



# 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 2608/2015\* \*\*

<i>Submitted by:</i>	R.A.A. and Z. M. (represented by counsel)
<i>Alleged victim:</i>	The authors
<i>State Party:</i>	Denmark
<i>Date of communication:</i>	8 May 2015 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 8 May 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	28 October 2016
<i>Subject matter:</i>	Degrading and inhuman treatment, deportation to Bulgaria
<i>Procedural issues:</i>	Lack of substantiation
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment or punishment;
<i>Articles of the Covenant:</i>	7
<i>Articles of the Optional Protocol:</i>	2

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\* Adopted by the Committee at its 118th session (17 October-4 November 2016).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmet Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. One individual opinion signed by five Committee members is appended to the present Views.

1.1 The authors are R.A.A., born on 1st December 1992, and Z.M., born on 20 June 1991, a couple of Syrian nationals. The female author was five months pregnant when the communication was submitted.<sup>1</sup> The authors were scheduled to be transferred from Denmark to Bulgaria within the Dublin II procedure on 11 May 2015. The authors claimed that their deportation to Bulgaria would put them and their unborn child at a risk of inhuman and degrading treatment in violation of article 7 of the Covenant. The authors were initially represented by the Danish Refugee Council, and subsequently by Ms. Hannah Krog.

1.2 On 10 May 2015, pursuant to rule 92 of the Committee's 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 authors to Bulgaria, while their case was under consideration by the Committee.

1.3 On 29 September 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State party's request to lift the interim measures.

### **Factual background**

2.1 The authors entered Bulgaria in June 2014. They claim that upon arrival they were stopped by the Bulgarian police and that the male author was subjected to physical abuse in the form of punches and blows with batons all over his body. The female author was pulled by the hair, beaten with batons, and frisked without her clothes. On arrival at the police station, they were once again victims of abuse and were detained for 5 days. Their belongings were taken away and not returned. Once released, they were sent to a reception facility. The authors indicate that the conditions in the reception facility were very bad, and that they rarely ate the food that was served, as they repeatedly had found worms and other insects in it. The authors further indicate that, as a result of the unsanitary conditions at the reception facility, the female author got an infection in the lower abdomen, and that she approached the doctor at the asylum center, but she was denied medical assistance and was told that the system would collapse if all asylum seekers received treatment for their diseases.<sup>2</sup> She claims that she had to endure the pain until she arrived to Denmark where she received medical treatment.

2.2 The authors also indicate that the male author suffers from a heart condition in the form of an enlarged heart muscle, making it more difficult for the heart to pump blood. They allege that he collapsed at the reception facility, but that he was only given painkillers. Then, he went to the local hospital, but was rejected because he did not have a residence permit at the time. When he went back with his permit, he was given an appointment that was postponed three times without a reason, so he relinquished his efforts. They further claim that the male author must have an echocardiography control every six months and requires to be hospitalized as early as possible to do a telemetry monitoring.<sup>3</sup> They state that given his health conditions and his predisposition to the disease, he may have to go through a surgery to implant a defibrillator.

2.3 The authors further submit that one day, when they were on their way back to the reception facility, the male author was hit in the face and body by 4 or 5 unknown persons,

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<sup>1</sup> The baby was born in Denmark on 1st October 2015.

<sup>2</sup> No information is available as to the person who made such comment.

<sup>3</sup> The authors provide a medical certificate stating that the male author has a A DI422 hypertrophic cardiomyopathy, non-obstructive. It states that he was hospitalized from 26 to 27 February 2015 because of an Epicrisis. The certificate further indicates that the author is very susceptible to DI422 hypertrophic cardiomyopathy, as his father and brother died of a heart arrest, and two of his brothers have ICD pacemakers due to the same condition. The author will be called for a bike test and an echocardiography within 6 months, which will be carried out every six months.

and that although he did not understand them, he assumed that the assault was racially motivated, as it was commonly known that racist groups were attacking migrants in the area. He claims that after the assault, he went to the police station to report the incident, but he was denied access to the police station and could not report it to the authorities. He indicates that due to the language barrier, he was not aware of the available procedures or of the authorities that would have been competent to address his complaint. The authors further submit that the reception facility had to be locked down for three days due to the presence of xenophobic groups who wanted to attack the asylum seekers. A group of young men, who defied the curfew to provide food to the people inside the reception center, were actually stabbed in this context.

2.4 The authors submit that they were granted refugee status in Bulgaria in September 2014. They claim that they were not provided with a translation of the residence permits or any explanation as to the rights they were entitled to. No explanation on the renewal procedure was given, but after insisting, they were informed that the permits were valid for 5 years. They were also informed that they could no longer stay at the reception center and had to find their own accommodation. The authors indicate that they were not offered any assistance: their small allowance was cut, they struggled to find accommodation, and they had no access to medical care or schooling.<sup>4</sup> The male author learned that the rent for an apartment was 400 leva. With no expectation to find a job and given the spread xenophobic tendencies in Bulgaria, he realized that he would not be able to pay the rent. They therefore lived on the street for two to three days during which they felt very unsafe, especially the female author. They contacted some friends who were still living in the reception facilities and lived in hiding in their rooms until their departure to Denmark, in December 2014. The authors further submit that they had to use some savings and received some financial help from their families in Syria due to the lack of assistance from the Bulgarian authorities.

2.5 On 15 December 2014, the authors arrived in Denmark and applied for asylum the same day. On 22 January 2015, the Danish Immigration Service asked the Bulgarian authorities to accept to take the authors back in compliance with the Dublin Regulation. On 6 February 2015, the Bulgarian authorities informed the Danish Immigration Service that the authors had been granted refugee status in Bulgaria on 15 September 2014.

2.6 On 4 May 2015, the Danish Immigration Service (DIS) rejected the authors' asylum applications, as they had been granted protection in Bulgaria. They were ordered to leave Denmark immediately. The DIS considered that the authors' personal integrity and safety would be protected during their entrance and stay in Bulgaria. It also considered that the authors had no issues with the Bulgarian authorities and failed to file a complaint with the police, in relation to the punches and blows with batons suffered by the authors in the hands of the Bulgarian police upon arrival, as well as the abuses they suffered during their 5 days of detention at the police station. In addition, the DIS indicated that although the authors' claims related to the poor living conditions in Bulgaria and the impossibility to find a job were noted, "it must be regarded as certain" that they will obtain adequate socio-economic conditions and that their personal integrity will be protected. The DIS further noted the authors' claims related to the attack suffered by the male author by unknown persons, but considered that it was an isolated criminal incident and that the author could refer to Bulgarian authorities for protection in the future. Regarding the male author's heart condition, the DIS considered that he would be able to obtain medical treatment in Bulgaria, given that he currently has a valid residence permit.

2.7 On 6 May 2015, the authors appealed the decision of the Immigration Service to the Refugee Appeals Board (RAB). On 9 July 2015, the RAB upheld the decision of the DIS, as it considered that refusing residence to an alien is permitted if the applicant has obtained

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<sup>4</sup> The authors indicate that when applying for the issuance of ID documents they were given no guidance on possibilities to find housing, work, education or financial support from the State.

protection in another country. The RAB considered as a fact that the authors have been granted refugee status in Bulgaria. The RAB further indicated that according to relevant legislation, certain conditions should be met in order to refuse a residence application:<sup>5</sup> a) that the alien is protected against *non-refoulement* in the first country of asylum, b) that it is possible for the alien to enter and stay lawfully therein, c) that the personal integrity and safety of the alien is protected; but that it cannot be required that the alien has the same social living standards as the nationals of the first country of asylum, and d) that the alien is treated in accordance with recognized basic human standards therein.<sup>6</sup>

2.8 The RAB found that the authors could enter and stay lawfully in Bulgaria and that they would be protected against *refoulement* there, as they were granted international protection on 15 September 2014. The RAB considered that there was no reason to assume that the authors would risk *refoulement*, as Bulgaria is an EU member and therefore should comply with relevant legislation on the matter.<sup>7</sup> Regarding the authors' allegations related to the racially motivated attacks that they could face in Bulgaria, the RAB took note of an UNHCHR report indicating that the government addresses and condemns such attacks, and that in February 2014, following an attack on a Mosque, the authorities arrested 120 people.<sup>8</sup> The RAB concluded that the authors could apply to Bulgarian authorities for protection, that their safety would be protected to the extent necessary, and that consequently, they would not be subject to torture or ill-treatment if returned. In addition, the majority of the RAB members considered that the social and economic conditions for refugees granted residence in Bulgaria could not independently lead to the conclusion that the authors had to be accepted in the State party and not returned to Bulgaria. The RAB further made reference to background material indicating that persons who have been granted refugee or protection status in Bulgaria enjoy the same rights as Bulgarian nationals, including access to all types of work and social benefits, including unemployment benefits, although in practice, it is hard to find a job due to the language barrier and the high level of unemployment.<sup>9</sup> Additionally, the RAB mentioned that persons with refugee status have access to health insurance in Bulgaria, although they must pay for it,<sup>10</sup> but are entitled to obtain the same social assistance as Bulgarians, including healthcare.<sup>11</sup> Therefore it concluded that the authors would obtain a sufficient socio-economic status in Bulgaria, and that the information provided by the authors with respect to the health problems of the male author could not lead to a different conclusion. In this connection, the RAB noted that the author is a young man and considered that it could be assumed that he would obtain the necessary medical treatment for his heart condition in Bulgaria.

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<sup>5</sup> The RAB quotes the explanatory notes on the Bill N. 72 of 14 November 2014 on Section 29b of the Aliens Act.

<sup>6</sup> The RAB quotes UNHCR's ExCom Conclusion No. 58 on the Problem of Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection (1989).

<sup>7</sup> The RAB quoted the EU Fundamental Rights Charter which has acceded to the Convention relating to the Status of Refugees.

<sup>8</sup> UNHCR, *Observations on the Current Situation of Asylum in Bulgaria*, April 2014. Available at <http://www.unhcr.org/53198b489.pdf>.

<sup>9</sup> The RAB quotes Danish Refugee Council, *Bulgaria: overview of the asylum system, reception facilities and other conditions of relevance to the matter of transfers under the Dublin Regulation*, 26 February 2014.

<sup>10</sup> The RAB refers to Danish Refugee Council, *Memorandum on the conditions of asylum seekers and refugees in Bulgaria, drafted on the basis of meetings with NGOs held on 26 and 27 August 2014*, published in November 2014.

<sup>11</sup> The RAB refers to UNHCR's *Monitoring report on the integration of beneficiaries of international protection in Bulgaria*, December 2014.

2.9 On 31 July 2015, the authors requested the RAB to re-open their case, indicating that they had not applied for asylum in Bulgaria and that they would have to live on the streets with their child if returned to Bulgaria. On 31 August 2015, the RAB rejected the request to re-open the case, as no substantial new information had been provided by the authors.

### The complaint

3.1 The authors allege that their deportation to Bulgaria will put them at risk of inhuman and degrading treatment, in violation of article 7 of the Covenant, as they would face homelessness, destitution, lack of access to health care and to personal safety. The authors further indicate that they must be regarded as extremely vulnerable, as they have a new baby –the baby was born on 1st October 2015- and the male author suffers from a serious heart condition. They allege that he needs permanent health care (echocardiography control every 6 months and urgent hospitalization to have a telemetry monitoring in case of need), and that he would therefore be at risk of death if no regular medical treatment is provided.

3.2 The authors also allege that there is no effective integration programme for refugees in Bulgaria and that refugees face serious poverty, homelessness and limited access to health care. They submit that the last integration programme finalized in 2013 and that refugees are left in the void with no sufficient support from the authorities for social inclusion and integration in society.<sup>12</sup> Furthermore, while according to domestic legislation, persons who have been granted refugee status have access to the labour market, health care system, social services and assistance in finding housing, it is actually almost impossible for them to find work or a place to live. In addition, refugees must provide an address to get access to social services, which is almost impossible for them to obtain.<sup>13</sup> The authors further submit that they felt a difference in their situation before and after their residence permit were granted: before, they lived in poor conditions at the reception facility and were provided with a little pocket money. However, once the permit was issued, their situation deteriorated, as the payments were stopped and they had no place where to live.<sup>14</sup> They refer to a report by UNHCHR according to which there is a gap between asylum seekers

<sup>12</sup> They refer to Tselina Hristova, Raia Apostolova, Neda Deneva and Mathias Fiedler, *Trapped in Europe's Quagmire: the situation of asylum seekers and refugees in Bulgaria*, 2014, available at <http://bordermonitoring.eu/wp-content/uploads/reports/bm.eu-2014-bulgaria.en.pdf>; and to The Danish Refugee Council, *Notat om forhold for asylansøgere og flygtninge i Bulgarien*, November 2014. The authors submit that according to this report, the previous government adopted a strategy plan for 2014 and onwards which currently lacks to be followed up by an action plan with allocated funds.

<sup>13</sup> The authors refer to AIDA, *AIDA National Country Report – Bulgaria*, 18 April 2014 available at <http://www.irinnews.org/report/98983/syrians-face-bleak-time-bulgaria%E2%80%99s-broken-asylum-system>; and UNHCR, *Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria*, 2013, p. 11 – 13. Available at <http://www.refworld.org/docid/51b57c864.html>.

<sup>14</sup> The authors quote a Human Rights Watch report in which it is stated that “[...] after granting refugee or humanitarian status, the government stops providing refugees the 65 leva per month they had received as asylum seekers. Human Rights Watch researchers met recognized refugees who were homeless and squatting in unfinished, abandoned buildings in the vicinity of the open centers”. HRW, *Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, April 2014, p. 5. Available at <https://www.hrw.org/report/2014/04/28/containment-plan/bulgarias-pushbacks-and-detention-syrian-and-other-asylum-seekers>. The authors refer to another report indicating that “recognized refugees have only a matter of days to move out of the reception centres once their applications are successful, at which time, they stop receiving monthly stipends and risk becoming destitute”. Integrated Regional Information Networks (IRIN), *Syrians face bleak time in Bulgaria's broken asylum system*, October 22, 2013. Available at <http://www.irinnews.org/report/98983/syrians-face-bleak-time-bulgaria%E2%80%99s-broken-asylum-system>.

and recognized refugees or persons who have been granted subsidiary protection in terms of access to the health care because the update of their health care status can take up to two months. Refugees also have to pay a monthly fee (approximately 8.7 Euros), which most families are not able to pay. In addition, medicines and psychosocial care are not covered.<sup>15</sup>

3.3 The authors further submit that due to their experiences of racially motivated attacks and xenophobia that is spreading in Bulgaria but unaddressed by the authorities, they do not believe that the country is a safe place for a refugee family with a baby. In this connection, they argue that refugees with minor children are a particularly vulnerable group in Bulgaria and they indicate that according to background information, institutional racism, including racist interventions by high level politicians are widespread in Bulgaria, and racist attacks remain unaddressed by the authorities.<sup>16</sup>

3.4 The authors state that the decision by the European Court of Human Rights (ECHR) in *Tarakhel v. Switzerland*<sup>17</sup> is relevant for the present case, as it refers to a country where no effective integration programme is in place and consequently, refugees and asylum seekers live in extremely harsh conditions. They add that in Bulgaria, refugees might find themselves in a more vulnerable position, as they do not have access to the reception facilities for asylum-seekers. The authors note that in *Tarakhel*, the ECHR required Switzerland to obtain assurances from its Italian counterparts that the applicants (a family) would be received in facilities and conditions adapted to the age of the children; and that if such assurances were not made, Switzerland would be violating article 3 of the European Convention on Human Rights by transferring them there. The authors argue that, in the light of this finding, the harsh conditions faced by refugees returning to Bulgaria would fall within the scope of article 3 of the European Convention on Human Rights and article 7 of the Covenant. They therefore reiterate that their deportation to Bulgaria would amount to a violation of article 7 of the Covenant. They further submit that the *Tarakhel* decision indicates that individual guarantees, such as securing returning children from destitution and harsh accommodation conditions, are necessary.

#### **State Party's observations**

4.1 On 9 November 2015, the State Party submitted its observations on the admissibility and merits of the communication. The State party first describes the structure, composition and functioning of RAB, as well as the legislation applying to cases related to the Dublin Regulation.<sup>18</sup>

4.2 Then, as to the admissibility and merits of the communication, the State party argues that the authors have 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 they will be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment in Bulgaria. The communication is therefore manifestly unfounded and should be declared inadmissible. In the alternative, the State party submits that the authors have not sufficiently established that article 7 will be violated in case of their return to Bulgaria. 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

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<sup>15</sup> The authors refer to UNHCR, *Observations on the Current Situation of Asylum in Bulgaria*, April 2014, p. 12.

<sup>16</sup> The authors refer to Tsvelina Hristova, Raia Apostolova, Neda Deneva and Mathias Fiedler, *Trapped in Europe's Quagmire: The Situation for Asylum Seekers and Refugees in Bulgaria*, p. 32.

<sup>17</sup> European Court of Human Rights, *Tarakhel v. Switzerland*, application No. 29217/12, judgment adopted on 10 September 2014.

<sup>18</sup> See Communication 2379/2014, *Ms Obah Hussein Ahmed v. Denmark*, Views adopted on 8 July 2016, paras. 4.1-4.3.

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 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>19</sup>

4.3 The State party observes that in their communication, the authors did not provide any essential new information regarding their circumstances beyond the information already relied upon in connection with their asylum proceedings and that the RAB has already considered these circumstances in its decision of 9 July 2015. The RAB considered it a fact that the authors have been granted refugee status in Bulgaria and found that they fell within section 29b of the Aliens Act. The State party further submits that the RAB requires as an absolute minimum that the asylum-seeker or refugee is protected against *refoulement*. It also must be possible for him/her to enter lawfully and to take up lawful residence in the country of first asylum, and his/her personal integrity and safety must be protected. This concept of protection also includes a certain social and economic element since asylum-seekers must be treated in accordance with basic human standards. However, it cannot be required that the relevant asylum-seekers will have completely the same social living standards as the country's own nationals. The core of the protection concept is that the persons must enjoy personal safety both when they enter and when they stay in the country of first asylum. Moreover, the State party notes that Bulgaria is bound by the European Convention on Human Rights.

4.4 Furthermore, the State party submits that the RAB took into account the authors' written statements about their stay and living conditions in Bulgaria, as well as the background material available to that regard. The State party sustains that the Committee cannot be an appellate body which reassesses the factual circumstances advocated by the authors in their asylum application before the Danish authorities and it must give considerable weight to the findings of fact made by the RAB which is better placed to assess the factual circumstances of the authors' case. The State party further makes reference to the Committee's jurisprudence according to which "it is generally for the organs of State parties to examine the facts and evidence of the case, unless it can be established that such an assessment was arbitrary or amounted to a manifest error or denial of justice".<sup>20</sup>

4.5 The State party notes that on 25 June 2014, the Bulgarian authorities have published a new integration programme scheduled to be implemented as from 2015 which would cover a higher number of persons, including language training for a greater number of beneficiaries than the precedent programme.<sup>21</sup> It submits that the circumstance that the authors may not have access to such programme cannot independently lead to a different assessment of Bulgaria as their first country of asylum. The State party further states that according to background material submitted by the authors, refugees acquire the same rights as Bulgarian nationals, except the right to participate in elections and to hold certain

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<sup>19</sup> The State party refers to the communication No. 2007/2010, *J.J.M. v Denmark*, Views adopted on 26 March 2014, para. 9.2.

<sup>20</sup> The State party refers to Communications 2426/2014, *N. V. Denmark*, Views adopted on 23 July 2015, para. 6.6; 2272/2013, *P.T v. Denmark*, Views adopted on 1 April 2015, para. 7.3; 2393/2014, *K v. Denmark*, Views adopted on 16 July 2015, paras. 7.4 and 7.5; 2186/2012, *Mr. X and Ms. X v. Denmark*, Views adopted on 22 October 2014, para. 7.5; and 2329/2014, *Z v. Denmark*, Views adopted on 15 July 2015, para. 7.4.

<sup>21</sup> The State party refers to Tselina Hristova, Raia Apostolova, Neda Deneva and Mathias Fiedler, *Trapped in Europe's Quagmire: The Situation for Asylum Seekers and Refugees in Bulgaria*, p. 24-25.

positions which require the Bulgarian nationality;<sup>22</sup> and that although Bulgaria's reception system has shown incapable of processing the high number of asylum applications submitted as from 2013,<sup>23</sup> it appears that conditions in reception centres have improved. The State party quotes a Human Rights Watch report (2013) which states that "all centres have heat, the SAR (State Agency for Refugees) provides two hot meals a day to residents, and many residents are now being allowed to remain in the centres for longer periods after being granted refugee or humanitarian status if they lack the means to support themselves".<sup>24</sup> In addition, the State party states that according to an UNHCR report (2013), although the quality of accommodation of asylum-seekers and protection status holders after leaving the reception centres is directly dependent on their employment and income, their family status also counts, as families with children receive a more "positive attitude" from landlords. Additionally, according to the same report, no cases have been registered of families being forced to leave the centres without having been provided with accommodation or at least with funds to rent lodgings.<sup>25</sup>

4.6 The State party further indicates that refugees have access to healthcare and free medical treatment if they are registered with a general practitioner.<sup>26</sup> It quotes a report by the Bulgarian Council on refugees and Migrants according to which beneficiaries of international protection are entitled to the same social assistance and services as nationals, including the right to the health insurance of their choice.<sup>27</sup> With respect to the authors' statement that they risk to face racist attacks in Bulgaria, the State party reiterates that they can address themselves to the national authorities for protection, as the authorities have taken measures against such incidents, and refers once again to the attack against a mosque in February 2014, which resulted in the arrest of 120 people.

4.7 The State party further refers to the ECHR's judgement on *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*,<sup>28</sup> and states that it is applicable to the present communication. In that ruling, the Court stated that the assessment of a possible violation of article 3 of the European Convention must be rigorous and should analyse the conditions in the receiving country against the standard established by such provision of the Convention, in particular the Court indicated that "In the absence of exceptionally compelling humanitarian grounds against removal, 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 is not sufficient in itself to give rise to breach of Article 3".<sup>29</sup> Furthermore, the State party considers that it cannot be inferred from the ECHR's judgement on *Tarakhel v. Switzerland* that individual guarantees must be obtained from Bulgarian authorities in the case at hand, as the authors have already been granted refugee status in Bulgaria, while in *Tarakhel v. Switzerland* the authors' application for asylum in Italy was still pending when the case was reviewed by the ECHR.

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<sup>22</sup> The State party refers to HRW, *Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, April 2014, p. 72.

<sup>23</sup> Ibid. p. 2.

<sup>24</sup> Ibid. p. 5.

<sup>25</sup> The State party refers to UNHCR, *Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria*, 2013, p.6.

<sup>26</sup> The State party refers to UNHCR, *Observations on the Current Situation of Asylum in Bulgaria*, April 2014, p. 12 [However the report does not refer to this matter] and Tselina Hristova, Raia Apostolova, Neda Deneva and Mathias Fiedler, *Trapped in Europe's Quagmire: The Situation for Asylum Seekers and Refugees in Bulgaria*, p. 16.

<sup>27</sup> Bulgarian Council on refugees and Migrants and UNHCHR, *Monitoring report on the integration of beneficiaries of international protection in the Republic of Bulgaria in 2014*, December 2014.

<sup>28</sup> ECHR, *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, application 27725/10, 2 April 2013.

<sup>29</sup> Ibid. para. 71.

### Author's comments on the State Party's observations

5.1 On 26 January 2016, the authors submitted their comments on the State Party's observations. The authors reiterate that they have adequately explained the reasons for which they fear that their forcible return to Bulgaria would result in a breach of article 7 of the Covenant and consider that their claims in this regard have been fully substantiated. They submit that it is uncontested that they were detained for five days upon arrival to Bulgaria, that subsequently they were transferred to a reception centre where the conditions were appalling and that they stayed there until September 2014, when they were asked to leave, as they had been granted refugee status. They reiterate that they were not given any instructions as to where to go, or how to get accommodation or food, and that they managed to sneak in the reception centre and lived there in hiding until they left Bulgaria. They further reiterate that the male author has not received medical assistance in Bulgaria, despite his serious heart disease.

5.2 The authors further submit that it is not correct that refugees in Bulgaria have access to housing, work or social benefits, including healthcare and education. They reiterate that several reports document that the living conditions in Bulgaria for beneficiaries of international protection are deplorable, as no functional integration programme is in place, and that persons holding valid protection status face several difficulties in finding basic shelter, access to sanitary facilities and food. They refer to a report by the Human Rights Commissioner of the Council of Europe (2015), which states "The Commissioner is concerned that the system to support the integration of refugees and other beneficiaries of international protection in Bulgarian society still suffers from serious deficiencies, mainly connected with the insufficient funding of the system. As a result, refugees and other beneficiaries of international protection in Bulgaria face serious integration challenges which threaten their enjoyment of social and economic rights, including a serious risk of becoming homeless, high levels of unemployment, no real access to education and problems in accessing health care services. They are also vulnerable to hate crimes".<sup>30</sup> They also indicate that although it appears that persons granted refugee status are given the possibility to stay in the reception centres when they have no means to sustain themselves, they can only stay for 6 months, and that there are allegations of corruption of the reception centres' staff who are said to extort payment from the families for the right to stay.<sup>31</sup> The authors also quote a report by Amnesty International (2015), according to which there is no integration plan for recognized refugees and other beneficiaries of international protection in Bulgaria,<sup>32</sup> and state that in August 2014, the Bulgarian government rejected a plan prepared by the SAR and the Ministry of Labour for the implementation of the National Integration Strategy adopted early 2014.<sup>33</sup> The authors further submit that the serious integration challenges faced by asylum-seekers and refugees in Bulgaria, is not a temporary situation, and that those who have been granted refugee status are in a worse position, as

<sup>30</sup> Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Bulgaria from 9 to 11 2015, p. 28-29. Available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2801758&SecMode=1&DocId=2284888&Usage=2>.

<sup>31</sup> The authors further quote the same report which states "There have also been reports of eviction campaigns by the SAR, pushing recognised refugees, including those in a vulnerable situation, out of the reception centres despite the fact that they were legally entitled to stay and that there was room in the reception centre. Once the six months are over, the persons have to leave and they reportedly have no access to municipal social housing and receive financial aid that is not sufficient to cover the cost of decent accommodation. As a result, many are said to be at risk of homelessness". Ibid. para 29.

<sup>32</sup> Amnesty International, International Report 2014-2015. Available at <https://www.amnesty.org/en/documents/pol10/2552/2016/en/>.

<sup>33</sup> The authors quote *Pro Asyl: Erniedrigt, misshandelt, schuttylos: Flüchtlinge in Bulgarien*, April 2015. Available at <http://www.asyl-saar.de/dokumente/bulgarien/Bulgarienbroschuere.pdf>

they seem to be excluded from the reception facilities due to their initial stay therein and the fact that they have left them.

5.3 With regard to the State party's reference to the ECHR's ruling on *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, the authors submit that the issue at stake is not that refugees in Bulgaria see significantly reduced their material and social living conditions, but that the current living conditions therein do not meet basic humanitarian standards, as required by UNHCR's ExCom Conclusion No. 58. They also indicate that based on their experience in Bulgaria where they did not receive any assistance in finding accommodation after they were asked to leave the reception centre and were denied medical assistance, there is no basis for assuming that the Bulgarian authorities will prepare for the return of the family in accordance with basic human standards. Furthermore, they reiterate that the ECHR's decision on *Tarakhel v. Switzerland* is applicable to their case, as the living conditions of beneficiaries of international protection in Bulgaria can be regarded as similar to the situation of asylum-seekers in Italy, and that the premise outlined in *Samsam Mohammed Hussein and Others v. the Netherlands and Italy* is no longer sufficient, as individual guarantees specially securing the return of children from destitution and harsh accommodation conditions are required by the ECHR. The authors argue that the Court's reasoning in *Tarakhel v. Switzerland* regarding article 3 of the European Convention on Human Rights can be regarded as corresponding to article 7 of the Covenant.

5.4 The authors also refer to the Committee's Views on *Warda Osman Jasin et al. v. Denmark*,<sup>34</sup> in which it emphasized the need to give sufficient weight to the real and personal risk a person might face if removed. The authors submit that this requires an individualized assessment of the risk faced by the person, rather than reliance on general reports and on the assumption that, having been granted subsidiary protection in the past, s/he would in principle be entitled to work and receive social benefits. They further claim that regardless of the Bulgarian legislation on the formal access to social benefits, healthcare and education, relevant background information indicates that refugees in Bulgaria risk facing homelessness and destitution, and that the RAB has failed to give sufficient weight to the real personal risk they and their baby would face if removed there. Furthermore, the RAB did not adequately take into account information presented by the authors regarding their experience in Bulgaria where they did not receive adequate assistance from the authorities, but instead relied on general information according to which, in theory, refugees have access to work, social aid and accommodation. They further submit that the RAB did not take into account that they had to use some savings and received some financial help from their families in Syria due to the lack of assistance from the Bulgarian authorities. In addition, the RAB did not contact the Bulgarian authorities to ensure that they and their baby would be received under circumstances where they can benefit of their rights. The authors finally submit that as newly recognized refugees, they need further support to get established in a country of asylum, as they do not possess cultural or social networks, and that special attention must be given to the facts that they have a baby and that the male author suffers from severe medical conditions that require medical treatment which was not taken into account by the authorities in Bulgaria.

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

### *Consideration of admissibility*

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

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<sup>34</sup> Communication 2360/2014, *Warda Osman Jasin et al. v. Denmark*, Views adopted on 22 July 2015.

6.2 The Committee notes, as required by article 5, paragraph 2 (a) of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

6.3 The Committee notes the authors' claim that they have exhausted all effective domestic remedies available to them. In the absence of any objection by the State party in that connection, 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 the admissibility of the communication on the ground that the authors' claim under article 7 of the Covenant is unsubstantiated. The Committee however considers that the inadmissibility argument adduced by the State party is intimately linked to the merits of the case. Accordingly, the Committee declares the communication admissible insofar as it raises issues under article 7 of the Covenant, and proceeds to its consideration on the merits.

#### *Consideration of the merits*

7.1 The Human Rights Committee has considered the communication in light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the authors' claim that deporting them and their baby to Bulgaria, based on the Dublin Regulation principle of "first country of asylum", would expose them to a risk of irreparable harm, in violation of article 7 of the Covenant. The authors base their arguments on, *inter alia*, the actual treatment they received after they were granted residence permit in Bulgaria, and on the general conditions of reception for asylum seekers and refugees entering Bulgaria, as found in various reports.<sup>35</sup> The Committee notes the authors' argument they would face a precarious socio-economic situation, given the lack of access to financial help or social assistance and to integration programs for refugees and asylum seekers, as demonstrated by their experience as asylum-seekers and after they received refugee status and a residence permit in September 2014. The Committee further notes the authors' submission that since they already benefitted from the reception system when they first arrived in Bulgaria, and as they were granted a refugee status, they would have no access to social housing or temporary shelters. It also notes the authors' submission that the male author would not have access to adequate medical treatment for his heart disease,<sup>36</sup> and that they would not be able to find

<sup>35</sup> According to the report *Trapped in Europe's Quagmire: The Situation of Asylum Seekers and Refugees in Bulgaria*: "The last National Integration Programme finished in 2013 and as of currently there is no operational integration program in the country. This leaves the ever-growing number of newly recognized refugees and humanitarian status holders in a void, without sufficient support from the Bulgarian institutions for further social inclusion and integration into Bulgaria society. Without such support, the newly recognized refugees are put in highly vulnerable position, exposed to higher risks of extreme poverty, unemployment, homelessness, xenophobic and racist attitudes and discrimination." Tselina Hristova, Raia Apostolova, Neda Deneva and Mathias Fiedler, *Trapped in Europe's Quagmire: The Situation for Asylum Seekers and Refugees in Bulgaria*, p. 22; see also UNHCR, *Where is My home? Homelessness and Access to Housing among Asylum-Seekers, Refugees and Persons with International Protection in Bulgaria*, 2013, p.13 and AIDA National Country Report – Bulgaria, 23 April 2014 pp. 10-13.

<sup>36</sup> According to the report *Trapped in Europe's Quagmire: The Situation for Asylum Seekers and Refugees in Bulgaria*: "the national health care system requires asylum seekers and refugees to register with a general practitioner in order to gain access to free medical care. Because of insufficient information about the regulations for health care access and due to the fact that asylum seekers and refugees often move from one center to another, they often lose the registration for a GP and hence cannot receive free treatment. The Ombudsman is quoting as many as 400 refugees without the right

accommodation and a job; and therefore they would face homelessness and be forced to live with their baby in the streets.

7.3 The Committee recalls its general comment No. 31,<sup>37</sup> 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 which prohibits cruel, inhuman or degrading treatment. 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>38</sup> The Committee further recalls its jurisprudence 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 and evaluate facts and evidence in order to determine whether such risk exists,<sup>39</sup> unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>40</sup>

7.4 The Committee notes that according to the authors, they were detained for five days upon their arrival to Bulgaria, during which they were abused by the police, and that they were then transferred to a reception centre, where they lived between June and September 2014, and were asked to leave when they were granted refugee status, without being provided with alternative accommodation. Subsequently, they lived in the streets for two to three days, but managed to go back to the reception centre and live in hiding there until they left Bulgaria, thanks to some contacts they had among the asylum-seekers. The Committee also notes the authors' submissions that the male author was denied medical treatment, despite the fact that he has a serious heart condition, as he was given painkillers after collapsing in the reception centre; that he was rejected at the hospital because he did not have a residence permit, and that, once he received such permit, his appointments were cancelled three times without being provided with any reason. The Committee further notes the authors' allegations that the male author suffered an apparently racially motivated attack, that he did not receive any protection from the authorities, and that he was not allowed to file a complaint to the police, as he was refused entrance to the police station. The Committee further notes the authors' claim that out of fear for their safety and that they would be unable to provide for their child, to access adequate medical treatment, or to find a humanitarian solution to their situation, they left Bulgaria and went to Denmark, where they requested asylum in December 2014. The authors, refugees, one of them suffering a serious heart disease which requires medical treatment, and with a baby, now find themselves in a situation of great vulnerability.

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to free health care in September 2013 due to the inconsistencies between the regulations for refugees and national health care regulations. Holders of refugee or humanitarian status have to cover their health care fees themselves and to take care of finding a GP to register with. This is problematic for most of them and they usually remain uncovered by the health care system". Tselina Hristova, Raia Apostolova, Neda Deneva and Mathias Fiedler, *Trapped in Europe's Quagmire: The Situation for Asylum Seekers and Refugees in Bulgaria*, p. 16. On the same matter, UNHCR has stated "UNHCR is concerned about the gap with regard to access to health care for beneficiaries of international protection once they have been granted such protection. UNHCR urges the Bulgarian authorities to ensure continued access to health care for beneficiaries of international protection". UNHCR, *Observations on the Current Situation of Asylum in Bulgaria*, April 2014, p. 13.

<sup>37</sup> See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

<sup>38</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>39</sup> See communication No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

<sup>40</sup> See, inter alia, *ibid.* and communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2.

7.5 The Committee takes note of the various reports submitted by the authors highlighting the lack of a functional integration programme for refugees in Bulgaria, as well as the serious difficulties they face in accessing to housing, work or social benefits, including healthcare and education. The Committee further notes the background material according to which there may be a lack of available places in the reception facilities for asylum seekers and returnees under the Dublin Regulation, who are often in poor sanitary conditions. It further notes that returnees, like the authors, who have already been granted a form of protection and benefited from the reception facilities when they were in Bulgaria, are not entitled to accommodation in the asylum camps beyond the six-month period from granting a protection status; and that although beneficiaries of protection are entitled to work and social rights in Bulgaria, its social system is in general insufficient to attend the authors' needs.<sup>41</sup>

7.6 The Committee notes the finding of the Refugee Appeals Board that Bulgaria should be considered the first country of asylum in the present case and the position of the State party that the first country of asylum is obliged to provide asylum seekers with basic human rights, although it is not required to provide for such persons the same social and living standards as nationals of the country. The Committee further notes the reference made by the State party to a decision of the European Court of Human Rights according to which 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 –Denmark- is not sufficient in itself to give rise to breach of article 3 of the European Convention of Human Rights.<sup>42</sup>

7.7 The Committee considers, however, that the State party's conclusion did not adequately take into account the information provided by the authors, based on their own personal experience that, despite being granted a residence permit in Bulgaria, they faced intolerable living conditions there. In that connection, the Committee notes that the State party does not explain how, in case of a return to Bulgaria, the residence permits would protect them, in particular as regards the access to the medical treatments that the male author needs, and from the hardship and destitution which they have already experienced in Bulgaria, and would now also affect their baby.<sup>43</sup>

7.8 The Committee recalls that States parties should give sufficient weight to the real and personal risk a person might face if deported<sup>44</sup> and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the authors and their child would face in Bulgaria, rather than rely on general reports and on the assumption that, as the authors had benefited from subsidiary protection in the past, they would, in principle, be entitled to the same level of protection today. The Committee considers that the State party failed to take into due consideration that the authors were mistreated by Bulgarian officers upon arrival; that the male author was victim of an apparently racially motivated attack and was unable to file a complaint to the police, as he was not allowed to access the police station; and that he was denied medical care for his heart disease. The Committee also notes that the authors have a one year old baby, and considers that these circumstances put them in a particularly vulnerable situation that was not sufficiently taken into account by the RAB, and that their deportation to Bulgaria would

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<sup>41</sup> See footnotes 16 -19 and 33-36.

<sup>42</sup> ECHR, *Samsam Mohammed Hussein and Others v. the Netherlands and Italy*, application 27725/10, 2 April 2013.

<sup>43</sup> See Communication No. 2360/2014, *Warda Osman Jasin v. Denmark*, Views adopted on 22 July 2015, para. 8.8., Communication 2409/2014, *Abdilaḥir Abubakar Ali et al v. Denmark*, Views adopted on 29 March 2016, para. 7.7, and Communication 2379/2014, *Ms Obah Hussein Ahmed v. Denmark*, Views adopted on 8 July 2016, para. 13.7.

<sup>44</sup> See for example, communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, paras.11.2 and 11.4; Communication No.2409/2014, *Abdilaḥir Abubakar Ali et al v. Denmark*, Views of 29 March 2016, para.7.8.

be a source of re-traumatization for them. The Committee further notes that, in the absence of any assistance from the national authorities when they were in Bulgaria, the authors were not able to provide for themselves, notwithstanding their entitlement to subsidiary and refugee protection. In this connection, it notes that the authors did not have access to the medical assistance they needed for the male author, and that they now have a one year old baby. The Committee further notes that the State party failed to seek proper assurances from the Bulgarian authorities to ensure that the authors and their baby, who are in a particularly vulnerable situation, would be received in conditions compatible with their status as refugees and with the guarantees under article 7 of the Covenant, by requesting that Bulgaria undertake (a) to receive the authors and their child in conditions adapted to the baby's age and the family's vulnerable status, and enabling them to remain in Bulgaria,<sup>45</sup> (b) to issue a resident permit to the authors' baby; and (c) to take the necessary measures to ensure that the male author receives the medical treatment that he needs.

7.9 Consequently, the Committee considers that, in these particular circumstances, the removal of the authors and their child to Bulgaria, without proper assurances, would amount to a violation of article 7 of the Covenant.

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the deportation of the authors and their child to Bulgaria would violate their rights under article 7 of the International Covenant on Civil and Political Rights.

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 proceed to a review of the claim of the authors, taking into account the State party's obligations under the Covenant, the Committee's present Views, and the need to obtain assurances from Bulgaria, as set out in paragraph 7.8 above. The State party is also requested to refrain from expelling the authors and their baby to Bulgaria while their request for asylum is being reconsidered.<sup>46</sup>

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 or not 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 in case a violation has been established, 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>45</sup> See communication No. 2360/2014, *Warda Osman Jasin v. Denmark*, Views adopted on 22 July 2015, para 8.9; Communication No.2409/2014, *Abdilafir Abubakar Ali et al v. Denmark*, Views of 29 March 2016, para.7.8.

<sup>46</sup> See for example Communication No.2409/2014, *Abdilafir Abubakar Ali et al v. Denmark*, Views of 29 March 2016, para.9, and Communication 2379/2014, *Ms Obah Hussein Ahmed v. Denmark*, Views adopted on 8 July 2016, para. 15.

## Annex I

### Individual opinion (dissenting) of Committee members Mr. Yuval Shany, Yuji Iwasawa, Photini Pazartzis, Anja Seibert-Fohr and Konstantin Vardzelashvili

1) We regret that we are unable to join the majority on the Committee in finding that, in deciding to deport the authors to Bulgaria, Denmark would, if it implemented the decision, violate its obligations under article 7 of the Covenant.

2) According to the well-established case law of the Committee, States parties are obliged not to deport persons from their territory "where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed."<sup>47</sup> Not every exposure to personal hardship in the country of removal would, however, fall within the scope of the removing State's *non-refoulement* obligations.<sup>48</sup>

3) With the possible exceptions of those individuals who face special hardships due to their particular situation of vulnerability<sup>49</sup> which renders their plight exceptionally harsh and irreparable in nature, non-availability of social assistance or delays in access to medical services do not constitute in themselves grounds for *non-refoulement*. A contrary interpretation, recognizing all individuals facing problems in accessing social services as potential victims of article 7 of the Covenant, has little support in the case-law of the Committee or in State practice, and would extend the protections of article 7 and the *non-refoulement* principle (which are absolute in nature) beyond a breaking point.

4) Although we supported the Views adopted by the Committee in *Jasin v Denmark*,<sup>50</sup> the facts in that case were significantly different from the facts of the present case, and do not warrant the same legal conclusion. In *Jasin*, the author as a single mother of three small children, whose residence permit had expired while in Italy and who was suffering from health problems would have been left upon deportation in a situation threatening her and her children's existence. Under these exceptional circumstances, we were of the view that, without specific assurances, Italy cannot be considered a 'safe country' of removal for the author and her children.

5) In the present case, it is not disputed that, as recognized refugees, the authors are entitled to receive social assistance in Bulgaria, on similar terms to those available to Bulgarian nationals. They may also lawfully work to support themselves and their one child, and while it has been shown that one of the authors suffers from a heart condition, it has not been shown that this actually limits his ability to work or that his condition cannot be adequately treated in Bulgaria.<sup>51</sup>

<sup>47</sup> General Comment 31 (2004), para. 12

<sup>48</sup> Cf. *Vuolanne v. Finland*, Comm. No. 265/87, Views adopted on 7 April 1989.

<sup>49</sup> *Jasin v. Denmark*, Comm. No. 2360/2014, Views adopted on 22 July 2015.

<sup>50</sup> *Ibid.*

<sup>51</sup> The evidence on file suggests that one of the authors suffers from non-obstructive hypertrophic cardiomyopathy, and should be subject to routine monitoring of his heart condition under effort conditions.

6) While the authors do allege that they were victims of two violent incidents (the first, upon their arrival to Bulgaria, and the second, on an unspecified date and under unclear circumstances, when they were *en route* to the reception center), they have not adequately explained why they have not complained of these incidents to the Bulgarian authorities (other than referring in connection with the second incident to “language barriers” that made them unaware of the existing complaint procedures)(para. 2.3). In any event, there are no grounds in the case file to suggest that the authors would be exposed to a personalized risk of being subject to future attacks upon their return to Bulgaria.<sup>52</sup>

7) In sum, we consider that although deportation to Bulgaria may put the authors in a more difficult situation than the one confronting them in Denmark, we do not have before us information suggesting that the authors’ future prospects if returned to Bulgaria, disclose a real risk of harm severe enough to fall within the scope of Article 7.

8) Under these circumstances, we cannot conclude that the decision of the Danish authorities to deport the authors to Bulgaria would entail a violation of article 7 of the Covenant by Denmark.

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<sup>52</sup> See e.g., *P.T. v. Denmark*, Comm. No. 2272/2013, Views adopted on 1 April 2015, para. 7.2; *X. v. Canada*, Comm. No. 2366/2014, Views adopted on 5 Nov. 2015, at para. 9.3.