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**Committee against Torture****Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1041/2020\* \*\***

<i>Communication submitted by:</i>	A.J. (represented by counsels, Vadim Drozdov and Nikita Matyushchenkov)
<i>Alleged victim:</i>	A.J., X, Y and Z
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	3 December 2020 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 7 December 2020 (not issued in document form)
<i>Date of present decision:</i>	26 April 2024
<i>Subject matter:</i>	Deportation to Poland under the Dublin III Regulation; summary removal (chain refoulement) to the Russian Federation
<i>Procedural issues:</i>	Admissibility – exhaustion of domestic remedies; admissibility – manifestly ill-founded
<i>Substantive issues:</i>	Cruel, inhuman or degrading treatment or punishment; health; risk to life or risk of torture or other cruel, inhuman or degrading treatment or punishment, if deported to country of origin (non-refoulement); refugee status; rehabilitation
<i>Articles of the Convention:</i>	3, 14 and 16

1.1 The complainant is A.J.,<sup>1</sup> a national of the Russian Federation born in 1986. He submits the communication on his own behalf and on behalf of his three children: X, born in 2007; Y, born in 2009; and Z, born in 2013. He claims that by removing him to Poland, the State party would violate his rights under articles 3, 14 and 16 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 1 January 1987. The complainant is represented by counsel.

\* Adopted by the Committee at its seventy-ninth session (15 April–10 May 2024).

\*\* The following members of the Committee participated in the examination of the communication: Todd Buchwald, Jorge Contesse, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ana Racu, Abderrazak Rouwane and Peter Vedel Kessing. Pursuant to rule 109, read in conjunction with rule 15, of the Committee's rules of procedure, and paragraph 10 of the guidelines on the independence and impartiality of members of the human rights treaty bodies (the Addis Ababa guidelines), Bakhtiyar Tuzmukhamedov did not participate in the examination of the communication.

<sup>1</sup> The complainant requested anonymity.



1.2 On 7 December 2020, the Committee, acting through its Rapporteur on new complaints and interim measures, issued a request for interim measures under rule 114 of the Committee's rules of procedure, requesting the State party to suspend the removal of the complainant to Poland while the communication was pending before the Committee.

### **Facts as submitted by the complainant**

2.1 The complainant was born and raised in Chechnya. He and his ex-wife – also a Russian national of Chechen origin – got married in 2005. In 2006, their first son was born, but died the same year following a bomb attack on their home.<sup>2</sup> The complainant fled to Poland with his wife and applied for asylum. In Poland their second child was born. In the camp where they lived, the hygienic conditions were very precarious, and the mother developed severe asthma and vomited very often. Their daughter was born with severe breathing difficulties. Therefore, after the birth, she had to stay in hospital for one month. There was no bed for the mother, so she slept in a chair for the whole month. The complainant went to the hospital every day and brought food.

2.2 The complainant and his wife believed that in Poland they were sought by the Russian secret services.<sup>3</sup> Therefore, after one and a half years in Poland, the family fled to Austria, where they again applied for asylum. The application was rejected,<sup>4</sup> so the family fled to Switzerland, where they applied for asylum on 5 July 2009. In September 2009, the complainant was admitted to outpatient treatment in the crisis intervention centre of the University Psychiatric Services Bern (UPD) – a hospital specializing in the treatment of mental health conditions.<sup>5</sup>

2.3 In 2010, the complainant's brother was detained by the authorities in Chechnya. While in custody, he was tortured, including with electric shocks. The authorities demanded a ransom from the family for his release. After the ransom was paid, the complainant's brother was released, but he died a few days after the release from the effects of the electric shocks. The official reason of the death was heart failure.<sup>6</sup>

2.4 On 16 November 2012, the family's asylum application was rejected. The appeal against this decision was rejected by the Federal Administrative Court on 17 July 2013. In August 2013, the complainant attempted suicide,<sup>7</sup> so he was hospitalized in the crisis intervention centre of the UPD, and then resumed outpatient treatment there.

2.5 On 4 December 2014, the family requested the re-examination of the decision of 16 November 2012, which was rejected by the State Secretariat for Migration on 5 November 2015. On 12 January 2016, the Federal Administrative Court rejected their appeal.<sup>8</sup> The complainant's last appointment at the UPD before his departure from Switzerland was in July 2016. At that time, he was diagnosed with post-traumatic stress disorder, recurrent depressive disorder and was treated with Mirtazapine and Quetiapine.

2.6 The complainant and his ex-wife decided that he would return to the Russian Federation alone to investigate whether it was safe for the whole family to return. Upon arrival in Moscow on 10 August 2016, the complainant was detained by agents of the Federal Security Service and interrogated under the accusation of not having been living in Switzerland, but in Syria. After several hours, the complainant was released. He then returned to Chechnya. While in Chechnya, officers of a security service combating terrorism came to him several times to interrogate him. On 13 September 2016, persons in military uniforms came at night to the house where he was staying and took him away. He was put in a concrete cell with no windows. He did not know where he was. He was tortured with electric shocks

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<sup>2</sup> The complainant believes that soldiers wanted to put pressure on him because he was suspected of collaboration with Chechen rebels.

<sup>3</sup> No further details.

<sup>4</sup> No further details.

<sup>5</sup> No further details. He then mentions that he was in outpatient treatment between February and October 2010.

<sup>6</sup> No evidence provided.

<sup>7</sup> Confirmed in his medical history.

<sup>8</sup> On 16 May 2017, the Federal Administrative Court also rejected an application for review of the judgment of 12 January 2016.

and was beaten. The captors demanded information about the Chechen government's opponents abroad and wanted to make him an informant. His family had to pay a ransom of 11,000 euros, after which the complainant was released.<sup>9</sup> The torture further damaged the complainant's mental health: he was constantly scared, had nightmares and was barely able to concentrate.

2.7 After release, the complainant sought various ways to re-enter Switzerland: he applied for visas at several European embassies in the Russian Federation and tried to enter the European Union through the border between Belarus and Poland. On 30 March 2018, the complainant entered Poland and submitted an asylum application there. He had to bribe a Polish official in order to be admitted into the country. Before that, he had made numerous unsuccessful attempts to submit an asylum application at the border crossing at Terespol. Shortly after the admission into Poland, he moved to Austria. He stayed in Vienna with his relatives for about two years. He did not document his stay in Austria.

2.8 While the complainant was away from Switzerland, his ex-wife filed for divorce, which was pronounced on 30 July 2019 by the Regional Court of Bern-Mittelland. The court awarded the mother the full custody of the children. The divorce decision entered into force on 27 August 2019, but the complainant was not notified about these proceedings. On 12 February 2020, the mother and the children were granted refugee status in Switzerland.

2.9 At the beginning of March 2020, the complainant entered Switzerland and reunited with his children. Although the children live with their mother, they meet regularly with the complainant, go for walks, and call each other. On 3 June 2020, the complainant submitted an application for asylum. The State Secretariat for Migration noted that he had submitted an application for asylum in Poland on 30 March 2018. On 11 June 2020, the complainant was interviewed about his itinerary to Switzerland, his objections to the removal to Poland and Austria under the Dublin III Regulation and his health condition. During the interview, the complainant stated that he did not want to return to Poland because he had had to pay a bribe in order to be admitted into that country. He further claimed that Polish authorities violate laws, that security in Poland was bad, and that he wanted to remain with his children. As to his health condition, he stated that he was doing well.

2.10 On 15 June 2020, under the Dublin III Regulation, the State Secretariat for Migration requested the Polish authorities to admit the complainant's transfer to Poland. On 29 June 2020, the Polish authorities accepted the request. On 2 July 2020, the complainant's legal representative submitted to the State Secretariat for Migration a declaration of consent from his ex-wife for family reunification in accordance with article 9 of the Dublin III Regulation.

2.11 On 13 July 2020, the State Secretariat for Migration found that Switzerland was not responsible for the complainant's asylum application and ordered his deportation to Poland. It noted that the complainant had not produced any medical or other type of evidence in support of his claims. With respect to Poland, the State Secretariat noted that there were no substantial grounds for considering that in Poland there were deficiencies in the asylum procedure and reception conditions for asylum seekers which would entail a risk of inhuman or degrading treatment within the meaning of article 3 of the European Convention on Human Rights, that there were no concrete indications that Poland would not comply with its obligations under international law and would not properly implement asylum and removal procedures or that the complainant would be transferred to his country of origin without having his asylum application examined. With regard to complainant's objection to deportation to Poland on the grounds that he wanted to live with his children, the State Secretariat stated that family life within the meaning of article 8 of the European Convention on Human Rights did not exist between him and the children as they had been separated between 10 August 2016 and March 2020. It also noted that the Convention on the Rights of the Child only guarantees that the child has the actual possibility of maintaining contact with both parents, but does not grant any entitlement to a residence permit or to joint custody.

2.12 On 17 July 2020, the complainant resumed psychiatric treatment at the UPD. On 23 July 2020, the Federal Administrative Court rejected his appeal against the State

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<sup>9</sup> The complainant submitted four photos with bruises on his face and back. However, there are no identification elements as to the date when the photos were taken.

Secretariat's decision, considering that there were no reasons to believe that the asylum procedure and reception conditions for asylum seekers in Poland show systemic weaknesses that would create a risk of inhuman or degrading treatment. It also noted that nothing sufficiently concrete can be inferred from the file as to the intensity, stability, and seriousness of a living relationship with his children, of whom he could not even give the exact dates of birth when he took up residence. The Federal Administrative Court finally noted that the complainant did not claim any health problems which would prevent him from being transferred to Poland. On 10 September 2020, the complainant was granted joint custody of his children.

2.13 On 17 September 2020, the complainant's doctors at the UPD issued a report according to which the complainant suffers from post-traumatic stress disorder and recurrent depressive disorder. At the material time, the latter condition was characterised as a severe episode without psychotic symptoms. The condition was associated with persecution and torture in Chechnya, the death of the first child and younger brother in Chechnya, and the stressful living conditions due to unwanted separation from his family. The doctors noted that evidence-based psychotherapeutic treatment of depression (drug and psychotherapeutic treatment) and post-traumatic stress disorder (with a focus on trauma exposure) in a setting that is as stable and health-promoting as possible is urgently indicated. They also noted that in Poland, the complainant could not fall back on any social and family network that could support him.

2.14 On 18 October 2020, the complainant submitted to the State Secretariat for Migration a request for re-examination of its decision of 13 July 2020 ordering his deportation to Poland. He argued that circumstances had changed significantly since the first decision was taken, in particular regarding his health. He produced a medical report dated 17 September 2020, a medical certificate dated 13 October 2020 and a psychological assessment of his children dated 8 October 2020. The complainant submitted that his deportation to Poland would sever his family life with his children, would have dire consequences for his mental health and that of his children, and would impair their development.

2.15 On 29 October 2020, the State Secretariat for Migration rejected his request. As far as the complainant's medical condition was concerned, the State Secretariat noted that Poland has an adequate medical infrastructure and is obliged under article 19 (1) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 (the so-called admission directive) to provide him with the necessary medical care, which includes at least emergency care and essential treatment of illness and serious mental disorders. By an interim decision of 20 November 2020, the Federal Administrative Court upheld the findings of the State Secretariat and considered that the complainant's appeal did not have a chance of succeeding, so it decided that it would only review it upon prepayment of the procedural fees of 1,500 Swiss francs. However, the complainant did not pay the court fees.

### **Complaint**

3.1 The complainant alleges that his transfer to Poland would violate his rights under articles 3 and 14 of the Convention and his children's rights under article 16 of the Convention. He claims that he will not have access to an adequate and fair asylum procedure in Poland. As a result, he would face a real risk of chain refoulement to the Russian Federation, where he would risk being subjected to treatment prohibited by the Convention.

3.2 The complainant notes that in July 2020, the European Court of Human Rights established the existence of a state policy of the Polish authorities of not accepting for review applications for international protection submitted by foreigners, in particular by Russian nationals of Chechen origin, at the border between Belarus and Poland.<sup>10</sup>

3.3 The complainant also denounces the fact that the Swiss authorities did not seek assurances from their Polish counterparts that he would not be detained upon arrival in Poland. He claims that according to a recent report about asylum system in Poland, the authorities detain asylum-seekers returned to Poland under the Dublin III Regulation even if such

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<sup>10</sup> *M.K. and Others v. Poland*, nos. 40503/17, 42902/17 and 43643/17, 23 July 2020, paras. 209-210.

asylum-seekers are victims of violence and suffer from a severe psychological condition.<sup>11</sup> The report mentions that asylum-seekers suffering from mental conditions are not provided with adequate treatment.<sup>12</sup> The complainant also notes that in 2019, the Committee expressed concern that in the State party, there was insufficient capacity to identify asylum seekers who are victims of torture and lack of adequate protection and care for survivors of sexual and gender-based violence.<sup>13</sup>

3.4 In conclusion, information about the practice of detention by the Polish authorities of returnees and the information about the reception conditions demonstrate that upon return to Poland, the complainant is very likely to be detained and not to have access to appropriate medical treatment. Given his background as a survivor of torture suffering from severe mental health conditions and under the risk of suicide, such living conditions would amount to ill-treatment comparable to torture. Accordingly, the Swiss authorities, by depriving him of the conditions conducive to recovery and rehabilitation and exposing him to ill-treatment comparable to torture, would breach his rights under articles 3, 14 and 16 of the Convention.

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

4.1 On 9 August 2021, the State party submitted its observations on the admissibility and the merits of the communication. It submits that the complainant's transfer to Poland does not meet the threshold of inhuman or degrading treatment for his children. Therefore, regarding the children, the communication should be declared inadmissible as incompatible *ratione materiae* with the Convention.

4.2 On the merits, the State party considers that the allegation that the success of the complainant's treatment depends on the proximity to his children should be put in the context of him having already lived without them for four years and of the likelihood of a stable environment in Poland. The State party declares that Poland has an adequate medical infrastructure and informs that the Polish authorities have expressly confirmed to the Swiss authorities that it can provide adequate medical services and that these are accessible in practice because asylum seekers and refugees have access to psychological treatment in the same way as Polish nationals. The State party explains that according to the case law of the Federal Administrative Court, the transfer of vulnerable asylum seekers to Poland is permissible insofar as the authorities of this State are informed in advance and in an appropriate manner of the state of health of the person concerned and of the necessary treatment.

4.3 The State party notes that there is no indication that the complainant was refused treatment by the Polish authorities in the past. On the contrary, during the family's first stay in Poland, their child was hospitalised there for a month after her birth, and the complainant does not claim that the care she received there was inappropriate.

4.4 As to the country report of 2019 invoked by the complainant to allege that persons with post-traumatic stress disorder are put in detention, the State party notes that with regard to persons returned under the Dublin III Regulation, the report mentions only one case, in which the Polish authorities had not been properly informed of the state of health of the persons in question.<sup>14</sup> Moreover, the 2020 update of that report provides that according to the Polish law, asylum seekers whose psychophysical state leads to believe that they are victims of violence cannot be placed in detention centres.<sup>15</sup> The State party further notes in the 2020 update that, while vulnerable asylum seekers are sometimes detained in practice, this is primarily a problem of identifying victims of torture or violence.<sup>16</sup> For the State party, this does not mean that Polish authorities have a general practice of detaining victims of torture, especially if they are informed of the vulnerability of the person in question during the

<sup>11</sup> Asylum Information Database (AIDA), *Country Report: Poland*, 2019, p. 70, available at [https://asylumineurope.org/wp-content/uploads/2020/04/report-download\\_aida\\_pl\\_2019update.pdf](https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_pl_2019update.pdf).

<sup>12</sup> *Ibid.*, pp. 62-63.

<sup>13</sup> CAT/C/POL/CO/7, para. 25 (d).

<sup>14</sup> *Country Report: Poland*, p. 81 et seq.

<sup>15</sup> AIDA, *Country Report: Poland*, 2020 update, p. 77, available at [https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-PL\\_2020update.pdf](https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-PL_2020update.pdf).

<sup>16</sup> *Idem*.

transfer procedure. Insofar as within the framework of the Dublin deportation, the Swiss authorities will communicate the necessary information to the Polish authorities, there is no reason to fear that the complainant will be detained without knowledge of his mental state.

4.5 The State party therefore considers that since adequate treatment is available and accessible to the complainant in the event of his transfer to Poland, there is no risk that he would be in a situation that could be characterised as ill-treatment within the meaning of article 16 of the Convention or as torture. Similarly, the transfer could not be regarded as contrary to his rights guaranteed by article 14 of the Convention.

4.6 As far as the complainant's separation from his children is concerned, the State party submits that the Convention does not guarantee the right to respect for family life. The complainant's separation from his family could not in itself constitute treatment contrary to article 16 or to any other provision of the Convention as it would not affect his state of health to such an extent that, combined with the other elements of the present case, his removal would be contrary to article 16 or even article 3 of the Convention.

4.7 The State party considers that the complainant does not have a real and effective family relationship with his children. He has decided voluntarily in 2016 to leave Switzerland without his family, and the telephone contacts he claims to have had from 2016 to 2020 are not sufficient to demonstrate a consolidated relationship between the complainant and his children. The low level of contact is also apparent from the fact that, at the time of his personal data hearing on 8 June 2020, he did not know either the date of the divorce or the exact dates of birth of his children. Furthermore, before returning to Switzerland, the complainant had stayed illegally in Austria for two years, without taking any steps to be reunited with his children.

4.8 The State party submits that the fact that on 10 September 2020, the complainant was granted joint parental authority does not demonstrate a close, real-life relationship with his children because that request was approved without any material examination. He may continue to maintain his relationship with his children from Poland, all the more so that he was already in this situation for four years without claiming that it has destroyed his relationship with his children.

4.9 Finally, the State party refutes the allegation of chain refoulement to the Russian Federation in the absence of any indication that Poland will not fulfil its international obligations to correctly conduct an asylum procedure. As for the case of *M.K. and Others v. Poland* invoked by the complainant, the State party notes that the applicants in that case had been refused entry into Poland at its border with Belarus, while for the complainant, Poland has already declared itself willing to examine his asylum request.

#### **Complainant's comments on the State party's observations on admissibility and the merits**

5.1 In his comments of 27 February 2024, the complainant reiterated the statements made in his initial communication. He insists that the described mental sufferings of his children associated with his deportation and supported by medical evidence demonstrate that the communication is admissible *ratione materiae* on their behalf.

5.2 The complainant affirms that the Swiss authorities failed to obtain personal assurances from the Polish authorities that they were informed in detail about his special needs as a victim of torture and were willing and able to take them into account. In domestic proceedings, the Swiss authorities merely assumed that in Poland, the complainant would have access to appropriate living conditions and medical treatment. They did not ascertain whether appropriate rehabilitation services in Poland were actually available and accessible to the complainant in order to satisfy his right to rehabilitation as a victim of torture, and to seek assurances from the Polish authorities to ensure that the complainant would have immediate and continuing access to such treatment.

5.3 The complainant also regrets that the Swiss authorities did not seek assurances from their Polish counterparts that he would not be detained upon arrival in Poland.<sup>17</sup> He insists that the Polish authorities continue to detain asylum-seekers who were victims of violence and suffered from a severe psychological condition, in violation of the law, and that it lacks adequate mechanism for identification of victims of torture and violence.<sup>18</sup>

5.4 Therefore, upon transfer to Poland, the complainant would be very likely detained in a prison-like reception center where, as a victim of torture suffering from post-traumatic stress disorder and under the risk of suicide, he would not have access to the necessary mental health treatment. As a result, such living conditions would amount to ill-treatment comparable to torture. In such circumstances, by transferring him to Poland, the State party would violate his rights under articles 3, 14 and 16 of the Convention.

5.5 As to separation from his children, the complainant submits that according to medical reports, the personal contact with them is the main factor for his rehabilitation as a torture victim, which provide him with the essential stable environment and prevent him from his suicidal behaviour. The Swiss authorities failed to conduct an individualized assessment of his risk of prohibited treatment upon return to Poland in light of his needs as a victim of torture, including close connection to his children, which is part of his rehabilitation process as a victim of torture. He would therefore face a risk of his mental health condition deteriorating to the extent that he would likely commit suicide, if returned to Poland.

5.6 Regarding the State party's reference to the four-year separation from his children, the complainant explains that this separation had a severe negative impact. According to the expert opinion of 8 October 2020, after his departure and due to prolonged uncertainty regarding his whereabouts, the children's school performance deteriorated and their mental health problems became more severe, which included nightmares, sleep problems and anxieties, withdrawal from the social environment, panic attacks and erratic behaviour. Complainant's symptoms of post-traumatic stress disorder and depressive disorder also intensified because of unwanted separation from the family. Accordingly, severe mental health deterioration sustained by the complainant and his children as a result of their past separation indicates the existence of strong family ties between them.

5.7 Finally, the complainant points to publicly available information, which reveals the deficiencies that asylum-seeking Russian nationals of Chechen origin face in Poland. He indicates that recent statistics on the granting of international protection status – at first instance – to applicants from Russia show that in 2022, the Head of the Office for Foreigners rejected 83.7% of applications, which concerned 630 Russian nationals.<sup>19</sup> Accordingly, on the basis of this information, it is highly unlikely that in Poland, the complainant – a Russian national of Chechen origin – would be granted asylum by the Head of the Office for Foreigners.

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

### *Consideration of admissibility*

6.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not challenged the admissibility of the complaint on this ground.

<sup>17</sup> He refers to the 2022 update of AIDA, *Country Report: Poland*, p. 38, available at [https://asylumineurope.org/wp-content/uploads/2023/05/AIDA-PL\\_2022-Update.pdf](https://asylumineurope.org/wp-content/uploads/2023/05/AIDA-PL_2022-Update.pdf).

<sup>18</sup> *Ibid.*, pp. 89-91.

<sup>19</sup> That is, a rejection rate of 83.7%, see *ibid.*, p. 7.

6.3 The Committee notes that the State party has contested the admissibility of the communication in respect of X, Y and Z, stating that the complainant's transfer to Poland does not meet the threshold of inhuman or degrading treatment for his children. The complainant contests this allegation. The Committee recalls that, for a communication to be admissible under article 22 of the Convention and rule 113 (b) of its rules of procedure, it must, *inter alia*, rise to the basic level of substantiation required for purposes of admissibility.<sup>20</sup> In other words, complainants must establish a *prima facie* case by providing evidence that rises to the basic level of substantiation to support their claims.<sup>21</sup> The Committee considers that the complainant has failed to provide evidence that would rise to the basic level of substantiation to support his claims that his children are at serious risk of treatment contrary to article 16 of the Convention if he is transferred to Poland. The Committee therefore finds that the complainant's claims under article 16 on behalf of X, Y and Z are insufficiently substantiated for the purposes of admissibility.

6.4 The Committee considers that the complainant has not shown that the facts, as presented by him, raise separate issues under articles 14 and 16 of the Convention.<sup>22</sup> It therefore decides to proceed to its consideration of the merits of the allegations submitted under article 3 of the Convention.

#### *Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

7.2 The Committee recalls, at the outset, that the Dublin III Regulation is based on the principle that an asylum application must be examined by the authorities of the Member State of the European Union that received the first asylum application (the application is examined by a single Member State). However, article 3 (2) of the Regulation states that it may be impossible to transfer an applicant for asylum to the "State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment". In light of these provisions and article 3 of the Convention, the Committee notes that the scope for the exercise of States' discretion in the context of the application of the Dublin Regulation demands an individual examination of each situation, in order to prevent a situation where a deportation would expose the person concerned to a real and serious risk of cruel, inhuman or degrading treatment or punishment, or acts of torture. A similar interpretation has been adopted by several human rights bodies. Thus, the Human Rights Committee, in its Views on *Jasin v. Denmark*,<sup>23</sup> concluded that an individual decision taken pursuant to the Dublin Regulation could violate the complainants' rights under article 7 of the Covenant. The Committee also draws attention to the jurisprudence of the European Court of Human Rights which, in a judgment handed down on 21 January 2011 in the *M.S.S. v. Belgium and Greece* case, concluded that a decision concerning expulsion adopted by the State party pursuant to the Dublin Regulation constituted a violation of article 3 of the European Convention on Human Rights. Accordingly, the Committee is entitled to examine decisions adopted by national authorities on the ground that they may violate article 3 of the Convention.<sup>24</sup>

7.3 The Committee must therefore determine in the present case, taking into account the factors set out above, whether the complainant's transfer to Poland would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

7.4 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Poland. In assessing this risk, the Committee must take into account all relevant

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<sup>20</sup> For example, *Y.H. v. Sweden* (CAT/C/76/D/979/2020), para. 7.4.

<sup>21</sup> *S.S. v. Australia* (CAT/C/74/D/935/2019), para. 7.6.

<sup>22</sup> *Harun v. Switzerland* (CAT/C/65/D/758/2016), para. 8.7.

<sup>23</sup> *Jasin v. Denmark* (CCPR/C/114/D/2360/2014).

<sup>24</sup> *Harun v. Switzerland*, para. 9.2.



considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights.

7.5 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, according to which the non-refoulement obligation exists whenever there are “substantial grounds” for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group which may be at risk of being tortured in the State of destination. The Committee’s practice has been to determine that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real”.<sup>25</sup> It also recalls that the burden of proof is upon the author of the communication, who must present an arguable case, that is to say, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when complainants are in a situation where they cannot elaborate on their case, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the communication is based.<sup>26</sup> The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.<sup>27</sup>

7.6 The Committee also recalls that States parties should consider whether the nature of the other forms of ill-treatment that a person facing deportation is at risk of experiencing might change so as to constitute torture, before examining the question of non-refoulement.<sup>28</sup> Severe pain or suffering cannot always be assessed objectively in this context. It depends on the negative physical and/or mental repercussions that the infliction of violent or abusive acts has on the individual concerned, taking into account all relevant circumstances of each case, including the nature of the treatment, the sex, age and state of health and vulnerability of the victim and any other status or factors.<sup>29</sup>

7.7 In the present case, the Committee notes the complainant’s allegation that if transferred to Poland, he will be detained on arrival, he will not have access to an adequate and fair asylum procedure in that country and risks a chain refoulement to the Russian Federation. However, while taking notes of reports pointing to detention of victims of violence with health issues, the Committee notes that those cases do not refer to Dublin transfers where the receiving authorities had been informed in advance of the status and state of health of the person concerned. The complainant has also not demonstrated the existence of a generalized practice of detaining asylum-seekers transferred to Poland in the framework of the Dublin III Regulation. The Committee then notes that there are no concrete elements to indicate that the complainant would not benefit from a fair asylum procedure in Poland. It finally notes that the complainant has not demonstrated that the State party would violate his rights under the Convention by subjecting him to a risk of summary removal to a country where he could face a real, present, personal and foreseeable risk of being tortured.

7.8 The complainant also claims that in Poland, he would not have access to adequate medical care. The Committee notes that the complainant did not personally seek medical care in Poland when he was there. According to the information on file, asylum seekers and refugees have access to psychological treatment in the same way as Polish nationals. The Committee notes the State party’s information that when transferring the complainant under the Dublin III Regulation, the Swiss authorities will inform the Polish authorities in advance of the complainant’s state of health and of the medical treatment he needs. In that connection, the Committee takes note of the practice of the Federal Administrative Court in the sense that the transfer of vulnerable asylum seekers to Poland is permissible insofar as the authorities

<sup>25</sup> General comment no. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 11.

<sup>26</sup> *Ibid.*, para. 38.

<sup>27</sup> *Ibid.*, para. 50.

<sup>28</sup> *Ibid.*, para. 28, in conjunction with para. 16.

<sup>29</sup> *Ibid.*, para. 17.

of this State are informed in advance and in an appropriate manner of the state of health of the person concerned and of the necessary treatment.

7.9 The Committee considers that the complainant had ample opportunity to provide the State Secretariat for Migration and the Federal Administrative Court with supporting evidence and more information about his claims. The evidence that has been provided, however, does not make it possible to conclude that his deportation to Poland under the Dublin III Regulation would put him at risk of torture or inhuman or degrading treatment.

8. On the basis of the above, and in the light of the material before it, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his deportation to Poland would expose him to a real, foreseeable, personal and present risk of being subjected to treatment contrary to article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, concludes that the deportation of the complainant to Poland under the Dublin III Regulation would not constitute a violation by the State party of article 3 of the Convention. While the Committee does not make a finding of a violation, it requests the State party to inform Poland about the complainant's needs as an alleged victim of torture in order to facilitate the continuity of his psychiatric treatment upon his arrival in Poland, and ensure that the complainant will not be detained upon arrival.

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