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Department  
Human Rights

3 November 2015

## Communication No. 2001/2010, Q v. Denmark

The Ministry of Foreign Affairs of Denmark presents its compliments to the Secretariat of the United Nations, Office of the High Commissioner for Human Rights.

Referring to the above mentioned communication, the Government of Denmark has taken careful note of the Committee's views. The Government will consult with the Danish Parliament on the matter and future steps in this regard and will revert to the Human Rights Committee, when those consultations have been concluded.

The Ministry of Foreign Affairs of Denmark avails itself of this opportunity to renew to the Secretariat of the United Nations, Office of the High Commissioner for Human Rights, the assurances of its highest considerations.

Yours Sincerely

Martin Bang  
Senior Advisor  
Human Rights Department



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Communication No. 2001/2010**

**Views adopted by the Committee at its 113<sup>th</sup> session  
(16 March–2 April 2015)**

<i>Submitted by:</i>	Q (represented by the Documentation and Advisory Centre on Racial Discrimination, DACoRD)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	15 July 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92 and 97 decision, transmitted to the State party on 21 April 2010 (issued in document form)
<i>Date of adoption of Views:</i>	1 April 2015
<i>Subject matter:</i>	Refusal to grant nationality through naturalisation
<i>Procedural issues:</i>	Claim out of the scope of the Covenant
<i>Substantive issues:</i>	Right to equal protection of the law
<i>Articles of the Covenant:</i>	26
<i>Articles of the Optional Protocol:</i>	2

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (113<sup>th</sup> session)**

concerning

#### **Communication No. 2001/2010\***

*Submitted by:* Q (represented by the Documentation and Advisory Centre on Racial Discrimination, DACoRD)

*Alleged victims:* The author

*State party:* Denmark

*Date of communication:* 15 July 2010 (initial submission)

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting on 1 April 2015,*

*Having concluded* its consideration of communication No. 2001/2010, submitted to the Human Rights Committee by Q under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the author of the communication and the State party,

*Adopts* the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication is Q, an Iraqi citizen born on 2 May 1971. He claims to be a victim of discrimination by Denmark of article 26 of the Covenant. The author is represented.<sup>1</sup>

#### **Facts as presented by the author**

2.1 The author arrived in Denmark on 15 October 1997 and was granted humanitarian protection. On 30 April 1998, he obtained a residence permit and on 9 May 2001 was provided with a residence permit of indefinite duration. The author is married and has three children. He is illiterate in Danish and in Arabic, his mother tongue.

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\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier De Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelic, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

<sup>1</sup> The Optional Protocol entered into force for Denmark on 23 March 1976.

2.2 On 12 May 2005, the author applied for Danish naturalization before the Copenhagen police. In that connection he was summoned for a police interview on 16 January 2006. The Ministry of Refugees, Immigration and Integration Affairs (the Ministry) received the application from the police on 17 January 2006. On 27 January 2006, the Ministry informed the author that his application had been received and the examination procedure would start within 12 to 16 months. On 25 June 2007 the author was requested to submit information on, inter alia, his Danish language proficiency and any criminal record and public debts. The author submitted the requested information on 2 July 2007.

2.3 On 4 July 2007, the Ministry informed the author that the documentation he submitted regarding his participation in language courses did not satisfy the requirement of language proficiency contained in the Guidelines on Naturalization, section 24 of which indicates that the applicant should be proficient in the Danish language and have knowledge of Danish society, culture and history. The author then requested to be exempted from the language requirement for medical reasons, pursuant to section 24(3) of the Guidelines.<sup>2</sup> On 5 October 2007, the Ministry notified the author that his request for exemption had been rejected and that no proper basis had been found to bring it to the attention of the Parliament's Committee on Naturalization, since the author had failed to document severe physical or mental illness.

2.4 The author then provided a medical opinion from his psychiatrist, Dr. S.B.J., and requested a reconsideration of his exemption request. As a result, his case was brought before the Parliament's Committee on Naturalization. On 3 June 2008, the Ministry

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<sup>2</sup> Section 24 of the Circular letter No 61 of 22 September 2008 containing the Guidelines on Naturalization reads as follows :

"(1) It is a condition for listing in a naturalisation bill that the applicant documents skills in the Danish language by a certificate of the Danish 3 Examination of the Danish language centres or one of the examinations listed in Schedule 3.

(2) It is furthermore a condition for listing in a naturalisation bill that the applicant documents knowledge of Danish society, culture and history by a certificate of a special citizenship test.

(3) Where exceptional circumstances make it appropriate, the question of whether exemption from the conditions of

subsections (1) and (2) hereof may be granted will be submitted to the Naturalisation Committee of the Danish Parliament. The question will be submitted if the applicant documents that he or she suffers from a physical or mental illness of a very serious nature and consequently finds himself or herself to be incapable – or to have no reasonable prospects – of satisfying the conditions of subsections (1) and (2) hereof.

(4) The circumstances referred to in subsection (3) hereof must be documented by a certificate from a medical professional. The certificate must state whether the treatment options are exhausted and whether the person will become able to acquire skills in the Danish language at the required level in future."

Footnote to paragraph 3 indicates that "the Ministry of Integration is assumed to submit the question of exemption from the requirement of skills in the Danish language, etc., to the Naturalisation Committee in cases where the applicant, for example, suffers from a severe physical disability (such as Down's syndrome), is brain damaged, blind or deaf or suffers from a severe mental disorder such as (paranoid) schizophrenia, a psychosis or a severe depression. The Ministry of Integration is further assumed to refuse the application of applicants who suffer from PTSD, also where the condition is chronic and this is documented by a certificate from a medical professional."

Footnote to paragraph 4 states that "in the case of residence permits issued on humanitarian grounds, a certificate may be disregarded if the medical professional in question requests on his or her own initiative that naturalisation be granted and has become personally involved in the case in such manner that it may be considered doubtful whether the certificate reflects an impartial assessment of the applicant's health. In such cases, the applicant for naturalisation is requested to submit a certificate from another medical professional."

informed the author that the Committee had found no basis to grant the exemption. No explanation was given as to the reasons for the denial.

2.5 On 9 September 2009, Dr. S.B.J. informed the Ministry about his medical assessment of the author. He indicated that he had been following the author since December 2007; that the author suffered from a severe chronic mental disorder in the form of a paranoid psychosis and depression; that he was treated with medication and that there was no prospect of improvement of his condition. As a result, the Ministry examined the case again. However, on 6 November 2009 the author was informed that Dr. S.B.J.'s letter did not contain new information and therefore the Ministry did not find grounds to resubmit the case to the Naturalisation Committee.

2.6 On 12 November 2009, Dr. S.B.J. wrote to the Ministry requesting a detailed reasoning of the rejection so that he could integrate this information in the treatment of his patient in the best possible manner. He also indicated that, from a medical perspective, the denial was unfounded, since it was well established that the author suffered from the above mentioned disorders and thus satisfied *prima facie* the conditions for exemption from the language requirement. He also indicated that the decision "made the continued treatment difficult, where the established medical treatment is of crucial significance for the patient to be capable of acting simply normal around his family and in social context". On 8 December 2009, the Ministry replied that there was no basis for bringing the case before the Naturalisation Committee again, that the exemption provision was open to interpretation and that the mere presentation before the Naturalisation Committee did not mean that the exemption would be granted.

### **The complaint**

3.1 The author claims that by refusing to grant him the exemption from the language requirement to be able to access naturalization, the State party violated article 26 in conjunction with article 2, paragraph 1 of the Covenant. He provided ample medical evidence regarding the severe mental ailments he suffers and which make it impossible for him to learn Danish at the required level. The refusal to grant such exemption is therefore arbitrary. The failure to treat the author as a person with mental and learning disabilities and thus acknowledge the need to grant him the exemption contained in the law is a discriminatory measure and a violation of his right to equality before the law. He adds that the measure is disproportionate to any legitimate goal.

3.2 The footnote to section 24, paragraph 4 of the Circular indicates that a medical certificate may be disregarded if the medical professional in question requests on his or her own initiative that naturalisation be granted and has become personally involved in the case in such a manner that it may be considered doubtful whether the certificate reflects an impartial assessment of the applicant's health. The author claims that the authorities should have informed him about the relevance of this rule in his case and given him the opportunity to produce an opinion from a different medical professional. Since this was not done the decision to disregard relevant and available medical information cannot be deemed a legitimate one.

3.3 The authorities did not explain the grounds for the denial, as Danish administrative law does not apply to decisions formally placed under the competence of the legislature. This circumstance has been used as a measure to hide an illegal decision behind a veil of the separation of powers. The Naturalization Committee has previously admitted exemptions from the language requirement in similar cases, involving physical or mental illnesses.

3.4 The author further contends that the criteria included in section 24 of the Guidelines are drafted in an opaque way, which opens the door to discrimination. Danish law provides

no legal guarantee that the criteria are applied objectively and there is no monitoring of the objective application of the exemption of the language requirement. Irrelevant factors, such as the ethnic origin of the author may have influenced the Naturalization Committee in its assessment.

3.5 Regarding exhaustion of domestic remedies, the author claims that there is no possibility to appeal a decision of the Naturalization Committee denying nationality. Consequently, the author has no possibility to challenge the decision in the domestic courts.

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

4.1 On 17 May 2011, the State party submitted observations on admissibility and merits. The State party refers to the author's application for naturalization and indicates that by letter of 25 June 2007 the Ministry advised the author that a new agreement on nationality had been concluded on 8 December 2005 (Circular Letter No. 9 of 12 January 2006 on new guidelines for naturalisation), and that it concerned applications submitted from 12 December 2005. As the author had submitted his application on 12 May 2005 it fell within the scope of Circular Letter No. 55 of 12 June 2002 on Guidelines for Listing in a Naturalisation Bill. However, Section 24 (3) of Circular Letter No. 9, concerning the exemption from the condition of skills in the Danish language applied regardless of the application date. The Ministry therefore requested the author to provide proof, *inter alia*, of his Danish language skills. As the author did not submit such information the Ministry requested it again on 4 July 2007.

4.2 On 10 August 2007, the author submitted a medical certificate dated 9 August 2007 in which Doctors A.R. and N.J. stated that the author suffered from PTSD; had severe sequelae from imprisonment, torture and interrogations; that this had caused concentration difficulties, depression, anxiety and agitation; and that he was consequently unable to participate in learning activities. On 20 August 2007, the author applied for exemption from the requirement of Danish language skills. His letter enclosed a medical certificate of 10 August 2007 from S.K., psychiatric consultant, stating that the author suffered from PTSD involving a personality change and severe depressive episodes/chronic state. He also suffered from pains in both knees, respiratory problems and curvature of the spine.

4.3 On 5 October 2007, the Ministry informed the author that it had found no basis for submitting his application to the Naturalisation Committee and asking the Committee to decide whether he could be exempted from the language requirement, as he had provided no evidence showing that he suffered from a physical or mental illness of a very serious nature, as provided by section 24(3) of the Guidelines. The Ministry based its decision on the fact that the author suffered from PTSD involving a personality change, moderate depressive episode and congenital weakness down the right side of his body, and that, according to the Guidelines, these were not diseases that could warrant submission to the Naturalisation Committee.

4.4 On 24 January 2008, the Ministry received a letter from the author including a medical certificate of 10 January 2008 by S.B.J., psychiatric consultant, who stated that the applicant suffered from psychotic symptoms in the form of loss of reality with aural hallucinations and paranoid delusions, as well as an organic brain damage that might be congenital. The Ministry considered this letter as an application for reopening of the proceedings related to the author's application for Danish nationality and informed him that his application would be submitted to the Naturalisation Committee for a decision on the exemption on the language requirement. The author would only be listed in a naturalisation bill if such exemption was granted.

4.5 The Ministry submitted the application to the Naturalisation Committee at its meeting on 22 May 2008. The submission was accompanied by various certificates stating

that, at that time, the author suffered from severe psychosis with aural hallucinations and paranoid delusions, organic brain damage, moderate to severe depressive periods, PTSD involving a personality change and various physical disorders in the form of pain in both knees, respiratory problems, curvature of the spine and congenital hemiparesis. The Committee concluded that it could not grant the exemption on the basis of the documents available. Accordingly, by letter of 3 June 2008, the Ministry informed the author that his application for naturalization had been refused.

4.6 The Ministry reopened again the application proceedings following Dr. S.B.J.'s letter dated 9 September 2009 (see above para 2.5). By letter of 6 November 2009, the Ministry informed the author that it appeared from the Dr. S.B.J.'s certificate that he suffered from a chronic mental disorder in the form of a paranoid psychosis, and that the Ministry thus found that the certificate did not give any decisive new information compared with the certificates which had formed the basis of the decision by the Naturalisation Committee not to grant the exemption.

4.7 Following Dr. S.B.J.'s request for clarification (see above para 2.6) the Ministry replied on 8 December 2009, that the competence to decide who can be listed in a naturalization bill was vested in the Danish Parliament and that the majority in Parliament had, in accordance with section 44 of the Constitution, laid down the guidelines according to which the Ministry administered the law. The Ministry also stated that the guidelines for listing in a naturalization bill had been agreed upon by the parties in government; that the agreement was published in Circular Letter No. 61 of 22 September 2008, and that it was the opinion of the parties to the agreement that it must be a reasonable requirement that applicants for Danish nationality can manage life in the Danish society, including speaking, reading and understanding Danish. The language requirement was thus one of the decisive conditions for naturalisation. Only exceptional cases of physical or mental illness of a very serious nature were submitted to the Naturalisation Committee for its decision as to whether an exemption could be granted. The exemption provision was open to interpretation, meaning that practice was laid down by the majority of the Naturalisation Committee at any time. The fact that an application had been submitted to the Committee for a decision on the exemption did not mean that the Committee would grant the exemption. Furthermore, the decisions of the Committee did not fall within the rules of the Public Administration Act on disclosing reasons for written decisions, but the Ministry did ensure good administrative practice throughout the proceedings related to the examination of applications. If possible, the Ministry would inform persons applying for nationality of the reasons why their application had been refused. However, as Committee proceedings were confidential, the Ministry was unable to give further details about the reason for a decision made by the Committee. These decisions could not be appealed to any other authority. Following his request, the Ministry granted the author's counsel access to the documents related to his application for nationality on 31 May 2010.

4.8 As a consequence of section 44(1) of the Danish Constitution, naturalisation is the exclusive prerogative of the Legislature. The system whereby nationality is granted by Act of Parliament thus implies that administrative or judicial authorities cannot decide at their own discretion whether foreigners can obtain Danish nationality through naturalisation and Parliament does not leave any discretion to the central administration in this regard. Accordingly, the process cannot be characterised as an administrative one. The debates and votes of the Committee in cases regarding exemption are confidential and only Committee members can participate at the meetings. The reason for this is that, during its assessment of the individual applications for nationality, the Committee deals with sensitive personal information which is not considered suitable to discuss in open meetings in Parliament out of concern for the applicant.

4.9 The initial examination of applications for naturalisation by Act of Parliament carried out by the Ministry, including refusals of applications from persons who do not meet the requirements and decisions to submit or refuse to submit cases to the Naturalisation Committee, as well as the decisions of the Committee are not made pursuant to a statute, but are classified as preparation of a statute. When preparing naturalisation bills and assessing whether applicants can be listed in a naturalisation bill, the Ministry is obliged to adhere to the Guidelines for Naturalisation of Circular Letter No. 61, as agreed by the majority in Parliament. This also implies that the procedure with regard to naturalisation by Act of Parliament is not governed by the general principles of administrative law.

4.10 Neither the applicants nor the Ministry are given the reasons why the Naturalization Committee grants or does not grant exemption from the requirements for listing in a naturalisation bill. Nevertheless, Parliament has declared that, to the extent possible, decisions taken in the process of naturalisation by Act of Parliament must be made with due consideration of the rules of the Public Administration Act and other principles of public administration during the examination of applications by the Ministry. Parliament has stated this view in its Decision No. V 36 of 15 January 1998, according to which Parliament instructs the Ministry to comply with international conventions and to ensure that the rules of the Public Administration Act and other principles of public administration are observed when naturalisation bills are prepared.

4.11 The Guidelines for Naturalisation contained in Circular Letter No. 61 of 22 September 2008 stipulate the requirements to be satisfied in order for applicants to be listed in a naturalisation bill without prior submission of their application to the Naturalisation Committee. Applicants listed in a naturalisation bill will therefore either satisfy the requirements of the Guidelines or have been listed in the bill following submission of their application to the Committee. On this basis the parties in Government who agreed on the Guidelines will vote in favour of the Government's naturalisation bill at the readings of the bill in Parliament. If an applicant fails to meet one or more of the requirements set out in the Guidelines for Naturalisation, the Ministry will refuse the application in accordance with the authorisation given to the Ministry by Parliament. If such applicant meets the requirements at a later stage he/she may ask the Ministry to reassess the application. If at that time all the requirements are met the applicant will be listed in a naturalisation bill.

4.12 If an applicant does not meet the requirements set out in section 24 (1) and (2) of the Guidelines the question of whether an exemption should be granted must be submitted to the Naturalisation Committee when exceptional circumstances warrant it. If the Naturalisation Committee finds that an exemption should be granted, the applicant will be listed in a naturalisation bill. If the Committee finds that no exemption should be granted the application will be refused. If, at a later stage, the applicant meets the requirements or if new information on the applicant's health is provided, the applicant may ask the Ministry to reassess the application. The Ministry cannot, at its own discretion, list an applicant who does not meet the requirements. The applicant in question can only be listed if the Committee has granted an exemption.

4.13 Persons holding a valid permanent residence permit have the same rights as Danish nationals in most aspects of life in the Danish society, such as pension for persons who are unable to work due to ill health and other relevant social benefits. The decision to grant social benefits also to non-nationals is based on one of the objectives of the Danish integration policy, which is to ensure that everyone, regardless of nationality, can participate and contribute to society on an equal footing and has the necessary competences to make use of his abilities and resources. This includes access to language training, the labour market and education. On this basis, most rights and responsibilities set out in Danish legislation are conditional on residence in Denmark and not on the nationality of the



person in question. Naturally, however, some rights and responsibilities require Danish nationality. Thus, only Danish nationals can hold a Danish passport and vote in general elections for Parliament, just as appointment to certain public offices, such as judge, police officer or juror, requires Danish nationality. Danish nationals are also granted the right to diplomatic protection and cannot be expelled from Denmark.

4.14 The State party provides statistics on the number of cases submitted to the Naturalisation Committee for assessment of exemption from proof of Danish language skills and proof of the special citizenship test, from 2005 to 2010. The number of exemptions granted were as follows: 65 out of 540 cases requested in 2005; 103 out of 359 cases requested in 2006; 37 out of 108 cases requested in 2007; 32 out of 168 cases requested in 2008; 72 out of 187 cases requested in 2009; and 118 out of 234 cases requested in 2010.

4.15 Regarding the admissibility of the present communication the State party submits that the author's claim falls outside the scope of application of article 26 of the Covenant and that the communication should therefore be declared inadmissible under article 2 of the Optional Protocol. While the Covenant does not contain any provision guaranteeing a right to nationality article 26 does apply to the enforcement of statutes on nationality as it guarantees equality before the law and prohibits discrimination. Thus, public administrative authorities and the judicial system are under an obligation to ensure that all statutes are administered and enforced in a way which is not arbitrary or discriminatory. However, as indicated above, the granting of nationality through naturalisation is a legislative process, according to section 44(1) of the Constitution, not an administrative one. The Circular Letter on the Guidelines for Naturalisation regulates the role exercised by the Ministry in its capacity as the body preparing the meetings of the Naturalisation Committee, but does not confer any rights or obligations on the citizens. Applicants thus have no legal claim to Danish nationality, nor any claim to exemption from the requirement of proof of Danish language skills. The author has not, by definition, been deprived of his right to equality before the law or equal protection of the law. The granting of Danish nationality is the exclusive prerogative of the Legislature and article 26 does not apply to such constitutional system. In this respect the present communication is distinguishable from Communication No. 1136/2002, *Borzov v. Estonia*, which was declared admissible by the Committee. In contrast to the Danish procedure for obtaining nationality by Act of Parliament, nationality in Estonia was granted on the basis of citizenship statute in the form of a general legislative act with specific criteria and subject to legal scrutiny.

4.16 Concerning the merits of the communication the State party submits that, should the Committee find the communication to be admissible, there is no violation of article 26. International law does not give rise to any free-standing obligation of States to grant nationality to persons permanently residing in their territory. Rather, States are entitled under international law to determine those persons upon whom the States will, by means of naturalisation, confer their nationality and in that regard define the requirements for obtaining nationality.

4.17 The Danish procedure for granting nationality by Act of Parliament has been firmly established in constitutional practice since the adoption of the Constitution in 1849. Furthermore, in its Decision No. V 36 of 15 January 1998, the Parliament instructed the Ministry to comply with international conventions and to ensure that the rules of the Public Administration Act and other principles of public administration are observed when naturalisation bills are prepared.

4.18 The State enjoys a wide margin of appreciation when laying down such requirements for nationality as it considers necessary to ensure a genuine link between the State and individuals applying for nationality. Danish language skills together with knowledge of the Danish society, culture and history are considered crucial for integration

into the Danish society and therefore must be considered as legitimate requirements. For the same reason, exemption is only granted in exceptional cases. Furthermore, the requirements must generally be considered proportionate.

4.19 The State party contests that the author has been deprived of equality before the law or has been subject to discrimination in relation to the equal protection of the law. He has not presented any evidence indicating that other persons in a similar situation have been treated more favourably than him. His application for nationality was dealt with in the same manner as all other applications from persons in a situation similar to his. During the examination of his application all available information was thoroughly assessed. By providing all relevant information on his health, the author had full knowledge of the documentation in his case and the basis of the assessment of his application.

4.20 The author has not substantiated his claim that the assessment by the Naturalization Committee was arbitrary. He has neither indicated the grounds on which the alleged discrimination has taken place. He bases his allegation of discrimination on the sole fact that the Committee did not have the same view on the possibility of granting exemption to the author as the author himself.

4.21 The State party is aware of the fact that traumatised refugees may be in need of special assistance to complete their Danish language training. In such cases the teaching methods are especially designed for this group of applicants. The Ministry has in this regard implemented a number of initiatives with the aim of strengthening the participation of traumatised refugees in Danish language training.

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

5.1 The author submitted comments on the State party's observations on 11 July 2011. The author holds that no State may derogate from its international law obligations on the basis of its domestic law, nor upon the basis that the acts in question are those of the Legislature or the Executive. By ratifying the Covenant and other human rights instruments the State party undertook an obligation to ensure persons under its jurisdiction equality before the law pursuant to, *inter alia*, article 26. As no specific reservation has been made in this respect, no internal provision can be invoked to exonerate the State party from such obligation. Thus, the State party cannot rely on the argument that the Guidelines in the Circular Letter are not administrative guidelines in the traditional meaning of this term, but rather a set of principles agreed by the majority in Parliament in order to guide its legislative work. Article 26 is an international standard which applies also to the constitutional system.

5.2 In 2011, the issue of naturalisation gathered much attention in the Danish media in connection with unlawful administrative practices of the Ministry in cases of naturalisation of stateless persons. In that context, legal experts raised serious concern in connection with other aspects of the naturalization procedure in general. For instance, they expressed doubts as to the compatibility with the Convention on the Rights of Persons with Disabilities of the clause in the Circular Letter excluding persons suffering from PTSD from exception of the language requirement. The media also referred to statements of some members of the Committee on Naturalisation according to which basic principles of the rule of law are disregarded in decisions concerning exemptions from the language requirement.

5.3 The author rejects the State party's argument that his claim falls outside the scope of article 26 of the Covenant. He recalls the Committee's jurisprudence that the principle of non-discrimination contained in article 26 is not limited to the rights provided for in the Covenant and that the principle applies to both the adoption of legislation and its application. Furthermore, the decision making in cases of naturalisation falls within the field regulated and protected by public authorities, even though there is identity between

the authority issuing the rules and the authority applying them. It would be strange if a State could elude its treaty obligations regarding the rule of law in respect of such fundamental principles as equal protection and non-discrimination by referring unlawful decisions to a field where such legal guarantees do not apply according to domestic law. If the State party's argument in this respect was to be accepted it would imply a *carte blanche* for States to circumvent any international standard by giving the competence in question, within the domestic constitutional system, to an authority which is not traditionally concerned with decision making. The author therefore concludes that the Danish naturalisation procedure falls within the scope of article 26.

5.4 Concerning the merits of the case the author states that he is not claiming the existence of a free standing right to nationality through naturalisation. He acknowledges the sovereign prerogative of the State to decide on the requirements to grant nationality and does not dispute the substance of the requirements set forth in the Circular Letter. Neither does he contest that the decision to place particular emphasis on, among others, Danish language is within the State's margin of appreciation, or that it is disproportionate to grant exemption only in exceptional cases. His claim concerns solely whether the requirement has been applied in an arbitrary or discriminatory manner.

5.5 The author has established a *prima facie* case through a number of strong, clear and concordant inferences and unrebutted presumptions of the fact that the rejection of his application was arbitrary and discriminatory, namely that the disregard of the medical evidence submitted by him was in direct conflict with the wording of the Circular Letter and that the members of the Naturalisation Committee are unqualified to adjudicate and do so in an arbitrary and, in the circumstances, discriminatory manner.

5.6 It cannot be expected of the petitioner that he adverts to another applicant who suffers from the same illness as he does and who has been granted exemption. For the purposes of establishing a *prima facie* case of discrimination it should suffice that the relevant authorities have acted *contra legem* in the processing of the application. If the State party wishes to plead that no applicant for nationality through naturalisation has ever been exempt from the language requirement for reasons of conditions such as the author's or any other listed as ground for exemption in the Circular Letter, it is incumbent upon the State party to demonstrate that it is the case. As opposed to the State party, the author does not have access to that information.

5.7 Regarding the State party's argument that the author has not indicated the grounds on which the alleged discrimination has taken place the author argues that a person who has been treated unfavourably in a process which is arbitrary has been deprived of equal protection of the law irrespective of any suspect ground. The Danish naturalisation procedure is of such a capricious nature that the petitioner does not need to adduce any specific ground on which the random rejection of his application has been based. Furthermore, the denial of equal protection of the law has been based on grounds such as race, colour, language, religion, national or social origin and/or his status as a refugee and a victim of torture. These suspect grounds have been recognizable factors in the Naturalization Committee's assessment of the author's application for exemption. In fact, besides the medical assessments confirming his suffering from an illness listed in the Circular Letter and warranting exemption, the Committee's only basis for the rejection has been information about the author's country of origin, etc. This gives rise to a very strong inference that the unwarranted rejection was based on racial, ethnic or similar considerations.

5.8 Finally, the author states that section 44(1) of the Constitution does not impose any limitation regarding the preparation of bills of naturalisation. This provision contains merely a competency rule. It does not constitute a hindrance to the observance of basic principles of the rule of law in the preparation of the bills.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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

6.2 The Committee notes, as required by article 5, paragraph 2 (a) and (b), of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement, and that it is uncontested that domestic remedies have been exhausted.

6.3 The Committee notes the State party's challenge to the admissibility of the communication on the fact that the author's claims of discrimination related to his naturalisation procedure do not fall under the scope of article 26 of the Covenant, as naturalisation is granted by Act of Parliament to which article 26 does not apply. The Committee recalls, however, that Art. 26 provides for equality before the law and equal protection of the law without any discrimination; that this provision concerns the obligations imposed on States parties in regard to their legislation and the application thereof;<sup>3</sup> and that it prohibits discrimination in any field regulated and protected by public authorities.<sup>4</sup> In this connection, the Committee recalls that all branches of government (executive, legislative and judicial) at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party.<sup>5</sup> Furthermore, the Committee notes that the author's claim that the rejection by the State authorities to grant him an exemption from the language requirement for his severe chronic mental disorder was discriminatory has been sufficiently substantiated for the purposes of admissibility. Accordingly, the Committee considers that the communication is admissible under articles 2 and 3 of the Optional Protocol.

6.4 As all admissibility requirements have been met, the Committee declares the communication admissible and proceeds to its examination 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 issue before the Committee is whether by refusing to grant the author an exemption from the language requirement in order to become naturalized, the State party violated article 26 of the Covenant. The Committee notes that the author does not challenge the language requirements for naturalization in general but only that the requirement has been applied to him in an arbitrary or discriminatory manner. The Committee recalls that article 26 provides an autonomous right prohibiting discrimination in law or in fact in any field regulated and 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.<sup>6</sup> When legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory.<sup>7</sup> In the

<sup>3</sup> General Comment No. 18: Non Discrimination, paras. 1 and 12.

<sup>4</sup> *Ibid.* para. 12

<sup>5</sup> General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 4.

<sup>6</sup> *Ibid.* para. 12.

<sup>7</sup> Communication No. 172/1984, *Broeks v. the Netherlands*, Views adopted on 9 April 1987, para. 12.4.

context of the present communication this means that the Committee must examine whether the consideration of the author's application for an exception was carried out by the competent Danish authorities in a manner that guaranteed the author's right to equality before the law and equal protection of the law without any discrimination.

7.3 The Committee recalls that neither the Covenant nor international law in general spell out specific criteria for the granting of citizenship through naturalization and that States are free to decide on such criteria.<sup>8</sup> However, when adopting and implementing legislation State parties' authorities must respect the applicants' rights enshrined in article 26. 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,<sup>9</sup> including "other status" such as disability.

7.4 The Committee notes the author's claim that the failure to treat him as a person with mental and learning disabilities and thus acknowledge the need to grant him the exemption contained in the law is a discriminatory measure. The Committee notes that the author applied to be exempted from the requirement of submitting proof of skills in Danish language on the basis of section 24 (3) of the Guidelines on Naturalization. His application was accompanied by medical reports indicating that, at that time, he suffered from severe psychosis with aural hallucinations and paranoid delusions, organic brain damage, moderate to severe depressive periods, PTSD involving a personality change and various physical disorders in the form of pain in both knees, respiratory problems, curvature of the spine and congenital hemiparesis. The application and accompanying documentation after its initial refusal on 5 October 2007 was submitted by the Ministry to the Naturalization Committee of the Danish Parliament, who rejected it on 22 May 2008. However, the Committee notes that the letter of the Ministry informing the author about the Naturalization Committee's decision does not contain any indication regarding the substantive grounds for the refusal. Subsequent letters from the Ministry responding to the author's requests for reconsideration equally lacked justification for denying the exemption contemplated in the Guidelines.

7.5 The Committee considers that the State party has failed to demonstrate that the refusal to grant the exemption was based on reasonable and objective grounds. The Ministry was unable to give details about the reasons for the Naturalization Committee's decision to deny the author's request since the Committee proceedings were confidential. According to the State party's own submission, the exemption provision was open to interpretation and practice was laid down by the majority of the Naturalisation Committee at any time. Furthermore the lack of motivation of the decision and transparency of the procedure makes it very difficult for the author to submit further documentation in order to support his request, as he does not know the real reasons for the refusal and the general trends regarding decisions of the Naturalisation Committee in applying section 24 (3) of the Guidelines. The Committee considers that the fact that the Naturalisation Committee is part of the Legislature does not exempt the State party from taking measures so that the author is informed, even if in brief form, of the substantive grounds of the Naturalization Committee's decision. In the absence of such justification the State party has failed to demonstrate that its decision not to accept the author's mental disability as a basis for a language exception provided for in the law and to require from him language proficiency despite his learning disabilities was based on reasonable and objective grounds. The Committee therefore concludes that the facts before it reveal a violation of the author's

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<sup>8</sup> Communication No. 1136/2002, *Borzov v. Estonia*, Views adopted on 26 July 2004, para. 7.4

<sup>9</sup> General Comment cit. para. 13; Communication No. 1136/2002, para. 7.3.

right to equality before the law and equal protection of the law under article 26 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 26 the Covenant.

9. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, which includes compensation and a reconsideration of his request for exemption of the language skills requirement through a procedure which takes into consideration the Committee's findings. The State party is also under an obligation to avoid similar violations in the future.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State 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, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views and to have them translated in the official language of the State party and widely distributed.

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