



# Convention on the Elimination of All Forms of Discrimination against Women

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## Committee on the Elimination of Discrimination against Women

### Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 171/2021<sup>\*\*\*.\*\*\*\*.\*\*\*\*\*</sup>

<i>Communication submitted by:</i>	Z.E. and A.E. (represented by counsel)
<i>Alleged victims:</i>	The authors
<i>State Party:</i>	Switzerland
<i>Date of communication:</i>	19 May 2021 (initial submission)
<i>References:</i>	Transmitted to the State Party on 25 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 and her brother to Greece under the Dublin III Regulation
<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 Barribeau, 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, Corinne Dettmeijer-Vermeulen and Jelena Pia-Comella is annexed to the present views.

\*\*\*\* The present document was submitted after the deadline in order to reflect the most recent developments.



1.1 The communication is submitted by Z.E., born on 30 May 1984, and her brother, A.E., born on 4 June 1981, both of whom are Afghan nationals. They claim that, if removed to Greece, the State Party would violate their rights under articles 2 (c)–(f), 3 and 12 of the Convention. The authors request interim measures to prevent their removal to Greece pursuant to article 5 (1) of the Optional Protocol to the Convention and rule 63 (1) of the rules of procedure of the Committee, alleging a risk of further sexual or gender-based violence, torture or inhuman or degrading treatment. The Optional Protocol entered into force for Switzerland on 29 December 2008. The authors are represented by counsel, Stephanie Motz and Lea Hungerbühler.

1.2 On 25 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 Z.E.<sup>1</sup> to Greece pending consideration of her communication and to consider suspending the removal of A.E., in the light of his role as a support person to Z.E. On 27 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 authors to Greece.

### **Facts as submitted by the authors**

#### *Contextual facts*

2.1 Z.E. was born the Islamic Republic of Iran and belongs to the Hazara ethnic group. Her parents were forced to flee from Afghanistan to the Islamic Republic of Iran after her mother was subjected to violence at the hands of her brothers and threatened with further violence. From the age of 5 years, Z.E. was raped regularly by a cousin in the Islamic Republic of Iran. At 17 years old, she was forced to marry and later gave birth to two children (in 2007 and 2011). Her husband abused her sexually and physically, and she had to be hospitalized as a result. She fled from the Islamic Republic of Iran together with her brother, A.E., in June 2018. They reached Lesbos, Greece, in September 2018 and were interviewed by Greek migration authorities in December 2018.

2.2 In Lesbos, Z.E. was raped again, by a man called K. Her brother was unable to protect her. K. was a person with power in the refugee camp; therefore, when she tried to report the offence, the interpreter refused to translate her statements out of fear of getting into trouble. Z.E. visited the doctor on several occasions for assistance due to suicidal ideation and trauma.<sup>2</sup>

2.3 A.E. and Z.E. were granted international protection on 22 January 2019 and 9 May 2019, respectively. They received a stamp on their asylum-seeker permits, allowing them to leave the island. On an unspecified date in autumn 2019, they relocated to Athens (Eleonas camp), but it was not safe for them there as Z.E.'s husband had been following them with the aim of killing them because they had escaped from him. Despite reporting this to police, no action was taken. Z.E. later learned that her husband was searching for her in the Eleonas camp. In view of the abuse that she had suffered in the past, she was terrified by the death threats and feared for her life, especially due to the absence of police protection. In spring 2020, the authors left the camp and hid in an apartment. After paying rent for one month, they could no longer afford it and became homeless.

2.4 They received their refugee papers in autumn 2020. Due to their new status, no housing, financial aid or other support was provided. They were forced to fend for

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<sup>1</sup> Medical reports indicate that Z.E. was diagnosed with severe post-traumatic stress disorder and severe depressive episodes with partially psychosomatic symptoms.

<sup>2</sup> The authors provide medical reports by Greek and Swiss psychiatrists and a mental health certificate from Médecins sans frontières.

themselves in the streets, with no protection from sexual or physical assaults. They were no longer able to obtain any medical or mental health treatment, since those services were available only to asylum-seekers and not to recognized refugees. They were terrified of Z.E.'s husband, who had followed them and from whom the police provided no protection.

2.5 As a consequence, Z.E. and A.E., on whom she is emotionally dependent, were forced to flee to have their basic needs met and to obtain protection from sexual and gender-based violence. They arrived in Switzerland on 1 November 2020 and sought asylum that same day. A search of the Eurodac system on 3 November 2020 revealed that they had been granted international protection in Greece. The Swiss authorities sent a readmission request to the Greek authorities, which was accepted on 12 November 2020.

2.6 On 20 January 2021, the State Secretariat for Migration ordered the authors' removal on the basis of the readmission agreement with Greece, asserting that Greece was bound by international obligations and that non-governmental organizations in Greece could support them. The authors note that the State Secretariat for Migration failed to consider that, despite the presence of such organizations in Greece, Z.E. had experienced sexual abuse and had been followed by her husband and that she would therefore face great danger upon her return to that country.

2.7 On 25 March 2021, the authors appealed to the Federal Administrative Court, arguing that their removal would put Z.E. at risk of further sexual abuse and torture due to the lack of social, medical and legal support that would be available to them, the absence of police protection and their vulnerable situation, which would include being homeless. In a judgment dated 7 April 2021, the Court joined the authors' procedures and dismissed the appeals on the basis that Greece was a safe third country and that the authors would be able to obtain the necessary medical treatment, finding that the presumption of safety had not been rebutted. This resulted in an official exit date of 9 April 2021.

2.8 The authors attended an appointment with migration authorities on 7 May 2021 at which they were informed that the forced return was scheduled for 7 June 2021 and pre-removal detention for 27 May 2021.

2.9 The authors note that there is no available domestic remedy to appeal the judgment. Therefore, there are no remedies available to them that would be likely "to bring effective relief" from imminent irreparable harm.

### **Complaint**

3.1 The authors allege that their removal to Greece would violate their rights under articles 2 (c)–(f), 3 and 12 of the Convention. Switzerland failed to undertake an individualized, gender-sensitive assessment of Z.E.'s asylum application, contrary to articles 2 (e) and (f) and 3 of the Convention, as her interview was in the presence of a male interpreter. She was not given any opportunity to provide a properly recorded and detailed account of the gender-based threats and violence that she had experienced in Greece, and Switzerland therefore failed to consider the gender-specific risks that she faced.

3.2 If removed to Greece, Z.E., who depends heavily on A.E.'s support, would face a real, serious and personal risk of sexual violence and a lack of medical treatment, in breach of articles 2 (c)–(f), 3 and 12 of the Convention, as the removal of refugees with a particular vulnerability to Greece, with its desolate living conditions, violates the prohibition on non-refoulement. A separation from her brother, as her only person of trust, would involve further destabilization for her.

3.3 The authors claim that the authorities disregarded the persistent and extreme gender-based discrimination and violence experienced by Z.E. in Greece. They also claim that there is a complete lack of State protection and psychological assistance for recovery, supported by extensive evidence of inhuman treatment of recognized refugees in Greece. Sexual violence is widespread and systematic in Moria refugee camp and in Athens; the police presence is insufficient, and the police fail to take appropriate measures to protect female refugees from violence. The provision of assistance to survivors of sexual violence is also lacking. Space in shelters for victims of gender-based violence is limited. Police officers are insensitive to sexual violence and do not intervene. Incidents – if reported – are often not even recorded, and criminal proceedings are not initiated. The Working Group on discrimination against women and girls has raised concerns about the constant risk of sexual violence, as a result of which refugee women do not dare to go to the toilet at night and instead urinate in bottles or wear diapers. In its concluding observations on the seventh periodic report of Greece ([CAT/C/GRC/CO/7](#)), the Committee against Torture expressed its concern about the increasing sexual violence that female refugees face and the lack of protection afforded to them.

#### **State Party’s observations on admissibility and the merits**

4.1 On 27 January 2022, the State Party offered a detailed account of Z.E.’s circumstances in the Islamic Republic of Iran and the legal proceedings that ensued.

4.2 The State Party maintains that A.E. is not entitled to submit an individual communication to the Committee under the Optional Protocol. Only Z.E. has the active legitimacy and the victim status to invoke a possible violation of the Convention. Moreover, the complaints that the Convention has been violated relate exclusively to Z.E. A.E. simply claims to have witnessed the alleged abuse of his sister and the impact of that abuse and to be an important support for her. The State Party invites the Committee to declare the communication in relation to A.E. inadmissible owing to a lack of victim status.

4.3 According to the State Party, “exhaustion of domestic remedies” means that, in principle, there must be a final judgment against which an ordinary appeal may no longer be lodged with the Federal Administrative Court. Sex-based discrimination claimed before the Committee must have been expressly invoked at the stage of the domestic proceedings.<sup>3</sup> The authorities must be given the opportunity to examine the substance of the author’s arguments regarding a possible violation of the Convention and to take a decision on the matter. Such issues should be raised early in the domestic proceedings. Z.E. did not explicitly present to the Federal Administrative Court the complaints later submitted to the Committee.

4.4 The State Party notes that the authors essentially claim a violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) on the grounds that Greece was not complying with its obligations towards persons who had been granted international protection and that Z.E. was at risk of being exposed to inhuman and degrading treatment. Z.E. argued that the state of her health had not improved and that, in the absence of an individual guarantee that she would receive adequate and uninterrupted medical treatment, her return to Greece would be contrary to article 3 of that Convention. She also stated that, as a rape victim, she was a vulnerable person with serious health problems. She argued that her removal would put her in a situation of

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<sup>3</sup> See *Kayhan v. Turkey* (CEDAW/C/34/D/8/2005) and *M.E.N. v. Denmark* (CEDAW/C/55/D/35/2011).

extreme material distress. She referred to the problems generally faced by refugee women in Greece.

4.5 The State Party notes that Z.E. had never stated in her appeal that the hearing and individual risk assessment had not been gender-appropriate. She alleged that the state of her health had not been sufficiently considered and argued that the mere fact that Greece had been designated a safe third country was not sufficient to return her there. Under the procedural aspects of article 3 of the European Convention on Human Rights, the authorities would be required to examine the current and general situation in Greece. In addition, she criticized the risk assessment in general terms.

4.6 The State Party recalls that the Committee cannot replace the national authorities in assessing the facts and evidence, unless it can be established that the assessment is biased or based on prejudicial gender stereotypes that constitute discrimination against women, is manifestly arbitrary or amounts to a denial of justice.<sup>4</sup> The Committee has received several communications in which the author has claimed that she would be expelled to a State where she would be at risk of suffering serious forms of discrimination. Most of these communications were declared inadmissible by the Committee because the author's complaints were not sufficiently substantiated.

4.7 The State Party notes that Z.E.'s interview on 6 November 2020 complied with the legal requirements of article 5 of 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 (the Dublin III Regulation). As shown in the file, during the interview Z.E. had the opportunity to give a detailed account of her experience in Greece. Regarding the state of Z.E.'s health, the State Party notes that, on 4 February 2021, the State Secretariat for Migration ordered a psychiatric report. In the communication, Z.E. does not explain what she would have liked to add to what she said in her interview.

4.8 The State Party clarifies that Z.E. was interviewed by a woman in the presence of her legal representative and an interpreter. During the interview, Z.E.'s legal representative requested a medical examination and the provision of psychological and/or psychiatric treatment but did not raise any objections to the establishment of the facts of the case. At the end of the interview, the legal representative confirmed that she had no further questions, so it can be assumed that the alleged sexual or gender-based violence had been sufficiently clarified during the interview. Z.E. confirmed that she understood the statements in the minutes and that they corresponded to her free expression.

4.9 The reasoning given for their decisions shows that the authorities had considered the arguments presented by Z.E. at the various stages of the procedure, as well as the general situation, including the healthcare available in Greece. The authorities examined the case in compliance with their obligations under the Convention. The State Party recalls that, according to the Committee, provided they respect the procedural guarantees under international law, sovereign States are in principle free to determine the nature and structure of their refugee status determination systems and to establish their procedures.

4.10 The State Party considers that the authors have not sufficiently substantiated, for the purposes of admissibility, how the asylum procedure would have resulted in discrimination based on gender. There is nothing to suggest that the asylum

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<sup>4</sup> *F.H.A. v. Denmark* (CEDAW/C/75/D/108/2016), para. 6.8, and *M.S. v. Philippines* (CEDAW/C/58/D/30/2011), para. 6.4.

authorities did not carry out a sufficiently thorough examination of Z.E.'s asylum application or that the examination of her application, as a woman seeking asylum, could be vitiated by procedural flaws.

4.11 The State Party submits that, under article 31a (1) (a) of the Asylum Act, the State Secretariat for Migration will not consider an asylum application if the applicant can return to a safe third country, within the meaning of article 6a (2) (b), in which she has previously resided. Under article 6a (2) (b) of the Asylum Act, the Federal Council designates safe third countries, i.e. those in which it considers that the principle of non-refoulement within the meaning of article 5 (1) is effectively observed. Greece has been designated a safe third country. The legal presumption that safe third States respect their obligations under international law is not irrefutable. As the Federal Administrative Court pointed out in its judgment of 7 April 2021, the onus is on the persons concerned to rebut this presumption.

4.12 Pursuant to article 83 (5) of the Federal Act on Foreign Nationals and Integration of 16 December 2005, the Federal Council designates the States of origin or provenance or the regions of these States to which return is reasonable. If the foreign national being returned or expelled comes from one of these States, or from a European Union or European Free Trade Association State, enforcement of the return or expulsion is in principle required.

4.13 In its ruling of 7 April 2021, the Federal Administrative Court indicated that Greece is a signatory to the European Convention on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol relating to the Status of Refugees of 31 January 1967. The Court assumes that Greece complies with its obligations under these instruments and recognizes that, while living conditions in Greece are difficult, they cannot be qualified as inhuman or degrading treatment under article 3 of the European Convention on Human Rights and do not constitute a situation of existential urgency. The Court emphasized that people with international protection status are treated in the same way as Greek nationals as to assistance and access to the courts and public schools. They are treated in the same way as other foreign nationals as to employment and accommodation. Persons benefiting from protection may avail themselves of the guarantees of Directive/2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification and status of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (the Qualification Directive) concerning access to employment (art. 26), education (art. 27), social assistance (art. 29), healthcare (art. 30) and housing (art. 32).

4.14 The State Party submits that Greece has implemented the Qualification Directive and that there are no indications that it would, in the long term, deny Z.E. the minimum living conditions guaranteed by the Directive and expose her to a situation of existential emergency.

4.15 With regard to living conditions in Greece, it is clear from the authors' statements and from the decision of the State Secretariat for Migration that they have received support from Greece. The Court found that, although they had lived in Athens for more than a year, they had not sufficiently informed themselves about the opportunities for assistance offered by the authorities and private organizations. The fact that they were able to rent a room shows that it is possible for refugees to find accommodation. The Court noted that, after their arrival in Greece, they could have sought to enrol in a support programme.

4.16 The State Party notes that the authors have a sister in the United States of America who supports Z.E. financially. In this respect, Z.E.'s statement that she was homeless before leaving Greece may be questioned. In any case, the sister in the United States can be expected to support her siblings in the future, if necessary. The mere possibility that Z.E. might find herself, at an indeterminate time in the future and for unforeseeable reasons, in such a difficult living situation that it would amount to an existential emergency and permanent treatment contrary to human rights does not meet the threshold required to admit the existence of a real risk under article 3 of the European Convention on Human Rights.

4.17 The State Party emphasizes that, since leaving the Islamic Republic of Iran, Z.E. has always stayed with her brother. The Greek authorities respected the relationship of dependence between the siblings. They were housed together in Moria and Eleonas camps. Z.E. was never alone in Greece. It follows from the decision of the State Secretariat for Migration that Z.E. should, as far as possible, be returned to Greece with A.E. Consequently, Z.E.'s specific vulnerability as a woman travelling alone cannot be accepted.

4.18 Furthermore, it follows from the decision of the State Secretariat for Migration that the generally difficult living conditions in Greece and the lack of housing affect the entire population in Greece. It must be acknowledged that, for economic reasons, it can be difficult for persons with protection status to find accommodation. Due to the high unemployment rate, the persons concerned are often dependent on limited State assistance benefits. In terms of access to State benefits, there may be discrimination between persons with protection status and Greek nationals, because the former are not referred to the relevant authorities. Even though access by persons with protection status to social services in Greece may be difficult, the high requirements for a concrete risk of inhuman or degrading treatment or confirmation of a situation of material urgency are not met in this case.

4.19 The State Party notes that Z.E. obtained refugee status in Greece on 9 May 2019, and not on 5 November 2018 as claimed. A.E. stated during his individual interview on 6 November 2020 that he could have participated in the Hellenic Integration Support for Beneficiaries of International Protection programme.

4.20 The Federal Administrative Court concluded in its judgment of 7 April 2021 that Z.E.'s medical problems did not fall within the scope of "other very exceptional cases" mentioned by the European Court of Human Rights in *Paposhvili v. Belgium*<sup>5</sup> as possibly raising an issue under article 3 of the European Convention on Human Rights. Z.E. is not a seriously ill person who, if returned to Greece, would face a real risk of being exposed to a serious, rapid and irreversible decline in her health that would result in intense suffering or a significant reduction in her life expectancy, as the medical care that she needs is guaranteed in Greece.

4.21 Contrary to Z.E.'s allegations, the Federal Administrative Court concluded that the State Secretariat for Migration had established the relevant medical facts concerning the authors sufficiently. The Court considered that there was adequate medical infrastructure in Greece for persons with international protection status. According to the Court, post-traumatic stress disorder can be treated in Greece. Z.E. received psychiatric and psychological support in Greece through regular individual sessions with a specialist doctor. According to the letter from Médecins sans frontières dated 2 June 2020, Z.E. had benefited from individual sessions with a psychiatrist and individual counselling sessions with a psychologist from February 2020 until the date of the letter. That letter demonstrates that Z.E.'s claim that she had

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<sup>5</sup> European Court of Human Rights, *Paposhvili v. Belgium*, Application No. 41738/10, Judgment, 13 December 2016, para. 183.

received individual sessions only at the beginning of their stay in Eleonas camp is not correct. According to her statements, Z.E. voluntarily interrupted the treatment when she left Eleonas camp. The authors' presence in Eleonas camp was tolerated even after they had been granted international protection status. The psychiatric reports of 2018 and 2019 show that, during Z.E.'s stay on Lesbos, her health problems were treated with medication.

4.22 In view of the fact that Greece fulfilled the requirements of the Qualification Directive, that the Greek authorities would be informed of Z.E.'s medical needs before the transfer, that, once in Greece, Z.E. could turn again to Médecins sans frontières, that the reports available to the State Secretariat for Migration did not indicate a need for further inpatient psychiatric treatment, and that Z.E. could receive support from her family, the State Secretariat for Migration considered that it was not necessary to obtain individual guarantees from the Greek authorities regarding Z.E.'s medical treatment. After a detailed analysis of the situation, the Federal Administrative Court also found that such guarantees were not necessary.

4.23 With regard to the psychiatric report of 17 May 2021, the State Party notes that Z.E. has been receiving trauma therapy from a female specialist doctor since 23 December 2020. One aspect of this therapy is to teach her the "skills" that should enable her to better manage stressful situations. The State Party stresses that Z.E.'s ability to travel will be definitively examined shortly before her transfer to Greece. The State Secretariat for Migration will consider Z.E.'s current state of health when organizing her transfer and will inform the Greek authorities prior to the transfer of any medical treatment that she requires. Other medical examinations may be carried out as part of the organization of the transfer. Finally, Z.E. should be returned to Greece with her brother.

4.24 With regard to the feeling of insecurity in Greece and Z.E.'s fear of her husband and his family, the State Party stresses that Greece is a State governed by the rule of law, with a functioning police force and judicial system. If necessary, Z.E. and A.E. can turn to those authorities.

4.25 With regard to the allegation that Z.E.'s husband had followed her to Greece, the Federal Administrative Court noted that the statements of Z.E. and A.E. on this subject were contradictory and questionable. The authors had spoken to the police in the past. They reported the alleged incident with Z.E.'s husband to the police, who did what they could. Z.E. did not leave Greece immediately after obtaining her refugee document, which is an indication that there was no threat in Greece. There are several organizations in Athens specializing in assistance for victims of sexual violence that offer a comprehensive range of services.

4.26 Given that the authors were transferred to Eleonas camp in Athens in February 2020, the situation on Lesbos was no longer relevant at the time of their departure from Greece. During her stay in Moria camp, Z.E. was assisted by the Women in Solidarity House organization.

4.27 The State Party considers that the authors have not sufficiently substantiated that a return to Greece would expose Z.E. to a real, personal and foreseeable risk of being subjected to serious forms of sexual violence. Nor have they demonstrated that the assessment made by the authorities was biased or based on prejudicial gender stereotypes that discriminate against women, was manifestly arbitrary or amounted to a denial of justice. The State Party invites the Committee to declare the communication inadmissible under article 4 (2) (c) of the Optional Protocol.

4.28 On the merits, the State Party notes that the authorities examined Z.E.'s case in compliance with their obligations under the Convention. In the communication, the authors did not provide information that would demonstrate a failure to conduct a

gender-sensitive assessment of the alleged risk in Greece. The State Party asserts that there is no real, personal and foreseeable risk that Z.E. would be subjected to serious forms of discrimination, sexual or gender-based violence or inhuman treatment if returned to Greece.

**Authors' comments on the State Party's observations on admissibility and the merits**

5.1 On 17 March 2023, the authors stated that they had submitted a request for reconsideration with the State Secretariat for Migration on 1 July 2022, after the Federal Administrative Court had altered its assessment of the situation in Greece in a leading judgment dated 28 March 2022.

5.2 The State Secretariat for Migration summarily examined the request for reconsideration, found it devoid of merit and requested an advance fee before admitting the reconsideration request. Given the authors' lack of financial means, they were not able to pay this fee, leading to an inadmissibility decision. The appeal against the decision was accepted by the Federal Administrative Court, which forced the State Secretariat for Migration to issue a material decision on 16 January 2023. As the State Secretariat for Migration rejected the reconsideration request on the basis of the same arguments, an appeal was submitted against this decision again, which, at the time the comments were submitted to the Committee, was pending before the Court.

5.3 The authors maintain that communications can be submitted not only by or on behalf of women, but also by or on behalf of people of other genders.<sup>6</sup> This interpretation was adopted by the Committee in the case of *M.W. v. Denmark* (CEDAW/C/63/D/46/2012), in which it granted victim status to M.W.'s son, O.W., and laid out the foundation for a more inclusive interpretation of victim standing before the Committee. The Committee even stated that the victim status of O.W. was not conditional on having submitted the communication together with his mother; rather, O.W. would have had victim status if he had petitioned on his own.<sup>7</sup> Moreover, this interpretation of victim status makes sense in light of the fact that persons identifying with the female gender are not the only ones who can experience or who are affected by sexual and gender-based violence.

5.4 A.E. helped Z.E. to flee from her violent husband and tried to protect her from being raped. He has been affected by sexual and gender-based violence, as he witnessed everything that happened to Z.E. and was not able to prevent it, which was traumatizing for him, especially as Z.E. is his sister, with whom he has a very close relationship. Accordingly, A.E. has been highly affected by sexual and gender-based violence. There are no grounds to disallow the inclusion of a female author's brother as a complainant before the Committee when other close male family members, such as husbands or sons, are approved as complainants, as shown above.

5.5 The well-being of the women in such cases is contingent on the close relationship and presence of the relevant male person, which establishes an extraordinary dependency that justifies the inclusion of a man as a complainant before the Committee. In the present case, Z.E. is highly dependent on A.E., in particular with regard to her mental health. She must not be separated from her only person of trust, which the State Party also confirms in its observations: the State Party underlines that a return to Greece would have to take place for both of them together,

<sup>6</sup> Article 2 of the Optional Protocol to the Convention confers active legitimacy on "individuals" or "groups of individuals".

<sup>7</sup> Jessica Tueller, "Not hers alone: victim standing before the CEDAW Committee after *M.W. v. Denmark*", *The Yale Law Journal*, vol. 131 (2021).

that the Greek authorities recognized the relationship of dependence and that the Federal Administrative Court acknowledged the dependency of Z.E. on A.E. and issued a single decision for the two of them. Finally, if the proceedings regarding Z.E. and A.E. had not been combined, it must be assumed that A.E. would have already been removed by the State Party and Z.E. would have been left alone without her only person of trust – which, as the State Party accepted, would leave Z.E. in an even more helpless and stressful situation and would not be acceptable.

5.6 The authors note that there is no duty under the Convention to raise a claim of sexual and gender-based violence within a specific domestic procedure. On the contrary, what is important is that Z.E. raised the claim in substance at the domestic level in order to give the domestic authorities and/or courts an opportunity to deal with the claim. The sexual and gender-based violence was explicitly mentioned in medical reports submitted to the State Secretariat for Migration as early as December 2020; during Z.E.'s interview under the Dublin III Regulation; and in the appeal to the Federal Administrative Court. These reports, the statements in the interview, and the reasoning in the Court appeal were sufficient evidence indicating a pertinent experience of sexual and gender-based violence, so the State Party ought to have identified Z.E. as having specific protection needs and investigated this aspect further.

5.7 During the interview under the Dublin III Regulation, of which only a summary statement exists on file, Z.E. mentioned incidents of sexual and gender-based violence but was not specifically asked about them, even though that would have been imperative, given that she is a young woman who had fled Greece. In addition to stating that she had been raped in a camp in Greece, Z.E. indicated that she had felt at risk throughout her stay in the country. Since Z.E. had declared herself a survivor of sexual and gender-based violence at the very first opportunity, the State Secretariat for Migration had violated its obligation to investigate on its own initiative, to explicitly ask the authors about sexual and gender-based violence and to conduct a gender-sensitive interview with a female-only team.

5.8 Z.E. required an all-female team – including a female interpreter – in order to be able to have the confidence to recount her traumatizing experiences of sexual and gender-based violence.

5.9 The authors raised the fact that no individualized risk assessment had been conducted in their appeal dated 25 March 2021. The Federal Administrative Court recognized this claim in its final decision, stating that the authors claimed that the State Secretariat for Migration had simply relied on the assumption that Greece was safe. The authors did in fact challenge the lack of an individualized risk assessment in the course of the domestic proceedings, and the State Party's observations are inaccurate. Moreover, it is the State Party's obligation to conduct an individualized risk assessment in each case.

5.10 In all the decisions issued by the State Secretariat for Migration or the Federal Administrative Court, the State Party refers to theoretical legal commitments by Greece based on various international conventions, and no evidence was brought up by the State Party besides the rights that the authors should have in theory, but that they in fact do not have. Country reports by respected organizations were disregarded in all decisions. The listing of relevant international law provisions, without assessing their implementation in practice, does not fulfil the requirements for an individual, gender-sensitive case assessment as required under articles 2 (e) and (f) and 3 of the Convention. If returned to Greece, the authors would face a real risk of homelessness and a lack of food, social assistance and medical and psychological support, as well as lack of protection from future sexual and gender-based violence.

5.11 The authors claim that, since spring 2020, the housing situation for beneficiaries of protection in Greece has further worsened. In March 2020, an amendment to Law No. 4636/2019 came into force, according to which recognized refugees receive State housing for 30 days only, instead of six months, from the date of recognition, which has a significantly negative impact on refugees in Greece. In addition to this, Emergency Support to Integration and Accommodation (ESTIA II), a project that provided accommodation for vulnerable people, had closed entirely by the end of 2022, and the Government of Greece prioritizes Ukrainian refugees when it comes to housing, rendering it almost impossible for other refugees to find any shelter.

5.12 In Greece, Z.E., a survivor of serious sexual and gender-based violence, would, under hardly any circumstances, have access to the rehabilitation services that she urgently requires and currently has in the State Party. While Z.E. indeed did have the chance to attend several mental health support sessions in Greece provided by a non-governmental organization, this can by no means be considered actual therapy, which is clearly indicated and desperately required. Rather, the sessions in Greece were a crisis intervention, which falls far short of constituting the required rehabilitation, and it remains entirely unclear whether even this access to crisis intervention would be available upon return. While it is not disputed that there are certain medical and mental health services offered in Greece, the relevant question is whether the authors would have access to them upon returning to Greece.

5.13 Z.E. claims that, in the readmission request by the State Secretariat for Migration dated 10 November 2020, her urgently required treatment was not even mentioned: no references to her health issues were made, despite her having suffered from sexual and gender-based violence and severe mental health issues. Therefore, in the readmission process, the State Secretariat for Migration failed to inform the Greek authorities about the facts relevant to the deportation to Greece. In the exit interview, the migration office threatened Z.E. with coercive measures such as detention and forced deportation by a special flight, accompanied by the police, which reflects a lack of consideration of her health problems, as the transfer modality was not adapted to particularly vulnerable persons.

5.14 The Federal Administrative Court, in its ruling of 28 March 2022, had decided that the return of vulnerable individuals recognized as refugees to Greece is unreasonable and can no longer be enforced.<sup>8</sup> According to that new case law, the authors would be considered particularly vulnerable, and the execution of the return would no longer be considered reasonable. As the Court recognized, the situation on the ground differs significantly from theoretical legal obligations and requires an individual assessment of the case, which the State Party did not conduct. In Greece, international commitments regarding human rights are disregarded and, in cases of judicial review, decisions, even by the European Court of Human Rights, are not implemented. Charities (overburdened with work, substantially underfinanced and difficult to access) are being restricted in their work by the Greek authorities. Furthermore, they cannot replace the functions that should be assumed by the State, when it comes to the protection of survivors of sexual and gender-based violence.

5.15 According to the authors, a simple reference to the alleged possibility that the authors could seek help from the police or other organizations, in particular in cases of threats of sexual and gender-based violence, is not sufficient to address the specific risks that they would face upon returning to Greece, since those organizations would not offer relief. The State Party's argument can be refuted given that Z.E. tried to get help from the police after she had seen her violent husband but had not received either assistance or a referral to a support service. It is widely known that young single

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<sup>8</sup> Federal Administrative Court, cases Nos. E-3427/2021 and E-3431/2021, Judgment, 28 March 2022.

women, who are at a real risk of exploitation and sexual abuse, are without legal or physical protection by the police in the Attica region.

5.16 Furthermore, it is not realistic that the authors' sister would be able to look after her traumatized and suicidal sister remotely, from the United States, and protect her from sexual and gender-based violence in Greece, since the sister's financial resources are very limited.

#### **Additional submissions of the parties**

6.1 On 15 May 2023, the State Party noted that the authors had submitted a new medical report, dated 15 February 2023, attesting that Z.E. suffers from post-traumatic stress disorder, had been following treatment since December 2020, and that forced removal would constitute a danger, given her history of suicidal tendencies, impulsivity and irritability. The State Party considers that this report does not contain new elements that would alter its arguments and conclusions.

6.2 With regard to the evolution of the jurisprudence of the Federal Administrative Court, the State Party explains that stricter conditions on removal to Greece apply for certain vulnerable groups, such as families with children, unaccompanied minors and persons suffering from grave illness. For all other persons, including pregnant women and persons suffering from post-traumatic stress disorder and depressive episodes, the presumption that a removal to Greece is, in principle, reasonable remains valid. The State Secretariat for Migration has considered the evolution of Court jurisprudence in its decision. Z.E.'s appeal against that decision is still pending, and therefore there has been no exhaustion of domestic remedies in this regard.

6.3 On 31 May 2023, the authors stated that they had no further comments.

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

##### *Consideration of admissibility*

7.1 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.

7.2 The Committee takes note of the State Party's argument regarding the lack of victim status of A.E. The Committee recalls that article 2 of the Optional Protocol establishes that communications may be submitted by or on behalf of "individuals", without limiting the victim status to "women". Article 2 also provides that communications may be submitted by or on behalf of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State. The Committee notes the authors' assertion of their close connection and the fact that A.E. has been an important support person for Z.E. However, the Committee considers that the authors have failed to provide sufficient information that would indicate that A.E. would suffer violations of rights under articles 2 (c)–(f), 3 and 12 of the Convention if removed to Greece, as the complaints relate exclusively to Z.E. The Committee considers that the authors' general reference to A.E.'s witnessing of the alleged abuse and the impact of the sexual and gender-based violence on Z.E. is insufficient to establish his victim status under the Optional Protocol. In the light of the foregoing, the Committee considers that it is precluded, by the requirements of articles 2 and 4 (2) (c) of the Optional Protocol, from considering the communication in relation to A.E.

7.3 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 Z.E. did not raise before the Federal Administrative Court, at least not explicitly, the complaints that she raised before the Committee, while discrimination on the grounds of sex claimed before the Committee must be expressly invoked at the stage of the domestic proceedings.

7.4 The Committee recalls its jurisprudence, which establishes that authors must have raised, in substance, at the domestic level the claims that they wish to bring before the Committee<sup>9</sup> in order to give the domestic authorities and courts an opportunity to take a decision thereon.<sup>10</sup> It notes that Z.E., as early as her interview under the Dublin III Regulation on 6 November 2020, mentioned incidents of sexual and gender-based violence, wherein she stated that she had been beaten twice and choked in Eleonas camp and that she had been raped in Moria camp. She also mentioned these incidents in her appeal to the Federal Administrative Court of 25 March 2021, thereby giving the authorities the opportunity to examine those claims. The Committee notes that Z.E., in her appeal to the Court of 25 March 2021, raised the fact that no individualized risk assessment had been conducted. In the light of the above, the Committee considers that Z.E. has exhausted domestic remedies because she had specifically claimed in her interview under the Dublin III Regulation and in her appeal to the Federal Administrative Court that she had been subjected to rape and beatings in Greece; the substance of the claim brought before the Committee could therefore have been resolved by the Court. Accordingly, it considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from examining the communication.

7.5 The Committee notes Z.E.'s claims that her removal to Greece under the Dublin III Regulation would amount to a violation of her rights under articles 2 (c)–(f), 3 and 12 of the Convention. It also notes the State Party's argument that Z.E. has failed to establish that the assessment by the State Secretariat for Migration and the Federal Administrative Court was arbitrary or amounted to a manifest error or a denial of justice and has failed to identify any irregularity in the decision-making process or any risk factors that the authorities failed to take properly into account.

7.6 In the present case, the Committee notes Z.E.'s claim that the State Party has failed to undertake an individualized and gender-sensitive assessment of her asylum and reconsideration applications. The Committee also notes Z.E.'s claims that, if removed to Greece, she would face a real, serious and personal risk of gender-based violence and would lack the medical treatment that she needs as a survivor of sexual and gender-based violence, owing to her experience in Greece where she had been raped and beaten.

7.7 In view of the information provided, the Committee considers that Z.E.'s claims are sufficiently substantiated for the purposes of admissibility. Accordingly, it proceeds with the examination of the merits of the communication.

#### *Consideration of the merits*

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

<sup>9</sup> *Kayhan v. Turkey*, 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.

<sup>10</sup> *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.

8.2 The Committee notes Z.E.'s undisputed claim that she is a survivor of gender-based violence that was inflicted on her from an early age in the Islamic Republic of Iran, for which she was recognized as a refugee in Greece. The Committee also notes her claim that she was subjected to gender-based violence in Lesbos, Greece, where she was raped, regardless of the fact that she was with her brother. The Committee notes that the sustained violence led to the deterioration of her mental health, resulting in suicidal ideation. The Committee observes that Z.E.'s vulnerable mental health has been ascertained in medical reports by psychiatrists issued in Greece and in the State Party.

8.3 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.<sup>11</sup>

8.4 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 further recalls that, under international human rights law, the non-refoulement principle imposed a duty on States to refrain from returning a person to a jurisdiction in which he or she might face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment.<sup>12</sup> The Committee also 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, was discrimination within the meaning of article 1 of the Convention, and that such rights included the right to life and the right not to be subjected to torture.<sup>13</sup> The Committee 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 comprised two aspects of State responsibility for such violence, that which resulted from the acts or omissions of both the State Party or its actors, on the one hand, and non-State actors, on the other.<sup>14</sup> A State Party would therefore violate 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-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.<sup>15</sup>

8.5 The Committee notes the State Party's contention that Z.E.'s allegations were thoroughly examined by the immigration authorities. It observes that they were dismissed because the authorities considered that Greece was a safe third country and that Z.E. would be able to obtain access to the necessary medical treatment and services there.

<sup>11</sup> *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011), para. 8.10, and *R.S.A.A. et al. v. Denmark* (CEDAW/C/73/D/86/2015), para. 7.7.

<sup>12</sup> General recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, para. 21.

<sup>13</sup> General recommendation No. 19 (1992) on violence against women, para. 7.

<sup>14</sup> General recommendation No. 35, para. 21.

<sup>15</sup> *A. v. Denmark* (CEDAW/C/62/D/53/2013), para. 8.6, and *R.S.A.A. et al. v. Denmark*, para. 7.8.

8.6 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,<sup>16</sup> 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 whether there was any irregularity and arbitrariness in the decision-making process regarding Z.E.'s asylum application to the extent that the State Party authorities failed to properly assess the risk of serious gender-based violence if she was returned to Greece under the Dublin III Regulation. The Committee notes Z.E.'s statement that, although she was interviewed by a woman, the interpreter was a man. 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.

8.7 In the present case, the Committee considers that it was incumbent upon the State Party to undertake an individualized, trauma-informed and gender-based assessment of the real, personal and foreseeable risk that Z.E. would face, as a woman victim of gender-based violence suffering suicidal ideation.

8.8 The Committee considers that the State Party did not appear to accord due weight to Z.E.'s vulnerable status as a refugee and victim of gender-based violence with suicidal ideation. The Committee therefore considers that a more thorough risk assessment would have been required by the exigencies of the case.<sup>17</sup>

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

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

- (a) Concerning Z.E.:
  - (i) Reopen her asylum request, taking into account the Committee's views;
  - (ii) Refrain from returning her to Greece while the reassessment of her case is still pending;
- (b) General:

Take all measures necessary to ensure that refugees who are victims of gender-based violence 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.

11. 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.

<sup>16</sup> *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.

<sup>17</sup> 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.

## Annex

### **Joint opinion of Committee members Hiroko Akizuki, Corinne Dettmeijer-Vermeulen and Jelena Pia-Comella (dissenting)**

1. We agree with the Committee that it is precluded, by the requirements of articles 2 and 4 (2) (c) of the Optional Protocol, from considering the communication in relation to A.E.
2. We also agree with the Committee's view that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from examining the communication in relation to Z.E.
3. We are, however, of the opinion that the communication in relation to Z.E. is inadmissible under article 4 (2) (c) of the Optional Protocol.
4. We reiterate that, according to the Committee's 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.<sup>1</sup>
5. We agree with the Committee's observations as noted in paragraph 8.6.
6. We also agree with the Committee that it was incumbent upon the State Party to undertake an individualized and gender-based assessment of the real, personal and foreseeable risks that Z.E. would face, as a woman victim of gender-based violence. However, we note that, in our opinion, the State Party has exercised due diligence and undertaken the required individualized and gender-based assessment.
7. 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,<sup>2</sup> 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.
8. 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 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 on the Elimination of All Forms of Discrimination against Women.<sup>3</sup> 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 to refrain from returning an individual where a real, personal and imminent risk exists that she will be exposed to gender-based violence.

<sup>1</sup> *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011), para. 8.10, and *F.H.A. v. Denmark* (CEDAW/C/75/D/108/2016), para. 6.5.

<sup>2</sup> *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.

<sup>3</sup> By analogy, *J.M. v. Chile* (CRC/C/90/D/121/2020), para. 7.4.

9. We note, however, the State Party's arguments that Z.E. was interviewed by female staff, with interpretation, offered ample opportunities to elaborate on her statements, and that a psychiatric report was ordered. We further note that, while Z.E. mentioned the episode of sexual violence in Greece, the focus of her asylum request was her health situation. In this regard, migration authorities assessed Z.E.'s claims but noted, among other issues, that the psychiatric reports of 2018 and 2019 showed that her health issues had been medically treated during her stay in Lesbos and that her medical condition did not reach the threshold to engage the State Party's non-refoulement obligations. With regard to the risk of facing serious violations of human rights, including sexual and gender-based violence, which is the focus of the present communication, we note that this risk was also assessed by national authorities, which concluded that Greek authorities would be able to protect her against such violence. Regarding the alleged risk by her former husband, raised before the Committee in a very generic manner, we note that this was also assessed by the Federal Administrative Court, which deemed the authors' statements contradictory. The Court further noted that Z.E. did not leave Greece immediately after obtaining her refugee status, which was taken as an indication that there was no threat against her in Greece. We also note the State Party's argument that, since leaving the Islamic Republic of Iran, Z.E. had always stayed with her brother and the Greek authorities had respected the relationship of dependence between the sister and her brother, so they had been housed together in Moria and Eleonas camps and Z.E. was never alone in Greece, leading to the conclusion that she could therefore not be considered a woman travelling alone.

10. We note the Federal Administrative Court judgment of 7 April 2021, in which the Court states: "On 4 February 2021, the State Secretariat for Migration commissioned the preparation of a psychiatric report. In the psychiatric report subsequently submitted by the 13 February 2021, the complainant (Z.E.) was certified with post-traumatic stress disorder and dissociative disorder. This was followed by further medical reports from 26 February 2021 and from 2 March 2021. The discharge report of 26 February 2021 from Psychiatric Clinic Münsterlingen stated, among other things, that there were no longer any indications that the complainant was acutely suicidal or at risk of harming others."

11. Considering these circumstances, we cannot conclude that the assessment of Z.E.'s claims was clearly arbitrary or that it amounted to a denial of justice. We further consider that Z.E. has not sufficiently substantiated, for the purposes of admissibility, her claim that, as a woman survivor of sexual and gender-based violence, she would face a real, personal and foreseeable risk of sexual violence if she were returned to Greece. Accordingly, we conclude that the communication is inadmissible under article 4 (2) (c) of the Optional Protocol.