



Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
21 July 2025

Original: English

Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 169/2021^{*,**,**}

<i>Communication submitted by:</i>	K.J. (represented by counsel)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Switzerland
<i>Date of communication:</i>	10 May 2021
<i>References:</i>	Transmitted to the State Party on 19 May 2021 (not issued in document form)
<i>Date of adoption of views:</i>	4 July 2025
<i>Subject matter:</i>	Removal of a woman who is a survivor of sexual and gender-based violence under the Dublin III Regulation to Greece
<i>Procedural issues:</i>	Exhaustion of domestic remedies; lack of substantiation
<i>Substantive issues:</i>	Non-refoulement; gender-based violence
<i>Articles of the Convention:</i>	2 (c)–(f), 3 and 12
<i>Article of the Optional Protocol:</i>	4 (1) and (2)

* Adopted by the Committee at its ninety-first session (16 June–4 July 2025).

** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Hamida Al-Shukairi, Violet Eudine Barriteau, Rangita de Silva de Alwis, Corinne Dettmeijer-Vermeulen, Nada Moustafa Fathi Draz, Yamila González Ferrer, Madina Jarbussynova, Marianne Mikko, Mu Hong, Ana Peláez Narváez, Jelena Pia-Comella, Bandana Rana, Elgun Safarov and Patsilí Toledo Vásquez.

*** A joint opinion of Committee members Hiroko Akizuki, Rangita de Silva de Alwis, Corinne Dettmeijer-Vermeulen and Jelena Pia-Comella (dissenting) is annexed to the present views.



1.1 The communication is submitted by K.J., a national of Afghanistan, born in 1993. The author claims to be a victim of a violation by Switzerland of her rights under articles 2 (c)–(f), 3 and 12 of the Convention. The Optional Protocol to the Convention entered into force for Switzerland on 29 December 2008. The author is represented by counsel, Stephanie Motz and Lea Hungerbühler.

1.2 On 19 May 2021, the Committee, acting under article 5 (1) of the Optional Protocol, through its Working Group on Communications under the Optional Protocol, requested the State Party to refrain from returning the author to Greece pending consideration of her communication. On 20 May 2021, the State Party informed the Committee that the State Secretariat for Migration had requested the competent authority not to take any steps to transfer the author to Greece.

Facts as submitted by the author

2.1 The author belongs to the Hazara ethnic group in Afghanistan. As a young child, she and her family were forced to flee from their home in Afghanistan to the Islamic Republic of Iran. At the age of 17, her brother forcibly married her by custom to a 44-year-old man as his second wife in order to use her dowry to pay for surgery for their severely sick mother.

2.2 The author was regularly mistreated, sexually abused and raped by her husband. Owing to the patriarchal system in the Islamic Republic of Iran and the lack of protection for victims of marital rape and domestic violence, she was unable to obtain any protection. After a particularly violent rape, the author went to the police, who told her that to prove that she had been raped, she would have to undergo a medical examination, which in the Islamic Republic of Iran is possible only with the agreement of the husband or legal guardian, which she refused as a result. Since the author was unable to prove the incidents, she was forced to leave the police station and went to her parents' home. Shortly after having reported the sexual violence to the police, the author received a letter¹ stating that the investigation had been closed as marital rape was not a punishable offence.

2.3 The author tried to stay with her parents to avoid living with her husband. After a short period of time, her husband started blackmailing her parents: if she wanted to stay with them, the parents had to pay back the dowry. Since they could not repay the amount, the father sent the author back to her violent husband. Besides the sexual violence, which occurred on a regular basis, her husband cut off her hair and threatened to cut off other body parts if she didn't "behave". He also regularly choked her with a belt up to the point at which she lost consciousness.

2.4 The domestic violence became so serious that her husband broke her hand while attacking her with a chair. He forbade her to go to the hospital, even though she was in intolerable pain. Her neighbours saw her suffering and later helped her to flee the country.²

2.5 On the way to Greece, the author was violently raped near the Iraqi-Turkish border by a friend of the smuggler, and upon her arrival in Greece, she realized that she was pregnant. After finally reaching Lesbos in October 2017, she was raped two more times within one month.³ After the first incident, she went to the police to report the rape. Since she could not identify the offender, the police did not commence any

¹ Presumably from the police, but the author does not specify.

² No further information provided.

³ The author submitted a sexual violence medical certificate issued in Greece on 18 October 2017, the date of the initial medical examination.

investigation. Nor did they send her to a specialized aid organization for victims of sexual violence. After the second rape, she therefore did not inform the police.

2.6 In November 2017, she had an illegal abortion in Athens. A few months later, in response to threats from her husband, who claimed to be following her, she moved to Athens, where she was raped again, this time on the streets of the city. She tried to make a complaint at the police station. Again, no assistance of any kind was provided to her. After this incident, she returned to Lesbos, since she felt less unsafe there.

2.7 On an unspecified date, the author applied for asylum in Greece. On 25 October 2018, the author had her asylum interview in Athens and, on 5 November 2018, was granted refugee status. Owing to that status, the housing, financial aid and other support that she was receiving came to an end on 31 August 2019. As a result, the author was forced to fend for herself on the streets, with no protection from sexual and physical assault. Furthermore, she was no longer able to get any medical or mental health treatment, which she urgently required, because the services were available only to asylum-seekers, not to recognized refugees. In addition, she was told that her violent husband had followed her to Athens and was looking for her. When she asked for help in that regard, no support was provided.⁴ As a consequence, she was again forced to flee in order to have her basic needs covered and to obtain protection from gender-based violence.

2.8 On 14 September 2019, the author arrived in Switzerland.⁵ She applied for asylum two days later. On 19 September 2019, as a result of a search using the Eurodac system, it transpired that she had been granted refugee protection in Greece. In her interview under Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the member State responsible for examining an application for international protection lodged in one of the member States by a third-country national or a stateless person (Dublin III Regulation), she was asked to provide summary reasons as to why she could not be removed to Greece as a safe third country. The author raised the fact that she had been raped and stated that, during the year and a half that she had spent in Greece, she had not felt safe on a single day or night. On 1 October 2019, the author was summarily interviewed by the State Secretariat for Migration. On 21 October 2019, the Greek authorities responded positively to the Swiss readmission request.

2.9 On 10 January 2020, the State Secretariat for Migration conducted an interview with the author, during which she was able to raise her particular vulnerability as a survivor of sexual and gender-based violence as a factor that had not been sufficiently assessed. On 14 January 2020, the basic medical service in the asylum camp assessed the author to be displaying psychological problems including depression, prescribed her medication and recommended that she undergo further medical examinations. On 20 January 2020, the State Secretariat for Migration ordered her removal from Switzerland on the basis of the readmission agreement with Greece, asserting that the author came under the protection of the Office of the United Nations High Commissioner for Refugees and women's organizations. The author submits that the State Secretariat for Migration failed to consider that, despite the presence of such organizations in Greece, she still experienced gender-based violence, was repeatedly raped and followed by her husband and hence would face great danger if returned to Greece.

⁴ No details provided as to whom or which authority the author asked for assistance.

⁵ The author took a direct flight from Athens to Switzerland with her Greek passport for foreigners and Greek identity card for foreigners.

2.10 On 28 January 2020, the author appealed to the Federal Administrative Court, claiming extreme vulnerability as a woman who had been a victim of gender-specific persecution and who was suffering from post-traumatic stress disorder. She requested the annulment of the decision of the State Secretariat for Migration of 21 January 2020 and the acceptance of her asylum application or, alternatively, a reassessment. From a procedural point of view, she requested that the proceedings be conducted free of charge and that an advance on costs be waived. In a judgment dated 3 February 2020, the Court dismissed the appeal on the basis that Greece was a safe third country and that the author would therefore be able to obtain the necessary medical treatment there, finding that the presumption of safety had not been rebutted. Concerning the author's fear of gender-based persecution, as her husband was looking for her and she would face dangerous living conditions in Greece, the Court stated that Greece was bound by the rule of law and had a functioning police and justice system. The Court therefore dismissed the appeal on the grounds that Greece was a safe third country. The author was hospitalized from 11 February to 3 March 2020 owing to a major depressive episode.⁶

2.11 On 24 March 2021, the State Secretariat for Migration denied the author's request for reconsideration, on the grounds that adequate medical treatment facilities were available in Greece. On 16 April 2021, the author appealed the decision to the Federal Administrative Court. She argued that a removal would put her at risk of gender-based violence, torture and inhuman treatment owing to the lack of social, medical and legal support and police protection available, in combination with her particularly vulnerable situation and the fact that she would be homeless. Her appeal was dismissed the same day. On 30 April 2021, the author applied for reconsideration of that decision, since the Court had not considered the evidence submitted previously about the sexual and gender-based violence to which she had been subjected in Greece. In an interim decision dated 5 May 2021, the Court confirmed its decision withdrawing suspensive effect and noting that the mentioned evidence would be of no relevance.

2.12 Referring to her health issues, the author submits that she is suffering from serious mental health issues and was diagnosed with post-traumatic stress disorder, episodic panic disorder and a medium to severe depressive episode. The author is extremely destabilized, which led to inpatient treatment of several weeks from February to March 2020 due to suicidal ideation. After the inpatient therapy, the doctors considered it essential for her to continue with the therapy and to establish a stable setting for such therapy. In November 2020, she was again hospitalized in the trauma department for about four months. In a medical report of March 2021, it was highlighted that long-term medical treatment and therapy were urgently required.

2.13 The author affirms that most refugees who are returned to Greece by other European countries are taken back to Athens. In Athens, she would be exposed to a serious and real risk of sexual and gender-based violence. Young unaccompanied women in particular are at real risk of exploitation and sexual abuse, without any legal or physical protection by the police – even more so if they do not speak Greek.

Complaint

3.1 The author claims that the State Party has failed to undertake an individualized and gender-sensitive assessment of her asylum and reconsideration applications in breach of her rights under articles 2 (e) and (f) and 3 of the Convention, as well as in

⁶ Subsequently, as shown in a crisis intervention report of 7 October 2020, a moderate depressive episode, post-traumatic stress disorder and a panic disorder were diagnosed.

connection to the Committee's general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women.⁷

3.2 The author further claims that the State Party authorities have decided to remove her to a State where she will face a real, serious and personal risk of gender-based violence and a lack of needed medical treatment in breach of articles 2 (c)–(f), 3 and 12 of the Convention. She claims that the removal of recognized refugees with a particular vulnerability to Greece, with its desolate living conditions and inadequate medical treatment options, would violate the refoulement prohibition.⁸

3.3 She further affirms that her removal would amount to torture and ill-treatment in violation of her rights under articles 2 (c)–(f), 3 and 12 of the Convention in the light of her being a highly vulnerable, suicidal survivor of severe sexual and gender-based violence and that, in Greece,⁹ she would be uprooted from her stable therapy setting and would have no access to housing, mental health, medical, legal or social support and would be exposed to a serious and real risk of further serious sexual and gender-based violence – including threats from her husband – without any State protection.

3.4 The author claims that her removal to Greece entails a real risk of torture or inhuman and degrading treatment and further sexual and gender-based violence in violation of the refoulement prohibition as guaranteed under the Convention because of the combination of above-mentioned case-specific factors going beyond the deplorable general situation for refugees in Greece.

State Party's observations on admissibility and the merits

4.1 On 25 January 2022, the State Party provided its observations regarding admissibility and the merits, focusing on several key factual clarifications and legal arguments. It offers a detailed account of the author's circumstances in the Islamic Republic of Iran and the legal proceedings that ensued.

4.2 The State Party highlights that the author did not raise the issue of sexual violence in Greece or invoke the guarantees of the Convention during her ordinary asylum and appeal proceedings or in the request for reconsideration. These issues were mentioned only in her appeal to the Federal Administrative Court on 16 April 2021, long after the initial proceedings. The Court noted that the author's allegation that she had been a victim of sexual violence in Greece must be considered as having been made subsequently and was thus implausible. Consequently, the Court dismissed her appeal as inadmissible on 18 May 2021, citing the untimeliness of the allegations without a plausible justification and her failure to pay the advance on costs.

4.3 The State Party argues that the author's complaints to the Committee are inadmissible because she did not exhaust domestic remedies by failing to raise these issues earlier in the domestic proceedings. Moreover, the State Party points out that the author's communication to the Committee is insufficiently substantiated, as required under article 4 (2) (c) of the Optional Protocol. The Committee, in its jurisprudence, has emphasized that it does not replace national authorities in assessing facts or evidence unless the assessment was biased, based on gender stereotypes or arbitrary, or amounted to a denial of justice.

⁷ See *R.S.A.A. et al. v. Denmark* (CEDAW/C/73/D/86/2015).

⁸ Human Rights Committee, *O.A. v. Denmark* (CCPR/C/121/D/2770/2016), para. 8.9 ff.; and Committee against Torture, *A.N. v. Switzerland* (CAT/C/64/D/742/2016), paras. 7.3 and 8.8.

⁹ Reference is made to the recent decision by Switzerland to reconsider a comparable case following a request by the Committee for interim measures (see *M.M. v. Switzerland* (CEDAW/C/81/D/160/2020)).

4.4 The State Party provides details of the procedures followed in the author's case, noting that she applied for asylum in Switzerland on 16 September 2019 and was individually interviewed on 1 October 2019, where she was given the opportunity to present her case and any reasons against her transfer to Greece. During this interview, the author stated that she had left the Islamic Republic of Iran owing to the ill-treatment to which she was subjected by her husband, and mentioned the difficult living conditions that she had experienced in Greece, the fear of her husband finding her and her psychological problems, but she expressly stated that she had not encountered any problems in Greece. The Swiss authorities, after considering her statements and the conditions in Greece, concluded that Greece was a safe country for the author, where she could receive protection and assistance. The State Party submits that, in its judgment of 20 January 2020, the State Secretariat for Migration stated that the medical problems claimed were not so serious that they could not be adequately treated in Greece, which was a member State of the European Union. The State Party maintains that the medical reports submitted in the context of the reconsideration proceedings¹⁰ do not contraindicate a removal to Greece.

4.5 The State Party also notes that the domestic authorities, including the State Secretariat for Migration and the Federal Administrative Court, conducted a thorough and individualized examination of the author's case, considering all relevant aspects, including her health condition and the threats from her husband. The State Secretariat for Migration noted that Greece had adequate medical infrastructure and that the author could continue her treatment there. The Federal Administrative Court confirmed these findings in its ruling of 3 February 2020 and again in its subsequent decisions.

4.6 The State Party concludes that the author's complaint to the Committee was formulated in a very general manner and did not demonstrate, with concrete evidence, that the national authorities' assessment of her case was biased or arbitrary. The State Party emphasizes that the domestic authorities did not ignore the author's gender-related arguments but concluded that her return to Greece was lawful and that Greece could provide adequate protection for her as a recognized refugee.

4.7 The State Party also addresses the author's claim that she would face inhuman and degrading treatment in Greece. It argues that Greece, as a State member of the European Union, is bound by European Union law, which ensures that refugees receive adequate protection and assistance, including access to healthcare and housing. It asserts that the Greek police could protect the author from any threats posed by her husband and that Greece has the medical facilities necessary to treat her condition. Furthermore, the State Party emphasizes that the European Court of Human Rights has consistently held that Greece provides adequate protection to refugees and that the Committee should not substitute its own assessment of the facts for that of the national authorities.

4.8 Finally, the State Party submits that the author has not provided evidence to substantiate her claim that she would face a real risk of inhuman or degrading treatment if returned to Greece. It argues that the author's general references to reports on the situation in Greece do not sufficiently demonstrate that her return would violate her rights under the Convention. The State Party concludes that the

¹⁰ Medical report of 3 March 2020 and discharge report of 17 March 2021: accounts of inpatient psychiatric treatment from 11 February to 3 March 2020 and from November 2020 to March 2021. In the first report, it was indicated that the author had suffered experiences of abuse in the Islamic Republic of Iran and Greece, without, however, elaborating on them. In the second, it was indicated that, during the second treatment, the trauma-specific therapy showed very good results with regard to improvements in post-traumatic stress disorder symptoms and in the depressive symptomatology.

author's communication should be declared inadmissible for failure to exhaust domestic remedies and for lack of sufficient substantiation and that, even if it were admissible, it should be dismissed on the merits, as the national authorities had conducted a thorough and fair examination of her case.

4.9 In sum, the State Party submits arguments concerning: (a) the delay in raising the complaint, as the author only mentioned her experiences of sexual violence in Greece during a late stage in the Swiss domestic proceedings, specifically in her appeal to the Federal Administrative Court on 16 April 2021, and this delay led the Court to declare her appeal inadmissible, as it was out of time and lacked a substantive basis for success; (b) the non-exhaustion of domestic remedies, as the author did not pay the advance costs required for her appeal, resulting in its inadmissibility; (c) insufficient substantiation, as the author's communication to the Committee lacked concrete details to support her claims, while the Swiss authorities had conducted a thorough individual examination of her case, considering all relevant aspects, including gender-related issues; (d) the assessment of the facts by national authorities, as it is generally the responsibility of national authorities to assess the facts, the evidence and the application of national law, unless the assessment was arbitrary or discriminatory or constituted a denial of justice; (e) procedural fairness, as the author had been given ample opportunity to present her case during the asylum proceedings in the State Party, including a hearing with an interpreter, and the domestic authorities had considered her arguments and evidence before concluding that her return to Greece would be lawful and safe; (f) compatibility with international standards, as Greece is obligated under European Union law to provide adequate protection and support to refugees, including access to healthcare and housing, the author could continue her medical treatment in Greece, and the Greek police could protect her from any threats posed by her husband; (g) the contradictions in the author's statements, in particular regarding her claim that she had got remarried to a Greek national, who had also mistreated her, the inconsistencies surrounding which raised doubts about the credibility of her claims of sexual violence in Greece; and (h) the author's procedural rights, as those rights, including the right to be heard and the opportunity to appeal decisions, were respected throughout the asylum process, so the fact that she did not pursue those remedies to their conclusion does not constitute a violation of the Convention.

Author's comments on the State Party's observations on admissibility and the merits

5.1 The author disputes the State Party's claim that she failed to exhaust domestic remedies in her case, arguing that there is no requirement under the Convention to raise issues of sexual violence in a specific domestic procedure. She asserts that she did raise the issue in her appeal to the Federal Administrative Court and that the authorities were already aware of her experiences of sexual and gender-based violence from earlier medical reports¹¹ and asylum procedures.

5.2 The author contends that the national authorities failed to thoroughly investigate her claims or provide a supportive environment for disclosure,¹² arguing that this failure led to an inadequate consideration of her vulnerability and risk of being subjected to sexual and gender-based violence in the future. She also challenges the State Party's reliance on the theoretical commitments of Greece to international law rather than assessing her specific situation. The author concludes that she has

¹¹ The author argues that the sexual violence that she suffered in Greece was documented in a medical report of 3 March 2020 and that her reporting of it could therefore not be described as late, nor could her claims in that regard be described as implausible.

¹² No further detail provided.

exhausted all available domestic remedies and sufficiently substantiated her claim of procedural violations under the Convention.

5.3 The author argues that the State Party's claims of a thorough and gender-sensitive examination of her asylum case are inaccurate. The author contends that the State Party merely referenced the theoretical legal obligations of Greece without addressing specific evidence or reports, including medical documentation detailing her experiences of sexual and gender-based violence. In its decisions, the State Party did not adequately consider the actual conditions in Greece or the author's specific vulnerabilities.

5.4 The author asserts that the State Party failed to conduct a proper individualized and gender-specific assessment, relying instead on generalized legal commitments by Greece and not addressing the detailed medical and psychological evidence submitted. She argues that the State Party's approach disregarded the trauma that she had experienced and the need for a supportive environment for full disclosure.

5.5 Furthermore, the author refutes the State Party's claim that she did not raise procedural violations or provide adequate details. She points out that she did raise these issues in her appeals and that the State Party's procedural shortcomings, including inadequate risk assessments and lack of sensitivity to sexual and gender-based violence, violated international and domestic legal standards.

5.6 In addition, the author highlights the deteriorating situation for refugees in Greece, in particular for those with mental health issues and survivors of trauma. Recent changes in Greek law and reports of inadequate support for such individuals underscore the increased risk that the author would face if returned to Greece. The author notes that the Swiss Federal Administrative Court has recently ruled that returning vulnerable individuals to Greece is unreasonable, countering the State Party's claims about the compliance of Greece with international standards.

5.7 The author argues that, by relying on the theoretical obligations of Greece, rather than addressing actual conditions or evidence, the State Party failed to provide a proper assessment of her situation. Despite numerous reports highlighting the dire circumstances for refugees in Greece, in particular survivors of sexual and gender-based violence, the State Party has not presented any concrete evidence of the effective implementation of Greek laws.

5.8 The author emphasizes her right to rehabilitation as a survivor of multiple incidents of sexual and gender-based violence, irrespective of where these occurred. She criticizes the State Party for not addressing her initial disclosure of sexual and gender-based violence and for failing to consider the lack of adequate rehabilitation services in Greece, which violates international obligations under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

5.9 The State Party's argument that the author's symptoms of post-traumatic stress disorder have improved and could be managed in Greece is challenged by the author, who points out that evidence in support of the State Party's affirmation that adequate services are available is lacking. The author also disputes the State Party's claim about the handling of her health issues during the readmission process (claiming that the State Secretariat for Migration had failed to inform the Greek authorities about her vulnerabilities) and the potential for adequate protection from her husband's threats in Greece.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4), it is to do so before considering the merits of the communication.

6.2 In accordance with article 4 (1) of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. The Committee notes the State Party's challenges to the admissibility of the communication on this ground, given that the author raised her claims that she had been raped in Greece late in her appeal of 16 April 2021 to the Federal Administrative Court.

6.3 The Committee recalls its jurisprudence, in which it is established that authors must have raised the claims that they wish to bring before the Committee in substance at the domestic level¹³ in order to give the domestic authorities and courts an opportunity to take a decision thereon.¹⁴ It also notes that the author raised the issue of sexual violence experienced in Greece in her appeal to the Federal Administrative Court on 16 April 2021, thereby giving the national authorities the opportunity to examine those claims.

6.4 The Committee also notes that the author underwent a full asylum procedure, followed by a re-examination procedure; that her request for suspensive effect was denied; and that she was ordered to pay a fee in the amount of 1,500 Swiss francs. In this regard, the Committee takes note of the author's contention that, as her request for suspensive effect had been denied, the appeal to the Federal Administrative Court did not constitute an effective remedy as defined in article 4 of the Optional Protocol. The Committee considers that the author exhausted domestic remedies because she had claimed specifically, although late, that she had been subjected twice to sexual violence in Greece in her appeal (complaint and application for super-provisional measures) to the Federal Administrative Court, which could have resolved the substance of the claim brought before the Committee. Accordingly, the Committee considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from examining the present communication.

6.5 The Committee notes the author's claim that, by returning her to Greece, the State Party would expose her to a real and personal risk of serious forms of gender-based violence. In view of the information provided, in particular regarding the author's vulnerable situation as a survivor of sexual violence in the Islamic Republic of Iran with recognized refugee status and the alleged failure of the national authorities to conduct an individualized trauma-informed and gender-sensitive assessment, the Committee considers that the author's claims are sufficiently substantiated for the purposes of admissibility. Accordingly, it proceeds with the examination of the merits of the communication.

¹³ See *Kayhan v. Turkey* (CEDAW/C/34/D/8/2005), para. 7.7, *M.A. v. Switzerland* (CEDAW/C/80/D/145/2019), para. 6.7, and *S.T.H. v. Switzerland* (CEDAW/C/87/D/165/2021), para. 7.5.

¹⁴ See *N.S.F. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/38/D/10/2005), para. 7.3, *M.A. v. Switzerland*, para. 6.7, and *S.T.H. v. Switzerland*, para. 7.5.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State Party, in accordance with the provisions of article 7 (1) of the Optional Protocol.

7.2 The Committee takes note of the author's undisputed claim that she is a survivor of severe gender-based violence that was inflicted on her from an early age in the Islamic Republic of Iran and while fleeing near the Iraqi-Turkish border, for which she was recognized as a refugee in Greece. The Committee also notes the author's claim that she was subjected to gender-based violence in Greece – in Lesbos, where she was raped twice within a month, and in Athens. The Committee takes note that the sustained violence led to the deterioration of her mental health and that she suffers from depression and has been diagnosed with post-traumatic stress disorder and episodic panic disorder. The Committee observes that the author's vulnerability in terms of her mental health has been ascertained in several medical reports by psychiatrists issued in the State Party.

7.3 The Committee reiterates that, according to its jurisprudence, the Convention has extraterritorial effect only when the woman to be returned will be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence.¹⁵

7.4 The Committee recalls that, under article 2 (d) of the Convention, States Parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with that obligation. The Committee also recalls that, under international human rights law, the non-refoulement principle imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment.¹⁶ In addition, the Committee considers that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention and that such rights include the right to life and the right not to be subjected to torture.¹⁷ The Committee has further developed its interpretation of violence against women as a form of gender-based discrimination in its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, reaffirming the obligation of States Parties to eliminate discrimination against women, including gender-based violence against women, stating that the obligation comprises two aspects of State responsibility for such violence, that which results from the acts or omissions of both the State Party or its actors, on the one hand, and non-State actors, on the other.¹⁸ A State Party would therefore be in violation of the Convention if it returned a person to another State where it was foreseeable that serious gender-based violence would be inflicted on that person. Such a violation would also occur when no protection against the identified gender-based violence can be expected from the authorities of the State to which the person is to be returned. What amounts to serious forms of gender-based violence depends upon the circumstances of each case and must be determined by the Committee on a case-by-

¹⁵ See, for example, *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011), para. 8.10, and *R.S.A.A. et al. v. Denmark*, para. 7.7.

¹⁶ General recommendation No. 32, para. 21.

¹⁷ General recommendation No. 19 (1992) on violence against women, para. 7.

¹⁸ General recommendation No. 35, para. 21.

case basis at the stage of consideration of the merits, provided that the author has made a prima facie case by sufficiently substantiating her allegations.¹⁹

7.5 In the present case, the Committee notes the State Party's contention that all the author's allegations were thoroughly examined by the State Party's immigration authorities. At the same time, the Committee observes that the author's allegations that she had been raped three times in Greece had been dismissed because the authorities considered that she had brought those allegations late in the proceedings, which affected her credibility.

7.6 In that connection, the Committee recalls that it is generally for the authorities of States Parties to the Convention to evaluate the facts and evidence and the application of national law in a particular case,²⁰ unless it can be established that the evaluation was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice. The issue before the Committee is therefore whether there was any irregularity or arbitrariness in the decision-making process regarding the author's asylum application to the extent that the State Party authorities failed to properly assess the risk of irreparable harm to the author if she was returned to Greece under the Dublin III Regulation. The Committee reiterates that, in carrying out their assessment, States Parties should give sufficient weight to the real and personal risk that a person might face if deported.

7.7 In the present case, the Committee considers that it was incumbent upon the State Party to undertake an individualized assessment of the real, personal and foreseeable risk that the author would face as an unaccompanied woman victim of severe gender-based violence suffering from post-traumatic stress disorder and depression.

7.8 The Committee considers that the State Party did not appear to accord any due weight to the author's vulnerable status as a refugee and victim of severe gender-based violence suffering from post-traumatic stress disorder and depression. The Committee therefore considers that, given the author's status as a recognized refugee and survivor of gender-based violence and the time often required in order for victims to be able to speak about such violence,²¹ it was not sufficient for the State Party to dismiss her claim that she had been subjected to gender-based violence in Greece merely because she had brought it later in the proceedings. In addition, the Committee considers that the State Party has not examined in an individualized and sufficiently thorough manner the foreseeable consequences for the author's mental health if she is forcibly removed from a country where she is currently in a stable therapy setting. The Committee therefore considers that a more thorough risk assessment would have been required by the exigencies of the case.

8. Accordingly, acting under article 7 (3) of the Optional Protocol to the Convention, the Committee concludes that the removal of the author would amount to a breach of articles 2 (c)–(f), 3 and 12 of the Convention.

9. The Committee makes the following recommendations to the State Party:

- (a) Concerning the author of the communication:
 - (i) Reopen her asylum request, taking into account the Committee's views;

¹⁹ See *A. v. Denmark* (CEDAW/C/62/D/53/2013), para. 8.6, and *R.S.A.A. et al. v. Denmark*, para. 7.8.

²⁰ See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5, and *R.S.A.A. et al. v. Denmark*, para.8.4.

²¹ European Court of Human Rights, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Judgment, 21 January 2011 para. 254, and *N.H. et al. v. France*, Application Nos. 28820/13, 75547/13 and 13114/15, Judgment, 2 July 2020, para. 100.

(ii) Refrain from returning her to Greece while the reassessment of her case is still pending;

(iii) Provide continued specialized medical support;

(b) General:

(i) Take all measures necessary to ensure that victims of gender-based violence with refugee status who are in need of protection are not returned to the country of their first entry under the Dublin III Regulation without an individualized, trauma-informed and gender-sensitive assessment of the real risk of irreparable harm.

10. In accordance with article 7 (4) of the Optional Protocol, the State Party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State Party is also requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all relevant sectors of society.

Annex

Joint opinion of Committee members Hiroko Akizuki, Rangita de Silva de Alwis, Corinne Dettmeijer-Vermeulen and Jelena Pia-Comella (dissenting)

1. We are of the opinion that the communication is inadmissible under article 4 (2) (c) of the Optional Protocol.
2. We have taken note of the author's undisputed claim that she is a survivor of severe gender-based violence inflicted upon her from an early age in the Islamic Republic of Iran and while fleeing near the Iraqi-Turkish border, for which she has been granted refugee status by Greece.
3. We have noted the State Party's argument that the author's claim of a fear of sexual and gender-based violence specifically in Greece was raised very late and without a plausible explanation. We observe that her failure to justify the late submission about the sexual and gender-based violence in Greece affected the author's credibility. We also note that the author had opportunities to raise her claim about sexual violence suffered in Greece, together with claims of sexual violence endured at the hand of her husband in the Islamic Republic of Iran, as well as at the Iraqi-Turkish border, at an early stage of the asylum proceedings – in her interviews with the State Secretariat for Migration in October 2019 and January 2020, in her first appeal to the Federal Administrative Court in January 2020 and in her request for reconsideration submitted to the State Secretariat for Migration in early 2021. In this regard, we further note the author's allegation that she did not have a supportive environment in which to reveal the sexual violence that she had endured in Greece. However, we observe that the author has failed to stipulate and substantiate the specific conditions that would have prevented her from raising this claim earlier.
4. We have noted the decision of the Federal Administrative Court of 5 May 2021 in conjunction with its decision of 16 April 2021, in which it stated that “according to the crisis intervention report of 9 October 2020 of the Psychiatric Services Thurgau, which is in the files, the complainant stated that she had married a Greek in Greece who had abused her, which is why she had fled to Switzerland (cf. p. 3), that these statements contradict earlier statements according to which the complainant was primarily afraid of being tracked down in Greece by her husband who lived in Iran, that in the complaint against the reconsideration decision, it is argued for the first time that the complainant was the victim of rape twice on the island of Lesbos and once in Athens, that contradictory information on the place and extent of the sexual violence suffered was thus submitted in the course of the proceedings, that these contradictions are capable of casting doubt on the complainant's submissions”.
5. We recall that it is generally for the authorities of States Parties to the Convention to evaluate the facts and evidence in a particular case,¹ unless it can be established that this evaluation was biased or based on gender stereotypes that constitute discrimination against women or that it was clearly arbitrary or amounted to a denial of justice. We consider that the fact that the State Party authorities took this issue as an element undermining the credibility of the author's allegations in the absence of a plausible explanation does not appear to be arbitrary, gender-biased or a denial of justice.
6. We note that the Convention must be interpreted in accordance with the general principles of international law. In such interpretation, due account must be taken of

¹ See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5, and *K.I.A. v. Denmark* (CEDAW/C/74/D/82/2015), para. 9.6.

the context in which the Convention is applied, which, according to article 31 (3) (c) of the Vienna Convention on the Law of Treaties, includes “any relevant rules of international law applicable in the relations between the parties”, including the Dublin III Regulation. However, we consider that it is not within the Committee’s competence to assess whether national authorities applied or interpreted the Dublin III Regulation correctly; rather, it is for the Committee to ensure that such application or interpretation is in line with the State Party’s obligations under the Convention.² We note that the Dublin III Regulation provides that a State may not transfer an applicant to an otherwise responsible State if it would expose him or her to “a risk of inhuman or degrading treatment”, given “systemic flaws in the asylum procedure and in the reception conditions for applicants” in that State. We consider that States should interpret this provision in line with their obligations under the Convention on the Elimination of All Forms of Discrimination against Women to refrain from returning an individual where a real, personal and imminent risk exists that he or she will be exposed to gender-based violence.

7. We consider that the author has not sufficiently substantiated her claim or developed the facts and arguments put forward, for the purposes of admissibility, to demonstrate that she, as a woman who is a survivor of sexual and gender-based violence, would face a real, personal and foreseeable risk of sexual violence, inhuman and degrading treatment or living conditions and lack of access to adequate health care if she were returned to Greece.

² See, by analogy, Committee on the Rights of the Child, *J.M. v. Chile* (CRC/C/90/D/121/2020), para. 7.4.