



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2473/2014\*, \*\*

<i>Communication submitted by:</i>	A.H.S. (represented by counsel, Tage Gottsche)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	24 October 2014 (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 October 2014 (not issued in document form)
<i>Date of adoption of the decision:</i>	28 March 2017
<i>Subject matter:</i>	Non-refoulement; arbitrary arrest and detention
<i>Procedural issue:</i>	Substantiation of claims
<i>Substantive issues:</i>	Torture; arbitrary arrest and detention
<i>Articles of the Covenant:</i>	7 and 9
<i>Articles of the Optional Protocol:</i>	2

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

1.2 On 29 October 2014, pursuant to rule 92 of its rules of procedure, the Committee, acting through the Special Rapporteur on new communications and interim measures, decided not to grant the author's request for interim measures.

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

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



**The facts as submitted by the author**

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

2.2 The reasons for asylum invoked by the author were his fear of detention and torture by Hamas because he fled and failed to provide them with information, as agreed to upon his release from detention, and his fear of being killed by his wife's family, who have high-ranking positions in Hamas, owing to a conflict with his father-in-law. On 6 December 2013, the Danish Immigration Service rejected his asylum application. On 19 June 2014, the Danish Refugee Appeals Board confirmed the decision of the Danish Immigration Service, having found that the facts of his story lacked consistency and credibility. The Board specified, among other reasons, that the author had not been in conflict with Hamas in the two years following his dismissal, although he alleged that Hamas was looking for him because of the advice he was providing to students; the author had travelled repeatedly in and out of Gaza; that the information on abuse during his detention cannot in itself justify granting asylum; and that the claims about attacks by his wife's family are not credible. The Board came to the conclusion that the author had not established that he would be at risk of personal persecution or inhuman treatment or punishment, which would justify granting him a residence permit.

2.3 During the appeals process, the author claimed that the human rights situation in Gaza justified, in itself, international protection. However, the Board found it unnecessary, in view of the facts of the case, to adopt a general position on the situation in Gaza.

2.4 The author claims to have exhausted all available domestic remedies since the decisions of the Board cannot be challenged in domestic courts.

**The complaint**

3. The author alleges that if he were to return to Gaza, he would face the risk of assault by Hamas and a threat to his life from his wife's family in violation of articles 7 and 9 of the Covenant.

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

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

4.2 The State party alleges that, should the communication be considered admissible, the facts as presented by the author do not reveal a violation of articles 7 and 9 of the Covenant. The State party cites the jurisprudence of the Committee according to which the risk of

being subjected to torture or ill-treatment must be personal and the author must provide substantial grounds to establish that a real risk of irreparable harm exists.<sup>1</sup>

4.3 The State party provided a detailed description of the asylum proceedings under the Aliens Act and decision-making processes and functioning of the Board.<sup>2</sup> It notes that in the present case, the Board concluded that the author's statements about his conflict with Hamas during his employment at the university were fabricated, together with his allegations about the conflict with his wife's family. The State party observes that the author's statements on several crucial points were inconsistent, vague, incoherent improbable and constantly being elaborated. The State party claims that the author appears to be a very low-profile individual, that neither he nor his family have ever been involved in any political activities, and that he has failed to give a coherent and logical account of why he was allegedly persecuted by Hamas. The State party also observes that the author has not provided any credible reasons for his conflict with his wife's family.

4.4 The State party submits that the author has failed to specify why the general conditions in Gaza are such that article 7 of the Covenant would be violated if he were to be returned. He also failed to refer to any specific background information. The State party refutes the author's allegation that the Board refused to review the situation in Gaza. It also submits that the Board has a comprehensive collection of general background material on the situation in the countries of origin of asylum seekers, which is continually updated. Having analysed the situation in Gaza, the State party agrees with the conclusion of the Board, namely that such a situation on its own cannot justify granting a residence permit.<sup>3</sup>

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

4.6 The State party further submits that the author has failed to provide any new, specific details about his situation to the Committee and that his communication merely reflects his disagreement with the assessment of his credibility by the Board. He has failed to identify any irregularity in the decision-making process or any risk factors that the Board has failed to take properly into account. The State party concludes that the author is in fact trying to use the Committee as an appellate body to have the factual circumstances of his claim reassessed.

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

5.1 On 27 August 2015, the author submitted his comments on the State party's observations.

5.2 The author argues that he has established a prima facie case under articles 7 and 9 of the Covenant on account of his fear of persecution by Hamas, on the one hand, owing to his previous persecution and imprisonment and, on the other hand, owing to his conflict with his father-in-law, who has relatives occupying high-ranking positions in Hamas. He also reiterates his claim regarding the failure of the State party to assess the general situation in Gaza, which has severely deteriorated since his arrival in Denmark.

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

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

<sup>1</sup> The State party cites the views of the Committee as expressed in para. 5.4 of the decision concerning communication No. 1302/2004, *Dawood Khan v. Canada*, adopted on 25 July 2006.

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

<sup>3</sup> The State party refers to *Thematic Memorandum Palestine: The Gaza Strip after the War from 7 July to 26 August 2014* (Oslo, Landinfo, 2014) and United Kingdom of Great Britain and Northern Ireland, Foreign and Commonwealth Office, report entitled "Israel and the Occupied Palestinian Territories (OPTs) — country of concern: latest update, 30 September 2014", a report published on 16 October 2014.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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

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

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

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

7.5 The Committee recalls paragraph 12 of 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 of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant". The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.<sup>4</sup> The Committee also recalls its jurisprudence specifying that 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 or evaluate facts and evidence in order to determine whether such risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>5</sup>

7.6 The Committee notes that the Board thoroughly examined the author's claim and considered his personal and family circumstances. It found that neither the author nor his family had ever been involved in any political activities, that the author had not provided any credible reasons for his conflict with his wife's family, that his statements on several crucial points had been inconsistent and vague and that he had failed to give a coherent and logical account of why he was allegedly persecuted by Hamas. On the basis of personal interviews with the author, the Board concluded that the author's statements about his conflict with Hamas during his employment at the university were fabricated, that his claims about potential attacks by his wife's family were not credible and that the author would not be at an actual and personal risk of persecution by Hamas if he returned to Gaza. The Committee also notes the State party's submission that it had reviewed the general situation in Gaza on the basis of the constantly updated country background information and has not found indications that the author would be at risk if returned there. The author has not explained why the decision of the Board would be manifestly unreasonable or arbitrary in nature. Accordingly, the Committee concludes that the author has failed to sufficiently substantiate his claim that his forcible removal would amount to a violation of article 7 of the Covenant and finds it inadmissible under article 2 of the Optional Protocol. For the same reasons, it finds the claim under article 9 of the Covenant to be inadmissible under article 2 of the Optional Protocol.

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<sup>4</sup> See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6; and No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>5</sup> See communication No. 1957/2010, *Z.H. v. Australia*, Views adopted on 21 March 2013, para. 9.3.

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