, the Board stated that it was not a requirement that the asylum seeker have the same social living standards as the nationals of the asylum country, on the condition that he or she was treated in accordance with recognized basic human standards.<sup>7</sup> The Board considered that the author could enter and stay lawfully in Greece and that he would be protected against refoulement there, as he had obtained international protection. In addition, as a member of the European Union, Greece was obliged to respect article 19 (2) of the Charter of Fundamental Rights of the European Union,<sup>8</sup> as well as the 1951 Convention relating to the Status of Refugees. The Board further considered that although the general socioeconomic conditions for persons granted refugee status in Greece were difficult, it could not be concluded that Greece could not be a country of first asylum. Regarding the author's claim that he was an unaccompanied minor, the Board indicated to the author that it fell outside its powers to change the information initially included in his application as to his age, but that he could ask the Service to review this issue; its decision could be appealed to the Ministry of Immigration, Integration and Housing. Regarding the author's claim that he was suffering emotional distress, the Board indicated that he had not requested any treatment for that condition and that according to the report on his interview, conducted on 29 March 2016, he was in good physical health. In addition, the Board considered that it could be assumed that the author would receive all the necessary psychological or medical treatment in Greece. Finally, the Board considered that the fact that the author had a girlfriend and a family network in Denmark could not lead to a different assessment,<sup>9</sup> and rejected the author's asylum application.

2.8 Regarding the author's claim that he was a minor when he arrived in the State party, the Danish Immigration Service decided on 30 May 2016 not to change the registration of the author's age insofar as 1 June 1995 was the date registered, based on the information that the author himself had provided to both the Greek and the Danish authorities. On 13 July 2016, the author filed an administrative complaint against this decision, alleging that he should have been given the benefit of the doubt regarding his real age. On 29 September 2016, the Ministry of Immigration, Integration and Housing rejected the administrative complaint, maintaining 1 June 1995 as the author's birth date. The Ministry recalled that during the author's interviews conducted by the Danish immigration authorities on 28 September 2015 and 29 March 2016, he indicated that his date of birth was 1 June 1995, that he had been issued an identity card when he was 14 years old, that he had been called for military service in 2013 when he was 18 years old and that he had a younger brother living in Germany. The Ministry also recalled that in the family book provided by the author following his request to change his date of birth, he was listed as a second child born

<sup>6</sup> Comments in bill No. 73 of 14 November 2014 on section 29b of the Aliens Act.

<sup>7</sup> The Board referred to conclusion No. 58 (XL) of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees. See [www.unhcr.org/excom/exconc/3ae68c4380/problem-refugees-asylum-seekers-move-irregular-manner-country-already-found.html](http://www.unhcr.org/excom/exconc/3ae68c4380/problem-refugees-asylum-seekers-move-irregular-manner-country-already-found.html).

<sup>8</sup> Article 19 (2) states: "No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment".

<sup>9</sup> The author does not provide any details on this matter.

on 1 June 2000, while the third child was listed as born in 1999. The Ministry noted that the second child — the author — had a later date of birth than the third child. When asked about this contradiction, the author indicated that he did not know the reason for the inconsistency. In addition, the Ministry noted that in the past, the author had referred to his older brother as his younger brother. When the author was questioned about the identity card he presented when he applied for asylum in Denmark, according to which he was born on 1 June 1995, he replied that it had been issued for the purpose of obtaining a job and renting a home. In this respect, the Ministry noted that if the author was indeed born in 2000, he would have been only 10 years old when the identity card was issued.

2.9 The Ministry further indicated that according to background information available on Syrian identity documents, after four years of civil war the civil registry in the country was no longer functioning; controls had weakened and documents were increasingly being issued under false pretenses or without the approval of the central administration.<sup>10</sup> In this regard, the Ministry considered that taking into account that the family book and the registration certificate produced by the author on 30 May 2016 had been issued within the past five years, they could not be considered as objective elements of evidence. Regarding the author's claim that the benefit of the doubt should be applied in his case, the Ministry emphasized that the author had consistently maintained throughout most of his asylum proceedings that he had been born on 1 June 1995, and that he only mentioned that he was a minor after his asylum application had been rejected. The author indicates that no remedy is available against this decision.

2.10 The author indicates that he has exhausted the domestic remedies, as the decisions by the Refugee Appeals Board cannot be appealed.<sup>11</sup>

### **The complaint**

3.1 The author alleges that his deportation to Greece would violate his rights under articles 7 and 24 of the Covenant, due to a risk of homelessness and detention in Greece. He contends that there are substantial grounds to believe that his deportation would therefore constitute a real risk of irreparable harm amounting to inhuman and degrading treatment under article 7 of the Covenant.

3.2 In support of his claim that homelessness could constitute inhuman and degrading treatment, the author cites a decision by the European Court of Human Rights, *M.S.S. v. Belgium*,<sup>12</sup> according to which the state of extreme poverty of an individual living in a park in Athens for months without access to food or sanitation amounted to degrading treatment under the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). He further submits that, although he has been granted refugee status, he remains vulnerable to such treatment. On this point, he refers to the Committee's Views in *Jasin et al. v. Denmark*, in which the Committee found that returning a single mother with no shelter and means of subsistence to Italy after the grant of subsidiary protection violated article 7.<sup>13</sup>

3.3 With regard to the risk of detention, the author submits that unaccompanied minors are detained in Greece, often for months, due to a lack of space at reception facilities.<sup>14</sup> In this regard, he refers to the concern expressed by the Office of the United Nations High Commissioner for Human Rights in May 2016 about unaccompanied minors who were being placed in "protective custody" in Greece due to a lack of adequate spaces, such as

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<sup>10</sup> The Ministry referred to a report by the Norwegian Country of Origin Information Centre (Landinfo), "Syria: identity documents and passports" (in Norwegian).

<sup>11</sup> See section 56 (8) of the Aliens Act.

<sup>12</sup> See application No. 30696/09, judgment of 21 January 2011, paras. 235 and 264.

<sup>13</sup> Communication No. 2360/2014, Views adopted on 22 July 2015.

<sup>14</sup> The author indicates that according to a report by the European Union Agency for Fundamental Rights, overcrowding has prevented the transfer of unaccompanied minors into accommodation. See monthly data collected by the Agency on the migration situation in the European Union, 1–31 March 2016, available from <http://fra.europa.eu/en/theme/asylum-migration-borders/overviews/march-2016>.

children's shelters.<sup>15</sup> The author also states that, according to media reports, as of 20 April 2016, 545 unaccompanied minors were in detention in Greece awaiting placement in specialized centres.<sup>16</sup> On the basis of this information, the author submits that the high risk of prolonged detention upon his arrival in Greece amounts to a high risk of inhuman and degrading treatment, in violation of his rights under the Covenant.

3.4 As regards article 24 of the Covenant, the author submits that the concept of a child's best interests is a fundamental right and that all proceedings should be guided by this principle. The author refers to general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, adopted by the Committee on the Rights of the Child, according to which all the elements that could be included in the best-interests assessment should be balanced in the light of each situation. Some of these elements are the child's own views, his or her situation of vulnerability and the child's right to health, among others. He submits that given his status as a minor and that he is a Syrian national who has already endured hardship during his trip to Europe, he is particularly vulnerable. He adds that deporting him to Greece would be against his best interests as a child, as he would be at risk of being homeless without any assistance from local authorities. The author further argues that access to accommodation in Greece is very limited, as refugees are obliged to compete with Greek nationals with limited economic resources, and that refugees face discriminatory treatment.

3.5 The author further submits that he has reasonable fears for his safety in Greece and that he has grown attached to his contact person in the State party, who is a key caregiver and adult presence in his life. He also indicates that he has no adult guardian who could take care of him in Greece, and that if left to live on the streets he would risk being subjected to xenophobic violence and other inhuman treatment. The author indicates that the State party's authorities have not assessed his best interests and that they have therefore failed to make the best interests of a child a primary consideration, as required by article 24 of the Covenant.

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

4.1 On 30 November 2016, the State party submitted its observations on admissibility and the merits of the communication. It provides a description of relevant domestic legislation and submits that the complainant's asylum request was considered in accordance with it, in particular the Aliens Act, which reflects the same principles as those established in article 3 of the European Convention on Human Rights. The State party therefore considers that its authorities complied with its international obligations regarding asylum applications. The State party also describes the structure, composition and functioning of the Refugee Appeals Board, as well as the legislation applying to cases related to the Dublin Regulation.<sup>17</sup>

4.2 As to the admissibility and merits of the communication, the State party argues that the author has failed to establish a *prima facie* case for the purpose of admissibility under article 7 of the Covenant. In particular, it has not been established that there are substantial grounds for believing that he will be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment in Greece. The communication is therefore manifestly unfounded and should be declared inadmissible. In the alternative, the State party submits that the author has not sufficiently established that article 7 will be violated should he be returned to Greece. It follows from the Committee's jurisprudence that States parties are under an obligation not to extradite, deport, expel or otherwise remove a person from their territory where the necessary and foreseeable consequence of the deportation would be a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant, whether in the country to which removal is to be effected or in any country to

<sup>15</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), "Migrant children face grim human rights conditions in Greece", 13 May 2016, available from [www.ohchr.org/EN/NewsEvents/Pages/MigrantchildreninGreece.aspx](http://www.ohchr.org/EN/NewsEvents/Pages/MigrantchildreninGreece.aspx).

<sup>16</sup> Elena Becatoros, "Council of Europe: detention of lone minors 'unacceptable'", Associated Press, 26 May 2016, available from [www.usnews.com/news/world/articles/2016-05-26/council-of-europe-detention-of-lone-minors-unacceptable](http://www.usnews.com/news/world/articles/2016-05-26/council-of-europe-detention-of-lone-minors-unacceptable).

<sup>17</sup> See Human Rights Committee, communication No. 2379/2014, *Hussein Ahmed v. Denmark*, Views adopted on 7 July 2016, paras. 4.1–4.3

which the person may subsequently be removed. The Committee has also indicated that the risk must be personal, and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>18</sup> With regard to the author's claim under article 24, the State party submits that it is incompatible *ratione materiae* with the Covenant and therefore inadmissible under article 3 of the Optional Protocol, as article 24 cannot be applied extraterritorially.<sup>19</sup>

4.3 The State party further indicates that when applying the principle of country of first asylum, the Refugee Appeals Board requires, at a minimum, that the asylum seeker is protected against refoulement and that he or she is able to legally enter and take up lawful residence in the first country of asylum. According to the State party, such protection includes certain social and economic elements, as asylum seekers must be treated in accordance with basic human standards and their personal integrity must be protected. The core element of such protection is that the person(s) must enjoy personal safety, both upon entering and while staying in the country of first asylum. However, the State party considers that it is not possible to require that asylum seekers have the same social and living standards as nationals of the country.

4.4 Regarding the author's claim that he entered the State party as an unaccompanied minor, the State party submits that the author entered its territory in possession of an identity card issued in the Syrian Arab Republic, from which it appears that he was born on 1 June 1995. It further refers to the findings of the Refugee Appeals Board of 30 May 2016, according to which the Greek authorities granted him refugee status from 12 June 2015 to 12 June 2018 and that a residence card was issued for him on 27 July 2015, as well as travel documents. The State party indicates that the Danish Immigration Service carries out an investigation to establish the identity, nationality and travel route of every asylum seeker, and that for that purpose it conducts an interview with him or her, with his or her consent, in order to review the correctness of the provided data, if deemed necessary, for example through an age-assessment test, a language-assessment test or a DNA test. In addition, before deciding whether to revise the data on the asylum seeker's age, nationality, etc., the asylum seeker is consulted. The State party indicates that the Service interviewed the author on several occasions: (a) on 28 September 2015, he maintained that his date of birth was 1 June 1995, that he had been issued his identify card when he was 14 years old and that he had been called up for military service in 2013, when he was 18 years old; (b) on 29 March 2016, the author was interviewed again and he reported that he had a younger brother in Germany; (c) on 30 May 2016, following the author's brief to the Board, he said that his real date of birth was 1 June 2000. When the author was interviewed by the Service, he stated that he had been advised not to communicate his real age to immigration authorities. During this interview, he presented a family book in which it appeared that he was the second child of the family, as well as a birth certificate showing that he was born on 1 June 2000.<sup>20</sup> The State party recalls that the Board found that it was outside its powers to assess or revise the author's birth date, as this was a question for the Service, appealable to the Danish Ministry of Immigration, Integration and Housing; (d) on 29 September 2016, the Ministry rejected the author's request to modify his registered date of birth. The State party relies on the decision made by the Ministry with respect to the author's age in its entirety and considers that it should be accepted as a fact that the author is an adult.

4.5 Regarding the risk that the author would face if deported to Greece, the State party notes that the author was granted refugee status in Greece on 12 June 2015 and that his residence permit is valid until 12 June 2018. It further submits that in accordance with the Committee's jurisprudence, conditions in Greece are not of such nature that it would be contrary to article 7 of the Covenant to deport the author there. In this regard, the State party refers to *X v. Denmark*,<sup>21</sup> which concerned a young Syrian male who, like the author, had been granted residence in Greece. The Committee concluded that the author's claims under article 7 of the Covenant regarding the living conditions in Greece had not been sufficiently substantiated, and declared the case inadmissible under article 2 of the Optional

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<sup>18</sup> The State party refers to communication No. 2007/2010, *J.J.M. v. Denmark*, Views adopted on 26 March 2014, para. 9.2.

<sup>19</sup> The State party refers to communication No. 2378/2014, *A.S.M. and R.A.H. v. Denmark*, Views adopted on 7 July 2016, para. 7.5.

<sup>20</sup> See para. 2.8.

<sup>21</sup> See communication No. 2523/2015, Views adopted on 1 April 2015, para. 4.4.

Protocol.<sup>22</sup> Furthermore, the State party differentiates the present case from *Jasin et al. v. Denmark*, in which the Committee considered that Denmark would violate article 7 of the Covenant by removing the author to Italy. The State party notes that, in that case, the author was a single mother who required medication for asthma, who had three minor children and whose residence permit for Italy had expired. These facts cannot be compared to the situation of the author, who is a grown, single man who has not requested medical treatment and who has a valid residence permit in Greece. Therefore, no exceptional circumstances exist in the present case. Furthermore, the State party notes that the author paid for a hostel in Greece for a period of time and that he had sufficient resources to travel to Denmark. The State party submits that taking into account all these factors, there is no basis to consider that the author is particularly vulnerable.

4.6 Moreover, the State party indicates that as the author has refugee status in Greece, which entitles him to a work permit of the same duration as his residence, he will be able to support himself there.<sup>23</sup> It further considers that it must be assumed that the author will also receive any necessary medical treatment in Greece, if he requests it. With regard to the author's fear of racially motivated attacks, the State party notes that it appears from general background information that although racially motivated attacks occur in Greece, there are special police units which prevent and resolve such incidents and that legislation aimed at appropriately punishing such attacks has recently been adopted.<sup>24</sup> The State party also indicates that although it appears that Greek police are sometimes involved in acts of racial discrimination, the author never reported that he had conflicts with the Greek authorities. In addition, during his asylum proceedings, the author also stated that he had never experienced any conflicts with political, religious or criminal groups, nor had he experienced conflicts with private persons during his stay in Greece. Accordingly, it cannot be accepted as a fact that he has been or could be subjected to racist attacks if deported to Greece. Moreover, it must be assumed that the author can obtain protection from the Greek authorities should he be attacked. The State party also indicates that the fact that the author considered that the attitude of the Greek authorities was very aggressive cannot lead to a different assessment.

4.7 Concerning the author's reference to the jurisprudence of the European Court of Human Rights,<sup>25</sup> the State party considers that it does not apply to the present case as the cases he referred to concerned asylum seekers whose situation cannot be compared to that of individuals with valid residence permits in Greece.<sup>26</sup> In addition, the author's allegations with regard to reception conditions in Greece are relevant for individuals falling under the Dublin Regulation but not for those who, like him, hold valid residence permits.

4.8 Finally, the State party recalls that important weight should be given to findings made by domestic authorities, and that it is generally for State organs to assess the facts and evidence of each case unless it can be established that such assessment was arbitrary or amounted to a denial of justice.<sup>27</sup> The author has failed to explain whether there were any

<sup>22</sup> The State party also refers to European Court of Human Rights, *Samsam Mohammed Hussein and others v. the Netherlands and Italy* (application No. 27725/10), judgment of 2 April 2013, in which the Court considered that the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed from the contracting State was not sufficient to give rise to a breach of article 3 of the European Convention on Human Rights.

<sup>23</sup> The State party refers to decree No. 189 of 1998 on conditions and procedures for the grant of a work permit or any other assistance for occupational rehabilitation to refugees recognized by the State, to asylum seekers and to temporary residents on humanitarian grounds, issued by the President of Greece.

<sup>24</sup> The State party refers to United States of America, Department of State, *Country Reports on Human Rights Practices for 2014* and *Country Reports on Human Rights Practices for 2015*, available from [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm).

<sup>25</sup> *M.S.S. v. Belgium and Greece; Sharifi and others v. Italy and Greece* (application No. 16643/09), judgment of 21 October 2014.

<sup>26</sup> The State party refers to communication No. 2523/2105, *X v. Denmark*, Views adopted on 1 April 2015.

<sup>27</sup> The State party refers to communications No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.3; No. 2393/2104, *K v. Denmark*, Views adopted on 16 July 2015, paras. 7.4 and 7.5; and No. 2426/2014, *N v. Denmark*, decision of inadmissibility adopted on 23 July 2015, para. 6.6.

irregularities in the decision-making process.<sup>28</sup> The State party also notes that in his communication to the Committee, the author has failed to provide new, specific details about his situation. This reflects that he merely disagrees with domestic decisions and that he is trying to use the Committee as an appellate body.

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

5.1 On 14 February 2017, the author submitted his comments on the State party's observations. Regarding the observations on the admissibility of the communication, with respect to article 7 of the Covenant, he submits that according to rule 96 (b) of the Committee's rules of procedure, the author does not need to prove his case but to provide sufficient evidence in substantiation of his allegations; in other words, to constitute a prima facie case. He considers that he has done so, as he has provided evidence of his real age and of the risk of ill-treatment if forcibly returned to Greece. Regarding the evidence provided of his real age, the author refers to his family book, which has been substantiated by statements from his network family in Denmark as well as by the team coordinator and social worker from the asylum centre in Denmark.

5.2 Regarding his allegations under article 24 of the Covenant, the author claims that they are admissible as the failure of the Danish authorities to make an assessment of his best interests as a child amounts to a violation of that provision, whether or not it applies extraterritorially. In this regard, the author also claims that the inhuman and/or degrading treatment he might suffer if deported to Greece is not decisive. In addition, the author recalls that article 2 of the Covenant contains an obligation not to remove a person to a State where there is a risk of irreparable harm,<sup>29</sup> and claims that irreparable harm may arise under provisions of the Covenant other than articles 6 and 7. In this regard, the author refers to the case of *D.T. v. Canada*, in which the Committee held that a deportation by Canada to Nigeria of a child was a violation of his rights under article 24 (1) of the Covenant.<sup>30</sup> He also quotes *A and B v. Denmark*, in which the Committee considered that article 18 could not be dissociated from the author's allegations under articles 6 and 7.<sup>31</sup> Furthermore, the author refers to general comment No. 35 (2014) on liberty and security of person, in which the Committee stated that returning an individual to a country where there are substantial grounds for believing that the individual faces a real risk of a severe violation of liberty or security of person, such as prolonged arbitrary detention, may amount to inhuman treatment prohibited by article 7 of the Covenant (para. 57).

5.3 With respect to the merits of the communication, the author reiterates that there are substantial grounds to believe that there is a real risk of ill-treatment if he were to be returned to Greece, in violation of article 7 of the Covenant. The author refers to article 3 of the European Convention on Human Rights, which mirrors article 7 of the Covenant. He indicates that according to the jurisprudence of the European Court of Human Rights, in the assessment made by the Court to determine the minimum level of severity amounting to ill-treatment, circumstances such as the age and state of health of the applicant need to be taken into account.<sup>32</sup> The author therefore argues that when interpreting article 7 in conjunction with article 24 of the Covenant, which stipulates that children must be the subject of measures of protection, the minimum level of severity must be assessed taking into account the special circumstances of the applicant who, in this case, is a Syrian minor who has already endured hardship in his home country and in Greece, who has also developed self-destructive behaviour and who has no caregiver in Greece. The author thus concludes that there is a real risk of ill-treatment in violation of article 7 of the Covenant if he were to be returned to Greece. The author further emphasizes that according to the background information on the situation of refugees in Greece, refugees do not receive

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<sup>28</sup> The State party refers to communications No. 2186/2012, *Mr. X and Ms. X v. Denmark*, Views adopted on 22 October 2014, para. 7.5; and No. 2329/2014, *Z v. Denmark*, Views adopted on 15 July 2015, para. 7.4.

<sup>29</sup> The author 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, para. 12.

<sup>30</sup> See communication No. 2081/2011, Views adopted on 15 Jul 2016, para. 8. The author also refers to an individual opinion by Sarah Cleveland and Sir Nigel Rodley regarding *A.S.M. and R.A.H. v. Denmark*, Views adopted on 7 July 2016, annex II, para. 6.

<sup>31</sup> See communication No. 2291/2013, Views adopted on 13 July 2016, para. 7.4.

<sup>32</sup> See *Tarakhel v. Switzerland* (application No. 29217/12), judgment of 4 November 2014, para. 118.



assistance from the Greek authorities, they risk labour and sexual exploitation and they are subjected to the extensive use of detention amounting to inhuman and degrading treatment due to the poor conditions of detention, all of which demonstrate the deeply problematic situation refugees are obliged to endure in Greece.

5.4 The author further argues that he has provided the State party with evidence of his real age, including documentary and testimonial evidence,<sup>33</sup> in accordance with the principle of the burden of the proof as established by the Office of the United Nations High Commissioner for Refugees (UNHCR).<sup>34</sup> According to this principle, the refugee must establish the veracity of his allegations and the accuracy of the facts on which his claims are based.<sup>35</sup> He also submits that he has provided a plausible explanation concerning the inaccurate information regarding his age to the Greek and Danish authorities.

5.5 Furthermore, the author indicates that in the light of the explanation and evidence that he produced, he should be afforded the benefit of the doubt, as no current method of age assessment is able to determine a specific age with certainty.<sup>36</sup> Therefore, when there are doubts regarding the age of an asylum seeker, as in the author's case, according to the principle of the benefit of the doubt he must be treated as a child. In addition, the author indicates that having fulfilled the burden of proof principle by producing evidence confirming that he is a child, the burden of proof becomes shared between him and the State party. The author refers to two decisions by the European Court of Human Rights, according to which once the burden of proof has been discharged, the applicant and the authorities have a shared burden to ascertain and evaluate all relevant facts.<sup>37</sup> Thus, if the State party had reasons to question the author's age, a medical age assessment test should have been undertaken.<sup>38</sup> The author recalls that neither the Greek authorities nor the Danish authorities conducted an age assessment test.

5.6 The author further states that his state of health, vulnerability and age are elements that must be evaluated when assessing if Greece would meet the conditions to serve as a first country of asylum. He further sustains that those elements suggest that there is a real risk of ill-treatment in violation of article 7 of the Covenant if he were to be deported to Greece. Therefore, he indicates that it is essential for the State party to establish his correct age, as minors are more vulnerable to suffering irreparable harm when circumstances such as those of the instant case are present, and reiterates that if he were deported to Greece his rights under articles 7 and 24 of the Covenant would be violated.

#### **Additional submission from the State party**

6.1 On 16 May 2017, the State party provided further observations. It reiterates that the author has not provided any new information on his initial grounds for asylum. It also reiterates that the author has failed to establish a prima facie case for the purpose of admissibility under article 7 of the Covenant and that this part of the communication is manifestly ill-founded. With regard to the author's claims under article 24, the State party reiterates that they are incompatible *ratione materiae* with the Covenant and therefore inadmissible under article 3 of the Optional Protocol.<sup>39</sup>

<sup>33</sup> The author refers to the Syrian family book and the statements by staff members of his asylum centre in Denmark and by his family network.

<sup>34</sup> The author refers to UNHCR, Note on the Burden of Proof in Refugee Claims, 16 December 1998. Available from [www.refworld.org/docid/3ae6b3338.html](http://www.refworld.org/docid/3ae6b3338.html).

<sup>35</sup> The author refers to article 4 (3) (a) of the Council of the European Union resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03), available from [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y0719\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y0719(02)&from=EN).

<sup>36</sup> The author refers to Gregor Noll, "Junk science? Four arguments against the radiological age assessment of unaccompanied minors seeking asylum", *International Journal of Refugee Law*, vol. 28, No. 2, pp. 234–250. Available from <https://academic.oup.com/ijrl/article/28/2/234/2223300/Junk-Science-Four-Arguments-against-the>.

<sup>37</sup> See *J.K. and others v. Sweden* (application No. 59166/12), judgment of 23 August 2016, para. 52. The author also refers to *R.C. v. Sweden* (application No. 41827/07), judgment of 9 March 2010, para. 53.

<sup>38</sup> The author refers again to article 4 (3) (a) of the Council of the European Union resolution of 26 June 1997. According to European law, if evidence of the real age is not available or serious doubts persist, an age assessment test may be carried out, in an objective manner.

<sup>39</sup> The State party refers again to *A.S.M. and R.A.H. v. Denmark*, para. 7.5.

6.2 With respect to the author's age, the State party recalls the decision of the Refugee Appeals Board of 30 May 2016, according to which the author did not submit that he was a minor until his asylum claim had been rejected by the Danish Immigration Service. The State party also points out that on 26 September 2016, the Board's decision was upheld by the Danish Ministry of Immigration, Integration and Housing, as there was no basis for changing the date registered as the author's date of birth. Therefore, the State party reiterates that there are no substantial grounds for believing that the deportation of the author to Greece would amount to a violation of article 7 of the Covenant.

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

#### *Consideration of admissibility*

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

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

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

7.4 The Committee notes the State party's challenge to the admissibility of the communication on the grounds that the author's claim under article 7 of the Covenant is unsubstantiated. However, the Committee considers that, for the purpose of admissibility, the author has adequately explained the reasons for which he fears that his forcible removal to Greece would result in a risk of treatment in violation of article 7 given his alleged age and associated vulnerability. The Committee therefore declares admissible this part of the communication, as it appears to raise issues under article 7.

7.5 The Committee takes note of the author's allegation that the State party has violated his rights under article 24 of the Covenant, as the Danish authorities did not take the necessary measures to protect him because they did not take any action to determine his real age. The Committee also notes the State party's argument that article 24 of the Covenant lacks extraterritorial application. The Committee considers, however, that the author's claims under article 24 refer to events that are indissociable from his claims under article 7. It also considers that part of the author's claims under article 24 pertain to events that occurred in Denmark. Accordingly, the Committee declares the communication admissible, insofar as it raises issues under articles 7 and 24 of the Covenant, read jointly and separately, and proceeds with its consideration of the merits.

#### *Consideration of the merits*

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's claim that his deportation to Greece, on the basis of the Dublin Regulation principle of first country of asylum, would expose him to a risk of irreparable harm, in violation of article 7 of the Covenant, and would violate his rights under article 24, taking into account that he is a minor. The author bases his arguments, inter alia, on the conditions he endured while he was in Greece, as well as on the general conditions of reception for asylum seekers and refugees entering Greece, in particular unaccompanied minors.<sup>40</sup>

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<sup>40</sup> See European Union Agency for Fundamental Rights, monthly data collected by the Agency on the migration situation in the European Union, monthly report 1–30 April 2016; OHCHR, "Migrant children face grim human rights conditions in Greece", 13 May 2016; Becatoros, "Council of Europe: detention of lone minors 'unacceptable'".

8.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant (para. 12), in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by article 7 of the Covenant. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.<sup>41</sup> The Committee further recalls its jurisprudence according to which considerable weight should be given to the assessment conducted by the State party and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such a risk exists,<sup>42</sup> unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>43</sup>

8.4 The Committee notes that according to the author, he fled the Syrian Arab Republic in March 2015 and entered Greece in April of the same year. The Committee notes the author's allegations that upon arrival on the Greek island of Chios, he was apprehended by the local authorities and placed in a closed facility where his fingerprints were taken because he had entered the country illegally and that after a few days he was allowed to travel to Athens, where he stayed in a hostel for four months, covering the costs himself. The Committee further notes the author's claim that when he ran out of funds he became homeless and lived on the streets for about two months, spending most nights in a large park. The Committee also notes the author's allegation that, following the advice given by a Syrian refugee, he filed a request for asylum in order to require accommodation from the Greek authorities. However, despite his attempts to contact the Greek authorities for help in finding accommodation, he was not provided with any assistance. The Committee also notes the author's submission that local authorities were extremely aggressive, which gave him a feeling of rejection. The Committee further notes the author's allegations that he did not feel safe in Greece and that he witnessed other refugees being exposed to violence and robberies, in particular in the park where he was staying, which kept him awake for many nights. The Committee also notes the author's claim that he left Greece and travelled to Denmark out of fear for his safety and because he was unable to provide for himself. The Committee notes that the author requested asylum in Denmark in August 2015.

8.5 The Committee also takes note of the various reports referred to by the author highlighting the lack of available places in the reception facilities for asylum seekers and refugees in Greece under the Dublin Regulation. The Committee notes in particular the author's submission that refugees like himself who had already been issued a residence card and travel documents in Greece were not provided with accommodation by the local authorities. In this regard, the Committee notes the author's reference to a decision by the European Court of Human Rights,<sup>44</sup> according to which the state of extreme poverty of an individual living in a park in Athens for months without access to food or sanitation amounted to degrading treatment under the European Convention on Human Rights.

8.6 The Committee further notes the author's allegation that he is a minor and that he lied about his age because he had been advised that, as unaccompanied migrant minors were systematically detained in Greece, he should identify himself as an adult. The Committee also notes the author's allegation that, as he was not sure whether the legal adult age in Greece was 18 or 21, he opted for stating that he was 21 years old and that consequently he was registered by the Greek authorities as an adult with the false date of birth of 1 June 1995. The Committee notes the author's claim that he provided false information to the State party's authorities for the same reasons. The Committee further notes that, in order to support the claim that he is a minor, the author provided the Danish authorities with a birth certificate and a family book indicating that his real date of birth is 1

<sup>41</sup> See communications No. 2523/2105, *X v. Denmark*, para. 9.2; No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6; and No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>42</sup> See communication No. 1957/2010, *Z.H. v. Australia*, Views adopted on 21 March 2013, para. 9.3.

<sup>43</sup> *Ibid.* See also, inter alia, communication No. 541/1993, *Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

<sup>44</sup> See *M.S.S. v. Belgium and Greece*, paras. 235 and 264.

June 2000. He also provided statements from the staff members of the asylum centre in Denmark indicating that, taking into account his behaviour and interaction with other persons staying at the centre, they were not surprised when they learned that the author was a minor. Moreover, the Committee notes the author's claim that unaccompanied minors are being placed in "protective custody" in Greece due to a lack of adequate spaces, such as children's shelters, and that he would risk detention under inhuman and degrading prison conditions upon his arrival were he to be deported to Greece. The Committee also notes the author's claim that he is a minor and a refugee, currently suffering from psychological problems due to the stress resulting from his past experiences in the Syrian Arab Republic and in Greece as well as throughout the asylum proceedings in the State party, and that he now finds himself in a situation of great vulnerability.

8.7 The Committee also notes the finding of the Refugee Appeals Board that Greece should be considered the first country of asylum in the present case, and also notes the position of the State party that the first country of asylum is obliged to provide asylum seekers and refugees with basic human standards, although it is not required that such persons have the same social and living standards as nationals of the country. In this regard, the State party refers to a decision of the European Court of Human Rights, which held that the fact that the applicant's material and social living conditions would be significantly reduced if he or she were to be removed from the contracting State — in this case, Denmark — is not sufficient in itself to give rise to a breach of article 3 of the European Convention on Human Rights.<sup>45</sup>

8.8 The Committee further notes the State party's authorities finding that the author is not a minor, as 1 June 1995 was the first birth date he provided and that it was the date registered, based on the information provided by the author himself to both the Greek and the Danish authorities. The Committee also notes the State party's argument that the author maintained that he was an adult throughout the asylum proceedings and that it was only after his asylum request had been rejected by the Danish Immigration Service that he submitted a motion to change his birth date. The Committee further notes the State party's statement that the family book the author submitted to the Danish authorities to support his claim contains contradictory information and that, as the civil registry in the Syrian Arab Republic is no longer functioning, the family book and the birth certificate that the author submitted could not be considered as objective elements of evidence.

8.9 The Committee notes that according to available background material, although conditions for refugees and asylum seekers in Greece have improved, as new legislation has been adopted and measures have been taken to improve the functioning of the asylum system, the situation is still challenging. In particular, the Committee notes recent reports according to which the treatment currently accorded in Greece to certain categories of persons, in particular vulnerable applicants, including unaccompanied minors, is inadequate.<sup>46</sup> In this connection, the Committee refers to the UNHCR Recommendations for Greece in 2017, according to which the national capacity for accommodating unaccompanied and separated children is still far from meeting the needs and that children are exposed to ongoing protection risks, including sexual exploitation and abuse, due to insufficient security, substandard and overcrowded reception sites, lack of specific services and insufficient access to formal or non-formal education and lengthy asylum procedures

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<sup>45</sup> *Samsam Mohammed Hussein and others v. the Netherlands and Italy*. See also para. 4.5.

<sup>46</sup> European Commission recommendation of 8 December 2016 addressed to the member States on the resumption of transfers to Greece under regulation (EU) No. 604/2013. Available from [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20161208/recommendation\\_on\\_the\\_resumption\\_of\\_transfers\\_to\\_greece\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20161208/recommendation_on_the_resumption_of_transfers_to_greece_en.pdf).

See also European Court of Human Rights, *Ilias and Ahmed v. Hungary* (application No. 47287/15), judgment of 14 March 2017. In addition, according to the European Union Agency for Fundamental Rights, on 17 March 2017 there were 891 children on the waiting list to be referred to the National Centre for Social Solidarity for accommodation, and although specialized reception facilities are available for only 1,272, some 2,000 unaccompanied children are staying in Greece. See <http://fra.europa.eu/en/theme/asylum-migration-borders/overviews/april-2017>.

for reuniting families, which also severely impact their psychosocial well-being.<sup>47</sup> The Committee further notes that available background material also indicates that unaccompanied refugee and migrant children continue to be held in detention centres in Greece,<sup>48</sup> sometimes with adults.<sup>49</sup>

8.10 The Committee further notes that the State party does not contest that after leaving the hostel where he had stayed following his arrival in Athens, the author lived on the streets for at least two months and that he did not receive any assistance from the Greek authorities, even though he had contacted them requesting support.

8.11 The Committee recalls that States parties should give sufficient weight to the real and personal risk a person might face if deported.<sup>50</sup> In particular, the evaluation of whether the removed individuals are likely to be exposed to conditions constituting cruel, inhuman or degrading treatment in violation of article 7 of the Covenant must be based not only on an assessment of the general conditions in the receiving country, but also on the individual circumstances of the persons in question. These circumstances include vulnerability-increasing factors relating to such persons, such as their age, which may transform a general situation which is tolerable for most removed individuals to one that is intolerable for some individuals.<sup>51</sup> The Committee considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author would face in Greece in view of its obligation to afford children special measures of protection pursuant to article 24 of the Covenant. Such special measures should have included, in the circumstances of the case, the taking of reasonable measures to ascertain whether the author is a minor. In this regard, the Committee notes that the decision of the State party to not review the author's age was based mainly on the decision to rely on the information initially provided by him, notwithstanding the author's explanation as to the reasons why he had lied when he filed his asylum request and despite the possible link between his status as a minor and his poor exercise of discretion in lying about his age. In particular, the Committee notes that following the author's motion to change his date of birth, the State party did not take any measures to establish his age, such as a medical or psychological assessment or interviews with the staff of the asylum centre who provided their written testimony to support the author's claim as to his age. Moreover, State party's authorities did not undertake any act to verify the documents provided by the author to support his claim.

8.12 The Committee considers that in deciding the author's asylum request, the authorities of the State party relied on the inconsistencies of the family book and the author's initial statements that he was an adult. However, in the particular circumstances of the case under review, such inconsistencies did not exempt the State party from taking other reasonable measures to remove doubts concerning the author's age and his right to obtain the special measures of protection that would be available for a minor, including (a) taking all reasonable measures available to assess his age before taking a decision on the possibility of removing him to Greece; and (b) taking into account available background information according to which the conditions of reception of migrant minors in Greece may result in circumstances incompatible with article 7 of the Covenant. Consequently, the Committee considers that, in these particular circumstances, the removal of the author to Greece would amount to a violation of articles 7 and 24 of the Covenant, read alone and in conjunction with each other.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the deportation of the author to Greece without taking any measures to ensure a reasonable assertion of the author's age would violate his rights under articles 7 and 24, read alone and in conjunction with each other.

<sup>47</sup> UNHCR Recommendations for Greece in 2017. Available from [www.unhcr.org/58d8e8e64.pdf](http://www.unhcr.org/58d8e8e64.pdf).

<sup>48</sup> Becatoros, "Council of Europe: detention of lone minors 'unacceptable'".

<sup>49</sup> UNHCR Recommendations for Greece in 2017.

<sup>50</sup> See, for example, communications No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, paras. 11.2 and 11.4; and No. 2409/2014, *Ali and Ali Mohamad v. Denmark*, Views adopted on 29 March 2016, para. 7.8.

<sup>51</sup> See communication No. 2681/2015, *Y.A.A. and F.H.M. v. Denmark*, Views adopted on 10 March 2017, para. 7.7.

10. In accordance with article 2 (1) of the Covenant, which establishes that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the claim of the author, taking into account the State party's obligations under the Covenant and the Committee's present Views. The State party is also requested to refrain from expelling the author to Greece while his request for asylum is being reconsidered.<sup>52</sup>

11. 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 Committee's Views and to have them widely disseminated in its official language.

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<sup>52</sup> See, for example, *Ali and Ali Mohamad v. Denmark*, para. 9; and *Hussein Ahmed v. Denmark*, para. 15.