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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning Communication No. 2754/2016

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| <i>Communication submitted by:</i> | J.S.K.N. (represented by counsel, Niels-Erik Hansen) |
| <i>Alleged victim:</i> | The author |
| <i>State party:</i> | Denmark |
| <i>Date of communication:</i> | 10 March 2016 (initial submission) |
| <i>Document references:</i> | Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 23 March 2016 (not issued in document form) |
| <i>Date of adoption of Views:</i> | 25 October 2022 |
| <i>Subject matter:</i> | Denial of application to grant nationality through naturalization |
| <i>Procedural issues:</i> | Exhaustion of domestic remedies; level of substantiation of claims |
| <i>Substantive issues:</i> | Discrimination based on disability |
| <i>Articles of the Covenant:</i> | 2 (1), 26 |
| <i>Articles of the Optional Protocol:</i> | 2, 5 (2) (b) |

1. The author of the communication is J.S.K.N., a stateless Palestinian, born in 1956. He claims to be a victim of a violation by the State party of his rights under article 26, read in conjunction with article 2 (1) of the Covenant. He is represented by counsel. The Optional Protocol entered into force for the State party on 23 March 1976.

The facts as presented by the author

2.1 The author arrived in Denmark in 1991 and was granted a residence permit. In 2002, he was granted refugee status and a permanent residence permit. The author has lived most of his life in Denmark. His wife and children are Danish citizens. The author notes that he

* Adopted by the Committee at its 136th session (10 October – 4 November 2022).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya, Carlos Gomez Martinez, Duncan Laki Muhumuza, Hernan Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Chongrok Soh, Kobaujah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

*** The text of individual opinions by Committee members Gentian Zyberi (concurring) and Vasilka Sancin (dissenting) are annexed to the present decision.



has been diagnosed with chronic post-traumatic stress disorder (PTSD)¹ due to effects of torture he experienced prior to arriving in the State party.

2.2 Due to his mental health condition the author was unable to learn more than a basic level of Danish. He notes that a condition for obtaining citizenship in the State party is a certain level of knowledge of Danish. He however still wished to become a Danish citizen and applied for citizenship through naturalisation in the State party in 2005, with a request for an exemption from the language proficiency requirement based on his medical records. He notes that, due to the State party regulation in force at the time, his application was rejected.

2.3 In 2013, following a general election, new regulations for naturalization were enacted in ‘Circular Letter no. 9253 of 6 June 2013 on naturalization’ that included an exemption as to the Danish language proficiency requirement for persons with disabilities. Following this change in the regulations, the author reapplied for citizenship through naturalisation on 26 November 2013. He was informed by letter dated 23 June 2015 from the Ministry of Justice that his application remained pending. In that letter, he was also informed that due to the fact that a general election had been held on 18 June 2015, new rules might be enacted pertaining to applications for citizenship through naturalisation. The author notes that new regulations were in fact adopted on 5 October 2016 by ‘Circular Letter no. 10873 of 13 October 2015 on naturalization’. He claims that the new regulations entered into force and were applied retroactively for any pending applications, including his.

2.4 On 27 October 2015, the author was informed by the Ministry of Immigration, Integration and Housing that his application for Danish nationality had been denied. He was informed that he did not satisfy the language proficiency requirement and the requirement to provide evidence of having passed a citizenship test as set out in section 24 (1-2) of Circular Letter No. 9253 of 6 June 2013. He was also informed that, in view of his health situation, his case had been presented to the Parliamentary Naturalisation Committee, requesting the Committee to determine whether an exemption could be granted from the requirement to provide evidence of proficient language skills and the requirement to provide evidence of having passed the citizenship test. He was informed in the letter that the Committee had held a meeting on 20 August 2015 and had assessed that in the author’s case, no exemption could be granted from the requirement to provide evidence of proficient language skills and the requirement to provide evidence of having passed the citizenship test in accordance with the Circular Letter. He was further informed that decisions of the Committee were not subject to the provisions of the Public Administration Act on reasoning and that, as proceedings in the Committee were confidential, the Ministry could not provide any details as to the Committee’s examination of his case. He was further informed that decisions made by the Committee “were not subject to appeal to any other authority”. He therefore claims that no effective remedies were available to him to challenge the rejection of his application for naturalisation.

The complaint

3. The author claims that his rights under article 26, read in conjunction with article 2 (1) of the Covenant have been violated by the refusal of State party authorities to grant him an exemption from the language proficiency requirement and the subsequent rejection of his application for citizenship. He claims that this rejection was discriminatory based on his disability status. He notes that he has submitted clear evidence of his medical diagnosis, which prevents him from learning Danish at the required level, and he argues that the decision to deny his application for naturalization is therefore arbitrary and discriminatory. He submits that the domestic regulations are disproportionate and not in pursuit of a legitimate aim. The author refers to the Committee’s jurisprudence in *Q. v. Denmark*² in which the Committee

¹ The author refers to a medical certificate, dated 13 March 2015, according to which the author has been diagnosed with post-traumatic stress disorder assessed as a “long-lasting impairment/disability”, with impaired concentration, memory, clarity and ability to learn due to sleep disorder, chronic pain and rapid mental fatigue. His condition is described as having worsened in 2009, with reduced cognitive functions, affecting his linguistic skills in both Danish and Arabic. His mental health condition is described as being assessed as chronic with psychological treatment not having improved his health.

² CCPR/C/113/D/2001/2010.

found a violation of article 26 of the Covenant in a case he argues is similar in facts to the present case.

State party's observations on admissibility and the merits

4.1 On 23 May 2016, the State party submitted its observations on the admissibility and the merits of the communication. It submits that the communication should be found inadmissible for non-exhaustion of domestic remedies under article 5 (2) (b) of the Optional Protocol and as manifestly unfounded under article 2 of the Optional Protocol. Alternatively, the State party submits that the communication is without merit.

4.2 The State party clarifies that the author entered Denmark on 31 January 1992 after he had been granted a residence permit based on family reunification. On 6 May 1998, he applied for asylum. The application was granted on 6 January 1999. On 8 February 2002, his residence permit became permanent.

4.3 On 14 December 2005, the author submitted an application for Danish nationality by naturalisation to the Hjørring Police. Enclosed with the application was evidence of his Danish language skills and a declaration made by the author regarding criminal offences and convictions. As per an interview report by the Hjørring Police, the author spoke, understood and read Danish. On 12 July 2007, the Ministry of Refugee, Immigration and Integration Affairs rejected the author's application based on his conviction on 4 February 1998 for a violation of the Criminal Code. The author was informed that, in accordance with the naturalisation regulations in force at the time, a waiting period of 10 years would be imposed following his criminal conviction and that he could therefore not reapply for naturalisation any earlier than July 2009.

4.4 On 26 November 2013, the author requested his application for naturalisation to be reopened. He submitted a medical certificate issued on 4 November 2013, according to which he had been diagnosed with PTSD, was receiving treatment at the Rehabilitation Centre for Refugees and was assessed to be unable to perform job-related functions, in particular functions associated with intellectual performance for which concentrations was required. According to the certificate, the author had previously been able to communicate in Danish without problems, but now seemed uncertain and unfocused with an impaired memory.

4.5 On 16 February 2015, the Ministry of Justice requested the author to provide evidence of having passed the "Danish 2 exam" and the citizenship test in accordance with Circular Letter No. 9253 of 6 June 2013. It also informed him that, where exceptional circumstances make it appropriate, a request for exemption from these requirements would be submitted to the Parliamentary Naturalisation Committee and it requested the author to submit supplementary medical evidence and a solemn declaration as to whether he had attended the "Danish programme 2" and had attempted to take the Danish 2 exam and the citizenship test. On 9 March 2015, the Ministry received a solemn declaration from the author and a certificate showing that he had passed "General Examination 1", but it appeared from the declaration that he had not attended language programme 2 or attempted to take the Danish exam 2 or the citizenship test. On 12 March 2015, the Ministry received psychological records dated 21 February 2012 and 17 April 2012, a certificate from a psychiatrist dated 19 October 2012, a description of a course of treatment dated 15 May 2014, medical consultation notes dated 13 June 2014 and a medical certificate dated 11 March 2015. The State party notes that it appeared from the most recent medical certificate that the author has been diagnosed with PTSD and chronic pain, with concentration difficulties, memory impairment, reduced perspective-taking and reduced learning abilities. According to the certificate from his general practitioner, it was deemed unrealistic for the author to attend classes, much less benefit from any kind of tuition, and it could therefore not be expected that he would be able to participate in any test.

4.6 On 20 March 2015, the Ministry of Justice notified the author that he did not satisfy the conditions of providing evidence of Danish language skills or of having passed the citizenship test as set out in Circular Letter No. 9253. It also requested him to submit supplementary medical evidence of his inability to acquire the required level of language skills and evidence that his long-term impairment was the reason why he had not attempted to sign up for the required tests. On 15 April 2015, the Ministry received a medical opinion

from the author's general practitioner dated 14 April 2014, according to which the author's verbal communication skills in Danish had severely eroded over the past six to seven years. It was noted that the author's health status and his severe concentration difficulties, memory impairment, learning disabilities and reduced endurance were the reasons he would not be able to participate in a programme that would improve his skills or be able to take the required tests. On 27 October 2015, the Ministry of Immigration, Integration and Housing³ informed the author that his application for naturalisation had been denied (see para. 2.4).

4.7 The State party provides information on the domestic legislation on naturalisation. It notes that, under section 24 (1-2) of Circular Letter No. 9253 of 6 June 2013, it is a requirement for naturalisation to provide evidence of Danish language skills in the form of a certificate of having passed the Danish exam 2 and of having passed the citizenship test, which focuses on aspects of everyday life and the political involvement of citizens in society. Under section 24 (3) of the Circular Letter, the question of whether an exemption can be made from these requirements will be submitted to the Parliamentary Naturalisation Committee if the applicant is medically diagnosed with a long-term physical, mental, sensory or intellectual disability and is consequently not able to satisfy the requirements of section 24 (1-2) of the Circular Letter.

4.8 The State party further informs that, pursuant to section 44 (1) of the Constitution, a person cannot be naturalised except by statute. Since 1849, naturalisation has been granted by statutes containing the names of each individual applicant for naturalisation. Bills are prepared by the Ministry of Immigration, Integration and Housing, they are discussed by the Parliamentary Naturalisation Committee and debated and passed by Parliament. The bills are usually introduced in Parliament by the Government in April and October each year. To be listed in a bill, an applicant must either meet the general requirements stipulated in the guidelines for naturalisation or obtain an exemption from the Parliamentary Naturalisation Committee. The Committee is composed of 17 members, who are all members of Parliament. The number of seats on the Committee allocated to each political party is largely proportionate to the relevant party's parliamentary seats. Decisions are taken by a simple majority vote and the preparation of naturalisation bills by the Ministry of Immigration, Integration and Housing and the readings of the bills in Parliament take place as part of the legislative process as provided by section 44 of the Constitution. The decision as to whether a person should be listed in the naturalisation bill and thereby obtain citizenship is thus the exclusive prerogative of the legislature and cannot be characterised as an administrative process. As a result, the Naturalisation Committee and the Ministry of Immigration, Integration and Housing are not considered to be performing tasks of public administration in the processing of applications for naturalisation, including refusals of applications from persons who do not meet the regulatory requirements and decisions to submit or refuse to submit applications to the Naturalisation Committee, as well as decisions of the Committee. On the contrary, these assessments are categorised as the preparation of a statute. When a case has been submitted to the Naturalisation Committee, neither the applicant nor the Ministry of Immigration, Integration and Housing are notified of the reasons why the Committee has granted or denied an exemption from the requirements to be listed in the naturalisation bill. Parliament has, however, decided that decisions taken during the examination of applications for naturalisation by the Ministry of Immigration, Integration and Housing must be made with due consideration of the provisions of the Public Administration Act and other principles of public administration to the extent possible. Parliament stated this view in its Resolution No. 36 of 15 January 1998, according to which Parliament instructed the Ministry to comply with international conventions and to ensure that the provisions of the Public Administration Act and other principles of public administration are observed when naturalisation bills are prepared.

4.9 The State party submits that the communication should be considered inadmissible for non-exhaustion of domestic remedies. It notes the author's claim that the letter of refusal of 27 October 2015 by the Ministry of Immigration, Integration and Housing informed him

³ The State party informs that on 28 June 2015, the authority to examine applications for Danish nationality was transferred from the Ministry of Justice to the Ministry of Immigration, Integration and Housing.

that he had no right to appeal the negative decision on his application for naturalisation. The State party notes that it follows from the letter of refusal of 27 October 2015 that decisions made by the Parliamentary Naturalisation Committee cannot be appealed to “any other authority”. However, it notes that, according to a judgment of 13 September 2013 by the Supreme Court, an applicant still has the right to apply for judicial review under section 63 of the Constitution relative to the process of an application for naturalisation. In this judgment, the Supreme Court stated that the State party had assumed a number of obligations under international law, and that it was assumed that these obligations were complied with when Parliament and the Naturalisation Committee exercise their discretion as to whether Danish nationality should be granted to an applicant. The Supreme Court further stated that an applicant who has not been included in a naturalisation statute can “request the courts to review whether obligations under international law have been breached, and whether the applicant has a claim for damages or compensation in that connection. Such judicial review will not be contrary to the authority of the Government or Parliament under sections 21 and 41 (1) of the Constitution on the introduction of bills or under section 44 (1) of the Constitution. By contrast, these provisions preclude any judicial review of claims to the effect that the applicant must be listed in a naturalisation bill or must be granted nationality by statute.” The State party argues that the present communication concerns the very issue of a potential breach of its obligations under article 26, read in conjunction with article 2 (1) of the Covenant in connection with the Parliamentary Naturalisation Committee’s refusal to grant the author an exemption from the requirement to provide evidence of his Danish language skills. It submits that author could therefore have instituted proceedings before the Danish courts claiming that the refusal to grant him an exemption from the requirement to provide evidence of his Danish language skills was arbitrary and contrary to his rights under the Covenant.

4.10 The State party submits that as the author did not bring before the courts the issue of a potential breach of the State party’s obligations under the Covenant in connection with the Parliamentary Naturalisation Committee’s refusal to grant the author an exemption from the requirement to provide evidence of his Danish language skills before submitting his communication to the Committee, he has not exhausted domestic remedies. It also argues that the present communication differs decisively from *Q. v. Denmark* as the Supreme Court decision had not been issued at the time that the author in that case submitted his complaint to the Committee.

4.11 On the merits of the communication, the State party argues that the Covenant does not convey a specific right to nationality, much less a particular nationality, and that international law does not give rise to any free-standing obligation of States to grant nationality to persons permanently resident in their territory. Rather, States are entitled under international law to determine those persons upon whom they will, by means of naturalisation, confer their nationality and in that regard define the requirements for obtaining nationality.

4.12 The State party notes that the general guidelines on the requirements for an applicant to be listed in a naturalisation bill are prescribed in the applicable Circular Letter on naturalisation, which has been agreed upon by the majority of Parliament. In the author’s case, the applicable version is the 2013 Circular Letter. For that reason, it is not correct as claimed by the author in his communication that his application for naturalisation was considered under the provisions of the 2015 Circular Letter as the 2013 Circular Letter was still in force at the time when the author’s application was considered by the Parliamentary Naturalisation Committee. The State party notes that it has made the choice not to have a general statute on nationality according to which naturalisation is granted by administrative authorities. Instead, the granting of Danish nationality by naturalisation is the exclusive prerogative of the legislature.

4.13 The State party submits that States enjoys a wide margin of appreciation when laying down such conditions for nationality as it considers necessary to ensure a genuine link between the State and individuals applying for nationality. In laying down such conditions, Parliament has chosen to place particular emphasis on Danish language skills. It argues that Danish language skills, combined with knowledge of Danish society, culture and history, are considered crucial for integration into Danish society and such conditions must therefore be considered legitimate. For the same reason, exemptions are only granted in exceptional cases.

The State party also emphasises that persons holding a valid permanent residence permit have the same rights as Danish nationals in most aspects of life in society. On this basis, most rights and responsibilities in Danish legislation are conditional on residence in Denmark and not on the nationality of the person in question.

4.14 The State party disputes that the author has been deprived of the right to equality before the law and argues that he has not provided any evidence indicating that other applicants in a similar situation have been treated more favourably than him. It argues that the required evidence of Danish language skills is a legitimate and proportionate condition for obtaining Danish nationality. Furthermore, the conditions of the 2013 Circular Letter for listing in a naturalisation bill, as well as the exceptional circumstances under which exemptions may be granted, are transparent and clearly described and apply to all applicants for nationality by naturalisation on equal terms, including the author. The State party notes that, as stipulated in the 2013 Circular Letter, the question of whether exemption from the requirement to provide evidence of Danish language skills should be granted is only submitted to the Parliamentary Naturalisation Committee when exceptional circumstances so warrant in cases of severe medical illnesses. Such exceptional circumstances are only found to be present in a limited number of applications. Furthermore, an exemption is granted only in a minority of the cases submitted to the Parliamentary Naturalisation Committee.

4.15 The State party argues that the author's application for naturalisation has been dealt with in the same manner as all other applications for naturalisation from applicants in a situation similar to that of the author. The request for an exemption from the requirement to provide evidence of Danish language skills has been thoroughly assessed by both the Parliamentary Naturalisation Committee and the Ministry of Immigration, Integration and Housing. It notes that the fact that the author disagrees with the assessment by the Parliamentary Naturalisation Committee that the author's case did not constitute such an exceptional case as to warrant an exemption from the language proficiency exam does not mean that the decision of Parliamentary Committee is discriminatory. The State party argues that the author has not indicated the grounds for the alleged discrimination in his case; nor has he provided any evidence indicating that other applicants in a similar situation have been treated more favourably than him.

4.16 Finally, the State party notes that in connection with the examination of applications for naturalisation by statute, it gives due consideration to the special circumstances of persons who are recognised as refugees, persons comparable to such individuals and stateless persons. For example, these persons may be listed in a naturalisation bill after eight consecutive years of residence in Denmark, as compared with the general requirement of nine consecutive years of residence. Regarding the requirement to provide evidence of Danish language skills, the State party notes that it is aware of the fact that traumatised refugees may be in need of special assistance to complete a Danish language programme. In such cases, classes are specifically adapted to this group of applicants. It also notes that it is possible to apply for an exemption from the general testing procedure to be allowed longer time for the test, the presence of an aid-person, the use of assistive technology and other practical measures in connection with tests like the Danish 2 examination and the citizenship test. An exemption may not, however, reduce the level of the test or have an impact on the assessment of the relevant applicant's performance.

Author's comments on the State party's observations

5.1 On 2 September 2019, the author submitted his comments on the State party's observations. He maintains that the communication is admissible.

5.2 The author reiterates his claim that he is a person with a disability and that it was thus discriminatory that his application for citizenship was rejected without the possibility for an exemption from the language requirement to be provided to him. He submits that the rejection of his application for naturalisation was thus arbitrary and discriminatory.

5.3 The author reiterates his argument that there were no effective domestic remedies available to him, and he argues that the 2013 Supreme Court judgment does not apply to his case as the case before the Supreme Court "was not a case handled by the Danish Parliament but 'only' by the Ministry" and concerned a decision made solely by the Ministry of Refugee,

Immigration and Integration Affairs. Additionally, the author notes that as deliberations held by the Naturalisation Committee are confidential, he could in any event not have applied for judicial review of the negative decision as he was not aware of the Committee's reasoning in his case.

5.4 The author agrees with the State party's argument that the State party may list requirements for naturalisation. He however notes that these requirements cannot be discriminatory. He argues that the guidelines of the 2013 Circular Letter were not followed in his case since the members in the Naturalisation Committee meeting of 20 August 2015 "invented new rules" following a shift in power after the general elections in June 2015. He claims that the new majority decided to "change the rules", as later formulated in the 2015 Circular Letter. He claims that this is proven by the fact that there was a heated debate in public as to the new guidelines issued in October 2015. He notes the State party's argument that he has not submitted any evidence indicating that other applicants in a similar situation were treated more favourably than him. In this connection, the author refers to *A.M. v Denmark* and *W.S. v. Denmark*,⁴ communications which were discontinued after the authors in those communications had been granted Danish nationality and who, like the author, were diagnosed with PTSD. The author claims that the only difference between those two cases and his, is that his was decided after the 2015 general election.

State party's further submission

6.1 On 3 March 2017, the State party submitted further observations on the communication. It reiterates that the communication should be found inadmissible for failure to exhaust domestic remedies. The State party refers to its observations of 23 May 2016 and argues that it follows from the Supreme Court's judgment of 13 September 2013 that an applicant who has not been included in a naturalisation statute can request the courts to review whether obligations under international law were breached when Parliament or the Parliamentary Naturalisation Committee exercised their discretion as to whether Danish nationality should be granted to an applicant.

6.2 The State party further refers to a decision by the European Court of Human Rights in *Nazari v. Denmark*,⁵ which also concerned a decision made by the Naturalisation Committee. In that case, the applicant was informed that the Naturalisation Committee had found that he was not eligible for listing in the next bill on naturalisation and that he could not expect to have a re-application examined within the next five years. Furthermore, it was stated that no grounds could be given for the decision and that the decision could not be appealed to any other authority. In its decision, the European Court of Human Rights noted the 2013 judgement of the Supreme Court and found that it was satisfied that a court review under article 63 of the Constitution was a remedy which was sufficiently certain not only in theory but in practice. It found that the remedy had been available to the applicant in that case and that it would have included an assessment on the merits, and that a ruling in favour of the applicant would be binding on the authorities, including the Ministry, if a renewed request for naturalization were to be submitted. The State party therefore submits that the communication should be considered inadmissible for non-exhaustion of domestic remedies as, at the time of the author's communication to the Committee, there were effective remedies in the Danish courts allowing the author redress for an alleged breach of his rights under the Covenant.

6.3 The State party reiterates that, contrary to the author's statement, the author's request for reopening of his application was examined under the 2013 Circular Letter.

6.4 The State party further argues that the general election in June 2015 and the subsequent change in the political composition of Parliament cannot be considered arbitrary and discriminatory treatment in violation of article 26 of the Covenant. It argues that the author's allegation of discrimination is based exclusively on the fact that the Naturalisation Committee did not share his view on the justification to grant him an exemption.

⁴ Communication Nos. 2012/2010 and 2045/2011.

⁵ Application No. 64372/11, 6 September 2016.

Issues and proceedings before the Committee

Consideration of admissibility

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

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 notes the State party's submission that the communication should be considered inadmissible for non-exhaustion of domestic remedies. It notes the author's undisputed claim that in the letter of refusal, dated 27 October 2015 from the Ministry of Immigration, Integration and Housing on his application for naturalisation, he was informed that decisions made by the Parliamentary Naturalisation Committee cannot be appealed to "any other authority". The Committee notes the State party's argument that according to a 2013 judgment by the Supreme Court, an applicant in a situation like the author can still apply for judicial review under section 63 of the Constitution, requesting the domestic courts to review whether obligations under international law have been breached in the processing of an application for naturalisation. The Committee further notes the author's claim that the 2013 judgment by the Supreme Court concerned a decision made by the Ministry of Refugee, Immigration and Integration Affairs and not a decision made by Parliament, and his argument that the 2013 Supreme Court judgment is thus not relevant to his communication. The Committee, however, notes that it follows from the Supreme Court's judgment that an applicant who has not been included in a naturalisation statute can request the courts to review whether obligations under international law were breached when Parliament and the Parliamentary Naturalisation Committee exercised their discretion as to whether Danish nationality should be granted to an applicant. It therefore follows that this judgement appeared to be applicable to the author's case.

7.4 The Committee notes that, in theory, an application for judicial review may therefore have been open to the author. It however observes that he was explicitly informed by the Ministry of Immigration, Integration and Housing that the negative decision on his application for naturalisation could not be appealed to "any other authority". The Committee considers that when such information on the availability of domestic remedies is provided by State party authorities mandated to process the application in question, authors must be able to rely on the information provided. It additionally notes the information provided by both parties that when a case has been submitted to the Parliamentary Naturalisation Committee, neither the applicant nor the Ministry of Immigration, Integration and Housing are notified of the reasons why the Committee has granted or denied an exemption from the requirements to be listed in the naturalisation bill and the author's argument that, as he was not informed of the Committee's reasoning, he could not, in any event, have applied for judicial review of the negative decision. The Committee considers, in this regard, that the lack of reasoning of the parliamentary decision rejecting his application for naturalisation left the author with no actual and reasonable possibility to argue discrimination based on his disability.

7.5 In light of the indication in the letter of 27 October 2015 from the Ministry of Immigration, Integration and Housing that no appeal was available to the author against the Naturalisation Committee's decision rejecting his application and the lack of reasoning of such decision, the Committee considers that a judicial review of the Naturalisation Committee's decision was not an effective remedy to the author *in concreto*. The Committee therefore considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from considering the present communication.

7.6 The Committee notes that the author has raised his claim under article 26 in conjunction with article 2 (1) of the Covenant. While recalling its jurisprudence that article 2 can be invoked by individuals only in conjunction with other substantive articles of the Covenant, the Committee does not consider examination of whether the State party violated

its non-discrimination obligations under article 2 (1), when read in conjunction with article 26, to be distinct from examination of the violation of the author's rights under article 26.⁶ The Committee therefore considers it unnecessary to review the author's claims under article 2 (1) of the Covenant.

7.7 The Committee further notes the State party's argument that the communication should be found inadmissible as being manifestly ill-founded. It however notes the author's claim that his rights under article 26 of the Covenant have been violated by the refusal of the State party authorities to grant him an exemption based on his disability from the language proficiency requirement and the citizenship test and the subsequent rejection of his application for citizenship through naturalisation. The Committee considers that the author has sufficiently substantiated these claims for the purpose of admissibility and declares his claims under article 26 of the Covenant admissible and proceeds with the examination on the merits.

Consideration on the merits

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

8.2 The Committee notes the author's claim that his rights under article 26 of the Covenant have been violated by the refusal of State party authorities to grant him an exemption from the language proficiency requirement and the citizenship test based on his disability, and the subsequent rejection of his application for citizenship through naturalisation. It notes his argument that he has submitted clear evidence of his medical diagnosis which prevents him from learning Danish at the required level and his argument that the decision to deny his application for naturalisation was therefore arbitrary and discriminatory. The Committee further notes the State party's argument that States enjoy discretion when laying down such conditions for nationality as it considers necessary to ensure a genuine link between the State and individuals applying for citizenship. It also notes the State party's argument that the author's application for an exemption from the language and citizenship tests was thoroughly assessed by the Parliamentary Naturalisation Committee and the Ministry of Immigration, Integration and Housing.

8.3 The issue before the Committee is whether, by refusing to grant the author an exemption from the language proficiency requirement and the citizenship test in order to become naturalized, the State party violated his rights under article 26 of the Covenant. The Committee notes that the author does not challenge the language requirements for naturalisation in general but only that the requirement has been applied to him in an arbitrary and discriminatory manner. The Committee notes that this issue concerns the application of domestic legislation and assessment of facts and evidence, which is in principle for national organs, unless it can be ascertained that the domestic proceedings were arbitrary or amounted to a denial of justice.⁷ In the present case, however, the lack of reasoning of the parliamentary decision rejecting the author's application for naturalisation forces the Committee to directly and independently assess the factual elements of the case against the domestic legislation in order to determine whether such application was discriminatory based on the author's certified disability.

8.4 The Committee recalls its general comment No. 18 (1989) on non-discrimination, in which discrimination is defined as "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms"⁸. The Committee further recalls that article 26 provides an autonomous right prohibiting discrimination in law or in fact in any field regulated and

⁶ *G. v. Australia* (CCPR/C/119/D/2172/2012), para. 6.7, *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4.

⁷ *Simms v. Jamaica*, (CCPR/C/53/D/541/1993), para. 6.2; *Arenz et al. v. Germany*, (CCPR/C/80/D/1138/2002), para. 8.6; *Arutyunyan v. Uzbekistan*, (CCPR/C/80/D/917/2000), para. 5.7; *Fernández Murcia v. Spain*, (CCPR/C/92/D/1528/2006), para. 4.3.

⁸ General comment No. 18 on non-discrimination, para. 7.

protected by public authorities and that the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.⁹ When legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory.¹⁰ The Committee also recalls that the prohibition of discrimination applies to both the public and the private sphere and that a violation of article 26 may result from a rule or measure that is apparently neutral or lacking any intention to discriminate but has a discriminatory effect.¹¹ However, not every distinction, exclusion or restriction based on the grounds listed in the Covenant, amounts to discrimination, as long as it is based on reasonable and objective criteria, in pursuit of an aim that is legitimate under the Covenant.¹²

8.5 The Committee recalls that neither the Covenant nor international law in general spells out specific criteria for the granting of citizenship through naturalization and that States are free to decide on such criteria.¹³ However, when adopting and implementing legislation, States parties' authorities must respect its obligations under article 26 of the Covenant.

8.6 The Committee notes the author's claim that the failure by the State party authorities to grant him an exemption from the language proficiency examination and the citizenship test, based on his disability, was discriminatory and arbitrary. The Committee notes that the author applied to be exempted from said requirements under Circular Letter No. 9253 of 6 June 2013. The Committee further notes that, in the present case, it is undisputed that the author has been diagnosed with chronic PTSD, which in numerous medical certificates submitted with his application for naturalisation¹⁴ was described as a long-term impairment negatively impacting his cognitive functions and affecting his linguistic skills in both Danish and Arabic. According to the medical certificates he was further diagnosed with concentration difficulties, memory impairment, reduced perspective-taking and reduced learning abilities, and his treating physician therefore assessed it as being unrealistic for the author to attend language classes or for him to participate in a language proficiency exam. The Committee notes that, based on his medical diagnosis, the author applied for an exemption from the language proficiency exam and the citizenship test. It notes that he was informed by the Ministry of Immigration, Integration and Housing on 27 October 2015 that his application for naturalisation had been denied and that he had been deemed to not satisfy the language proficiency requirement and the requirement to provide evidence of having passed a citizenship test as set out in section 24 (1-2) of Circular Letter No. 9253. In this connection the Committee notes the author's argument that the 2015 Circular Letter was retroactively applied to his application and that his application was not examined under the 2013 Circular Letter applicable at the time he submitted his application. The Committee however notes that according to the letter by the Ministry informing the author of the negative decision on his application, his application was examined under Circular Letter No. 9253 of 6 June 2013.

8.7 The Committee further notes the author's unrefuted argument that in the letter from the Ministry of Immigration, Integration and Housing he was informed that decisions of the Naturalisation Committee were not subject to the provisions of the Public Administration Act on reasoning and that as proceedings in the Committee were confidential the Ministry could not provide the author with any details as to the Committee's examination of his case. The Committee recalls in this respect that article 26 requires reasonable and objective justification and a legitimate aim for distinctions that relate to an individual's characteristics enumerated in article 26, including "other status" such as disability¹⁵. The Committee considers that in failing to provide the author with any reasoning in its decision on his application or any information on the grounds for refusing his application for an exemption from the language

⁹ Ibid para. 12.

¹⁰ *Broeks v. Netherlands* (CCPR/C/29/D/172/1984), para. 12.4 and *Q v. Denmark*, para. 7.2.

¹¹ *Althammer et al. v. Austria* (CCPR/C/78/D/998/2001), para. 10.2.

¹² *O' Neill and Quinn v. Ireland* (CCPR/C/87/D/1314/2004), para. 8.3; *Yaker v. France* (CCPR/C/123/D/2747/2016), para. 8.14; *Hebbadj v. France* (CCPR/C/123/D/2807/2016), para. 7.14 and *Genero v. Italy* (CCPR/C/128/D/2979/2017), para. 7.3.

¹³ *Borzov v. Estonia* (CCPR/C/81/D/1136/2002), para. 7.4 and *Q v. Denmark*, para. 7.3.

¹⁴ See paras. 2.1 and 4.4-4.6.

¹⁵ General comment No. 18, para. 13, *Borzov v. Estonia*, para. 7.3 and *Q v. Denmark*, para. 7.3.

proficiency requirement and the citizenship test based on his medical health status, the State party has failed to demonstrate that the refusal to grant the exemption was based on reasonable and objective grounds¹⁶. Furthermore, the lack of motivation of the decision and the ensuing lack of transparency of the procedure makes it very difficult, if not impossible, for the author to submit further documentation or reapply for citizenship through naturalisation. The Committee considers that the fact that the Naturalisation Committee is part of the legislature does not exempt the State party from taking measures to ensure that the author is informed, even if in brief form, of the substantive grounds of the Naturalisation Committee's decision¹⁷. It considers that, in the absence of such justification, the State party has failed to demonstrate that its decision not to grant the author an exemption was based on reasonable and objective grounds. The Committee therefore concludes that the facts before it reveal a violation of the author's rights under article 26 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses a violation of the author's rights under article 26 the Covenant.

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires the State party to provide the author with full reparation including adequate compensation and a reconsideration of his application, taking into consideration the Committee's findings. The State party is also under an obligation to avoid similar violations in the future.

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 for all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

¹⁶ See *Q v. Denmark*, para. 7.5.

¹⁷ *Ibid.*

Annex I

Individual opinion by Committee member Gentian Zyberi (concurring)

1. I am in agreement with the Committee concerning the finding of a violation of the author's rights under article 26 the Covenant. This individual opinion addresses the issue of adequate compensation, placing this type of remedy in the more general context of the Committee's practice.

Remedies

1. The Committee has indicated that the State party should provide the author with full reparation, including *adequate compensation* and a reconsideration of his application, taking into consideration its findings¹. While the reconsideration of the author's application is directly concerned with the violation found, it is unclear what would constitute adequate compensation in this case? Besides, this remedy adds an element not explicitly asked by the author.

2. According to the 2016 Guidelines on Measures of Reparation, when the Committee finds that an individual communication reveals violations of Covenant rights, it sets out measures designed to make full reparation to the victims (restitution, compensation, rehabilitation and measures of satisfaction), as well as measures aimed at preventing the reoccurrence of similar violations in the future (guarantees of non-repetition).² When processing communications, the Committee advises authors to include in their submissions an indication of the types of reparation that they are seeking. States parties are then requested to comment specifically on that aspect of the authors' submissions.³ When deciding on which measures of reparation are appropriate, the Committee should take into account the specific circumstances of the communication.⁴ While in every case the Committee has to consider what types of remedies would ensure full reparation, in this case that seems to involve mainly, if not solely, a reconsideration of the author's application. Another suitable remedy in this case could have been covering the legal costs and fees incurred by the author.

Adequate compensation

3. Adequate compensation is a broad term that the Committee uses quite regularly in its Views. Under the heading "Compensation", the 2016 Guidelines on Measures of Reparation note that as a general rule, the Committee does not specify sums of money.⁵ When appropriate, the Committee should expressly state that compensation should cover both material and moral (or non-material) harm.⁶ While providing some guidance for the Committee and the parties to the individual complaints procedure, the amount due as adequate compensation for various types of violations remains open.

4. The 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, clarify that "Compensation should be provided for any economically assessable damage, as appropriate and proportional to the

¹ Views, para. 10, emphasis added

² Human Rights Committee, Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights, UN Doc. CCPR/C/158, 30 November 2016, para. 2.

³ Ibid., para. 4.

⁴ Ibid., para. 5.

⁵ Ibid., para. 9.

⁶ Ibid., para. 10.

gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.”⁷ Alongside its own Guidelines on Measures of Reparation, this UN General Assembly resolution should guide the parties to the proceedings when indicating the compensation sought and the Committee when assessing what would amount to adequate compensation.

5. When adequate compensation is indicated as a remedy by the Committee in its Views, it remains for the State party and the author/s to determine what would constitute adequate compensation in that concrete case, through negotiation, determination by a domestic court, or another suitable manner. While this provides some flexibility, quite important given the various practices followed in the State parties to the Optional Protocol, it might be advisable for the Committee to request the parties before it to indicate in their submissions what would constitute adequate compensation, were it to find a violation. Even if ultimately the Committee were not to indicate a specific amount as adequate compensation in its Views, the parties before it would have a baseline from which to start the consultation and implementation of the Views.

6. The need for the Committee to adopt a more proactive approach is even more pronounced given that its Views are usually not directly applicable, do not necessarily lead to an automatic reopening of a case, and are adopted many years after the violation. Given the Committee follows up on the implementation of its Views, should the State party and the author/s be unable to agree within a reasonable time on what amounts to adequate compensation, the Committee could decide to intervene and settle the matter.

Concluding remarks

In the interest of a more effective and timely implementation of its Views, the Committee might need to go further than its current practice of indicating adequate compensation as a remedy. The Committee should request the parties to express themselves on what would amount to adequate compensation before adopting its Views and retain the possibility of determining that during the follow up process, should the parties prove unable to settle that within a reasonable time.

⁷ UN Doc. A/RES/60/147, Annex, para. 20.

Annex II

Individual opinion by Committee member Vasilka Sancin (dissenting)

1. I regret I cannot join the majority of the Committee in finding that the Committee was not precluded from considering the present communication.
2. Article 2 of the Optional Protocol requires that individuals who submit communications to the Committee must have exhausted all available domestic remedies. Further, this prerequisite for admissibility of a communication, contained also in article 5 (2) (b) of the Optional Protocol, precludes the Committee to consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The object of this fundamental rule is to enable the respondent State party the first opportunity to correct the alleged harm if a violation of the Covenant is established. This requirement should not be displaced unless compelling evidence shows that the remedies would not offer a reasonable prospect of redress and are *de facto* unavailable to the author.¹
3. In its response to a communication, a State party, where it considers that the domestic remedies have not been exhausted, should specify the available and effective remedies that the author of the communication has failed to exhaust.²
4. In the present case, it is uncontested that the letter of refusal, dated 27 October 2015 from the Ministry of Immigration, Integration and Housing on the author's application for naturalisation, informed the author that decisions made by the Parliamentary Naturalisation Committee cannot be appealed to "any other authority". Nevertheless, the State party, in my view, convincingly argued that according to a 2013 judgment by the Supreme Court, an applicant in a situation like the author can still apply for judicial review under section 63 of the Danish Constitution, requesting the domestic courts to review whether obligations under international law have been breached in the processing of an application for naturalisation (para. 4.9), thus demonstrating not only that a domestic judicial review is possible, but that it is also *de facto* available to authors in similar situations.
5. In paras. 7.3 and 7.4 of the present Views, the Committee noted that the Supreme Court's judgment appeared to be applicable to the author's case, offering, in theory, an application for judicial review to the author.
6. However, the majority of the Committee, in my view then erroneously proceeded to interpret the phrase that the negative decision on the author's application for naturalisation could not be appealed to "any other authority", as precluding the author from arguing discriminatory treatment before domestic judicial authorities. In fact, the decision on naturalisation as a sovereign act of a State cannot be appealed when adopted in accordance with State party's international legal obligations. Nevertheless, individuals are in no way precluded from bringing claims alleging discriminatory treatment by State authorities contrary to State party's international legal obligations before domestic courts.
7. The fact that neither the applicant nor the Ministry are notified of the reasons why the Parliamentary Committee has granted or denied an exemption from the requirements to be listed in the naturalisation bill, shall not be determinative of the *de facto* availability of domestic remedies to the author, particularly when represented by a counsel, as in the case of the present author. The majority of the Committee opined that the lack of provided reasoning on decision left the author with no actual and reasonable possibility to argue discrimination based on his disability (para. 7.4) and concluded that a judicial review of the

¹ See, for example, *D.G. et al. v. the Philippines* (CCPR/C/128/D/2568/2015), para. 6.3 and *Daniel Billy et al. v. Australia* (CCPR/C/135/D/3624/2019), para. 7.3.

² General Comment No 33 (CCPR/C/GC/33) The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, para. 5.

Naturalisation Committee's decision was not an effective remedy to the author *in concreto* (para. 7.5).

8. It is important to note that the State party (para. 4.9.) also argued that the present communication concerns the very issue of a potential breach of its obligations under article 26, read in conjunction with article 2 (1) of the Covenant and that the author could therefore have instituted proceedings before the Danish courts claiming that the refusal to grant him an exemption from the requirement to provide evidence of his Danish language skills was arbitrary and contrary to his rights under the Covenant.

9. I am convinced that the author had a possibility and a duty to exhaust available domestic remedies, before benefiting from the Committee's assessment. He could have presented to Danish courts at least the same arguments that were brought before the Committee, and on the basis of which the Committee found a violation of the author's rights under article 26 the Covenant (para. 9) and requested the State party to provide the author with full reparation including adequate compensation and a reconsideration of his application, taking into consideration the Committee's findings (para. 10). This finding is in my view irreconcilable with the majority's position that the lack of reasoning of negative decision on naturalisation prevented the author to argue arbitrariness and discrimination before domestic authorities.

10. In conclusion, the Committee should have found this communication inadmissible and refrain from replacing domestic judicial authorities, which are in principle significantly better placed to fully assess all the evidence and information in individual cases. It is important to recall that the States parties to the Optional protocol accepted the Committee's competence to assess individual communications only after they themselves have had the opportunity to do so.
