



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
28 December 2023

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1085/2021* **

<i>Communication submitted by:</i>	F (represented by AsyLex)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	7 July 2021 (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 8 July 2021 (not issued in document form)
<i>Date of present decision:</i>	3 November 2023
<i>Subject matter:</i>	Deportation to Romania under the Dublin III Regulation; summary removal (chain refoulement) to the Syrian Arab Republic
<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, 12, 14 and 16

1.1 The complainant is F, a national of the Syrian Arab Republic born in 1982. He claims that by removing him to Romania, the State party would violate his rights under articles 3, 12, 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.

1.2 On 8 July 2021, 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 Romania while the communication was pending before the Committee. The State party informed the Committee that it had complied with the request.

* Adopted by the Committee at its seventy-eighth session (30 October–24 November 2023).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



Facts as submitted by the complainant

2.1 The complainant is of Kurdish ethnicity and is from Al Malikiyah in the Syrian Arab Republic. In the context of the civil war in the Syrian Arab Republic, Al Malikiyah is a fiercely contested city.

2.2 On 19 July 2020, the complainant left the Syrian Arab Republic.¹ With the assistance of a smuggler, he arrived in Türkiye and was then taken to Romania on an unspecified date. The complainant did not know which country he was in. On an unspecified date, Romanian police officers halted the truck in which the complainant was travelling and took the individuals inside the truck to a prison.² There, they were handcuffed for more than seven hours and were held in a basement with dirt on the floor, insect-ridden mattresses and no light. When the complainant refused to allow his fingerprints to be taken by hiding his hands behind his back, police officers beat him with sticks. The complainant still suffers from injuries from the beating today. Police officers repeatedly said to him, “Go Syria”. Out of fear, the complainant provided his personal information and fingerprints. Approximately 24 hours later, the complainant and the other individuals were released. Thereafter, they spent one or two days on the streets until a smuggler assisted them and took them to a forest. They remained there until a truck came to pick them up. They were then taken to a train station.

2.3 On 11 October 2020, the complainant entered Switzerland by train and filed an asylum application in Basel on the same day. When he arrived in Switzerland, he did not know that he had previously been in Romania. On 15 October 2020, the complainant had a preliminary interview with the migration authorities in Switzerland, who informed him that his reasons for seeking asylum would be discussed at a later date. He stated that he had been fingerprinted and arrested somewhere, but at that time he did not mention that he had been beaten. On 23 October 2020, with the assistance of counsel, the complainant was heard by the State Secretariat for Migration. He was asked if there were reasons why he could not be removed to Romania, which should be in charge of processing his asylum application. He alleged that he had been beaten in Romania. On 27 October 2020, Romania accepted a request by Switzerland to readmit the complainant under Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 (the Dublin III Regulation).³ Romania noted in its correspondence with Switzerland that on 12 September 2020, the complainant had filed an asylum application in Romania, which had been rejected “in an administrative phase” on 13 October 2020 after the complainant’s arrival in Switzerland.

2.4 On 5 November 2020, the State Secretariat for Migration rejected the complainant’s asylum application and stated the following considerations in its decision: during his interview, the complainant had stated that he was in good health and there were no substantial grounds for assuming, pursuant to article 3 (2) of the Dublin III Regulation, that asylum procedures and reception conditions for asylum-seekers in Romania showed deficiencies that would expose the complainant to a risk of facing inhuman or degrading treatment there. The complainant had not been able to explain why he might face hardship if he were returned to Romania. A care facility in Switzerland was aware of the complainant’s state of health and was providing him with medical care. Any psychiatric-psychological treatment and further examinations of his general condition could also be carried out in Romania. It could be assumed that access to the necessary medical treatment was guaranteed in Romania, which offered adequate medical care. The complainant’s suicidal tendencies did not warrant his non-removal. Because Romania was governed by the rule of law, the complainant could, if necessary, file a complaint with the competent authorities concerning the alleged police violence that he had experienced.

¹ According to the documentation provided, the complainant has a wife and three children who are minors. They remain in the Syrian Arab Republic, where the complainant was a hairdresser. The complainant’s mother-in-law and father-in-law live in Switzerland.

² According to the documentation provided, the complainant’s fingerprints were taken at the border between Bulgaria and Romania on 11 September 2020.

³ Regulation (EU) No 604/2013 (the Dublin III Regulation) establishes 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.

2.5 On 12 November 2020, the complainant filed an appeal with the Federal Administrative Court against the negative decision of the State Secretariat for Migration. He argued that asylum procedures and reception conditions in Romania did include considerable deficiencies and that he was entitled to protection as a Syrian Kurd from a contested region. He asserted that asylum-seekers in Romania could barely support themselves and that medical care for vulnerable refugees was not guaranteed. The complainant argued that the humanitarian situation had been exacerbated by the coronavirus disease (COVID-19) pandemic and that the economy had declined by 30 per cent. The complainant maintained that the economic situation could not be expected to improve in the near future and that it should therefore be assumed that the complainant, who had no relatives in Romania, would be unable to support himself, especially since he had lost any right to protection and support when his asylum application was rejected in Romania.

2.6 On 22 January 2021, the Federal Administrative Court rejected the complainant's appeal, noting the following considerations in its judgment: the complainant had stated that he was in good health during his interview on 23 November 2020; and he had not substantiated his claim that the processing of his asylum application in Romania had been flawed. It could not be assumed that deficiencies in the protection system in Romania demonstrated that Romania was fundamentally unwilling or unable to grant beneficiaries of protection the rights and benefits to which they were entitled. Thus far, neither the Federal Administrative Court, nor the European Court of Human Rights, nor the Court of Justice of the European Union had found systemic weaknesses in the asylum system in Romania. The jurisprudence of the European Court of Human Rights invoked by the complainant did not support that conclusion.⁴ The complainant would be able to appeal against the negative asylum decision issued by the authorities in Romania. The rejection of his asylum application in Romania did not demonstrate that the asylum procedure had been conducted incorrectly or that the principle of non-refoulement had been violated.

2.7 The Federal Administrative Court also considered that the complainant had not provided any concrete evidence to indicate that Romania would permanently deprive him of the minimum living conditions to which he was entitled under Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013, which lays down standards for the reception of applicants for international protection. The Court stated that it drew no conclusions as to whether the complainant's claim of having been beaten by the police was credible. In any event, it could not be concluded from the alleged incident that Romania would systematically deprive asylum-seekers of the minimum living conditions to which they were entitled. The Court further considered that in the event of any temporary restrictions, pursuant to article 26 of directive 2013/33/EU, asylum-seekers could turn to the competent authorities and claim the reception conditions to which they were entitled by taking legal action. In addition, the complainant could contact active charitable organizations in the area to seek assistance.

2.8 The Federal Administrative Court also noted the following: in his appeal, the complainant had made claims regarding his mental health. According to the medical record submitted on 29 December 2020, the complainant experienced pain, nightmares and sleep disorders. In addition, there were signs that he had an adjustment disorder with a depressive reaction and signs of post-traumatic stress disorder. However, the health problems alleged were not of such severity that his transfer to Romania was precluded for humanitarian reasons. He was unable to demonstrate that he was unfit to travel or that a transfer would seriously endanger his health or entail a real risk of a violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).⁵ The Court stated that the authorities in charge of the transfer would take into account any special needs of the complainant, including the need for medical care and in relation to the COVID-19 epidemic.

⁴ European Court of Human Rights, *Muhammad and Muhammad v. Romania*, Application No. 80982/12, Judgment, 15 October 2020.

⁵ See European Court of Human Rights, *Paposhvili v. Belgium*, Application No. 41738/10, Judgment, 13 December 2016.

2.9 In addition, the Federal Administrative Court considered that Romania had an adequate medical infrastructure. Member States of the European Union are obliged to make available to applicants the necessary medical care, including at least emergency care and essential treatment of illnesses and serious mental disorders (under article 19 (1) of directive 2013/33/EU); and applicants with special needs must be provided with the necessary medical or other assistance, including, if necessary, appropriate psychological care under article 19 (2) of the directive. There was no evidence that Romania would deny the complainant adequate medical treatment. The decision of the Court was final and not subject to appeal.

2.10 On 31 March 2021, the complainant filed a request for reconsideration with the State Secretariat for Migration, based on new circumstances (namely, a suicide attempt on 23 February 2021, suicidal ideation, adjustment disorder and post-traumatic stress disorder). The State Secretariat for Migration rejected the complainant's request for reconsideration. It noted that the psychiatric report included the complainant's statement that he had wanted to set himself on fire but had not further described the suicide attempt. The Secretariat cited the relevant standards regarding non-refoulement obligations in relation to health problems and considered that the complainant would not face a serious risk of suffering a rapid and irreversible deterioration in his health, combined with excessive suffering or a significant reduction in life expectancy, in Romania. In addition, Romania had an adequate medical infrastructure to provide him with the necessary medical care.

2.11 The State Secretariat for Migration stated that, in accordance with articles 31 and 32 of the Dublin III Regulation, it would take the complainant's state of health into account when organizing the transfer to Romania by informing the authorities in Romania in advance about his state of health and the medical treatment he needed.

2.12 The State Secretariat for Migration further stated that the complainant was free to seek medical or psychiatric help, if necessary, and the corresponding infrastructure was also available in Romania. According to the jurisprudence of the European Court of Human Rights, the transfer of a suicidal person would not violate article 3 of the European Convention on Human Rights if the sending State took measures to prevent the realization of a corresponding suicide threat.⁶ The State Secretariat for Migration takes into account any suicidal tendencies that may arise at the time of removal by only carrying out the transfer if the person is fit to travel and by carefully preparing the transfer with the involvement of medical expertise.

2.13 Following the rejection by the State Secretariat for Migration of his request for reconsideration, the complainant applied on 20 April 2021 to the Federal Administrative Court for an interim order to be exempted from legal costs for filing an appeal. On 30 April 2021, the Court denied the complainant's request for exemption from costs for an appeal. The Court considered that the State Secretariat for Migration had indeed taken into account the complainant's state of health and had concluded that treatment options would be available to him in Romania. On 25 May 2021, the Court issued a final judgment in which it rejected the complainant's appeal against the denial of his request for reconsideration by the State Secretariat for Migration, because he had not paid the required costs. The complainant maintains that he has exhausted domestic remedies.

Complaint

3.1 The complainant claims that by removing him to Romania, the State party would violate his rights under articles 3, 12, 14 and 16 of the Convention. The complainant suffers from persistent suicidal ideation, adjustment disorder with depressive reaction and post-traumatic stress disorder. He was hospitalized twice in Switzerland owing to a high risk of suicide. He should not be uprooted from the stable therapy setting that he has in Switzerland. He would face desolate living conditions in Romania, which has the worst health-care system in the European Union.⁷ He would not be able to receive therapy in Romania, which does not have appropriate mental health care for rejected asylum-seekers.

⁶ See *Dragan and others v. Germany*, Application No. 33743/03, Judgment, 7 October 2004.

⁷ Cristian Gherasim, "Romania: Inside the EU's worst healthcare, as virus hits", EUobserver, 30 April 2020.

Furthermore, the complainant would not have access to housing or medical, legal or social support in Romania.

3.2 In addition, given his past experience in Romania, the complainant would face a real risk of experiencing additional serious torture or inhuman and degrading treatment if he were sent back there. He would not benefit from any State protection in Romania and could be subsequently removed to the Syrian Arab Republic, since his asylum application in Romania was denied. In the Syrian Arab Republic, the complainant could face torture or inhuman and degrading treatment owing to the civil war. It is well documented that his home town is a fiercely contested city. In *Muhammad and Muhammad v. Romania*, the European Court of Human Rights reprimanded Romania for deportations to crisis areas.

3.3 The State party's authorities did not provide evidence that sufficient and appropriate care would be available in Romania to prevent the complainant from being subjected to torture. Rather, they relied on statements to the effect that Romania had adequate medical infrastructure to provide the complainant with the necessary medical care. The authorities did not conduct an individualized assessment.

3.4 The complainant has no social network or family in Romania. Some members of his wife's family live in Switzerland and would be able to ensure that he receives the necessary treatment, as he is unable to claim his own rights. A familiar environment is essential for the complainant, as he has major psychological problems and has been severely traumatized by his experiences in the Syrian Arab Republic and during his journey to Switzerland.

3.5 During the appeal proceedings, the complainant's counsel asserted that the complainant was not in a position to take care of himself with regard to his mental health. He would not be able to explain his medical needs to the authorities in Romania. Romania does not provide a mechanism for identifying vulnerable individuals and relies on such individuals to identify themselves to the authorities.⁸ Thus, the complainant would not be able to receive urgent medical therapy in Romania and would very likely take his own life, owing to his precarious situation.

State party's observations on admissibility and the merits

4.1 In its observations of 1 March 2022, the State party notes that the complainant filed his asylum application in Switzerland on 11 October 2020, one month after filing an asylum application in Romania on 11 September 2020. On 14 October 2020, the State Secretariat for Migration requested the Romanian authorities to readmit the complainant under the Dublin III Regulation. On 15 October 2020, the Secretariat interviewed the complainant regarding his personal information. On 23 October 2020, it conducted another interview with the complainant, in accordance with article 5 of the Dublin III Regulation. At that time, the complainant stated that he did not want to be transferred to Romania, where the authorities had taken his fingerprints by force and had beaten him. He stated that, having been detained for half a day in Romania, he had left to travel to Switzerland, where he wished to remain.

4.2 On 27 October 2020, the Romanian authorities agreed to readmit the complainant under the Dublin III Regulation and informed the State party that they had rejected the complainant's asylum application on 13 October 2020. On 5 November 2020, the State Secretariat for Migration decided not to examine the substance of the complainant's asylum application and ordered his removal to Romania.

4.3 The complainant's claim under article 12 of the Convention is inadmissible because it is insufficiently substantiated and because the complainant has not exhausted domestic remedies.

4.4 The complainant's claims under articles 3, 14 and 16 are without merit. Romania is a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights, and the Convention relating to the Status of Refugees. It may ordinarily be presumed that Romania recognizes and protects the right to protection as set forth in various directives of the European Union

⁸ Asylum Information Database, *Country Report: Romania, 2019 Update*, pp. 105–107. The Asylum Information Database is managed by the European Council on Refugees and Exiles.

(Directives 2013/32/EU and 2013/33/EU). However, under the well-settled jurisprudence of the Federal Administrative Court, that presumption may be set aside when there is an established practice of systematic violations of the minimum standards of the European Union that reveal systemic deficiencies in the asylum procedures and reception conditions for asylum-seekers.

4.5 The reports on Romania available in the Asylum Information Database do not mention any serious problems with conditions of reception in Romania. They indicate that the situation for failed asylum-seekers in Romania is sometimes problematic. However, it could not be considered that the known deficiencies are of such a scale as to indicate that Romania is, in general, reluctant to grant or incapable of granting protection to eligible persons. Neither the Federal Administrative Court, nor the European Court of Human Rights, nor the Court of Justice of the European Union have found systemic deficiencies in Romania.

4.6 Moreover, Romania has adequate medical infrastructure and is required to ensure that asylum-seekers receive the necessary medical care, including, at a minimum, urgent care and essential treatment for illness and serious mental disturbances. Romania is also required to provide medical or other necessary assistance to asylum-seekers who have special needs, including mental health care where needed. The complainant's state of health does not present a real risk that he would be exposed in Romania to a serious, rapid and irreversible decline, resulting in intense suffering or a significant reduction in life expectancy.

4.7 The 2020 report on Romania in the Asylum Information Database shows that the needs of vulnerable persons are sufficiently taken into account in Romania.⁹ There are no indications that Romania has refused, or will refuse, to provide appropriate medical treatment to the complainant. Moreover, there is no indication that his state of health has deteriorated. The transfer of a person who has made threats of suicide is not contrary to the principle of non-refoulement if the State returning the person takes measures to prevent those threats from being carried out. When removing an individual to another country, the State Secretariat for Migration considers that person's possible suicidal tendencies and only executes the removal if the person is fit to travel. The transfer is carefully prepared and takes medical expertise into account. The authorities in Romania are informed in advance of the state of health of the person and of the medical treatment he or she needs. The State Secretariat for Migration expressly confirmed this procedure in its decision on the complainant's case.

4.8 A worrying human rights situation is not sufficient to conclude that an individual would risk being the victim of torture or ill-treatment on his or her return to a country. Additional grounds are required for the risk of torture to be qualified as foreseeable, present, personal and real. The reports and sources relied on by the complainant do not demonstrate that he would face such a risk in Romania. Nor do they call into question the conclusions of the State party's authorities. The complainant's allegations of being ill-treated in the past in the Syrian Arab Republic and Romania are very general. The allegations of torture during his trip to Romania are not supported by evidence. The medical report of 16 March 2021 merely reiterates the complainant's statements and does not substantiate his allegations. Romania is a State of law with a functioning judicial system. The complainant could have lodged a complaint about the alleged police misconduct but did not do so. His statements indicate that he only thought about continuing his voyage to Switzerland and had no intention of staying in Romania. Persons who have entered a State unlawfully are required to cooperate with the law enforcement agencies of that State.

4.9 The complainant has not established that Romania systematically deprives asylum-seekers of the living conditions guaranteed by Directive 2013/33/EU. Upon return to Romania, the complainant would be differently situated. The State Secretariat for Migration will inform the authorities in Romania in advance of the transfer of the complainant, in accordance with the Dublin procedure. The entry of the complainant into Romania will be legal. Nothing indicates that after his arrival in Romania, the complainant will be subjected to treatment contrary to the Convention. The State Secretariat for Migration is not aware that persons transferred under the Dublin procedure have been subjected to ill-treatment after their arrival in Romania. The complainant does not indicate why he personally would risk

⁹ Asylum Information Database, *Country Report: Romania, 2020 Update*, f, p. 117.

being subjected to treatment contrary to the Convention if transferred through the Dublin procedure.

4.10 The complainant's claim of systemic shortcomings in reception conditions in Romania is not based on his personal experience. He did not want to go to a registration centre for asylum-seekers; rather he wanted to continue his journey to Switzerland. Under Directive 2013/33/EU, the complainant may address the competent authorities and lodge an appeal regarding the conditions of reception.

4.11 With regard to the claim of chain refoulement (summary removal) from Romania to the Syrian Arab Republic, the rejection of the complainant's asylum application in Romania does not mean that the asylum procedure was flawed or that the authorities in Romania would violate the principle of non-refoulement. The complainant has not demonstrated that the asylum procedure there was defective. He left Romania before presenting his grounds for asylum and before the substance of his application could be examined.

4.12 The short duration of the asylum procedure in Romania does not demonstrate that it was deficient. The prompt rejection of his application is explained by article 52 (2) of the Asylum Law in Romania, according to which all asylum decisions must be taken within 30 days. The complainant's departure was voluntary and the authorities in Romania did not attempt to send him back to the Syrian Arab Republic or another State. Furthermore, the authorities in Romania agreed to readmit the complainant under article 18 (1) of the Dublin III Regulation and stated that his application had been rejected during an administrative phase on 13 October 2020. A closed asylum procedure of a person who has left Romania and entered another Member State of the European Union may be continued if the person submits an asylum application within nine months of the decision to close the file. If the time limit has expired, the asylum application is considered a subsequent application. Asylum law in Romania incorporates the principle of non-refoulement and there are no concrete indications that the authorities are summarily removing asylum applicants without examining their claims.

4.13 The judgment of the European Court of Human Rights in *Muhammad and Muhammad v. Romania* related to an expulsion order by a court for reasons of national security. In that case, the expulsion order was based on classified information that had not been communicated to the applicants, who were lawfully residing in Romania. The expulsion order was also executed without sufficient compensatory guarantees. The Court found that Romania had violated article 1 of Protocol No. 7 to the European Convention on Human Rights (procedural safeguards in the event of the expulsion of aliens). The case did not concern asylum and is not analogous to the circumstances of the present complainant.

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

5.1 In his comments of 12 December 2022, the complainant reiterates his arguments and maintains that the State party relied upon generalizations and failed to demonstrate that in practice Romania respects the right of asylum-seekers to access material reception conditions. According to the complainant, the 2020 and 2021 reports on Romania in the Asylum Information Database describe the findings of various organizations that asylum-seekers in Romania have experienced a large number of collective expulsions, severe violence, including beatings with a baton, and other forms of ill-treatment by police officers, including threats of violence, denial of access to food, water and medical assistance and discrimination.¹⁰

5.2 A report published by the Border Violence Monitoring Network describes allegations of the use of torture and ill-treatment in the majority of pushback operations conducted by Romania at the border with Serbia.¹¹ In a more general context, the United States Department of State has reported that most incidents of abuse of migrants and refugees are not reported

¹⁰ Asylum Information Database, *Country Report: Romania, 2020 Update*, 30 April 2021, pp. 22 and 23; and *Country Report: Romania, 2021 Update*, 3 June 2022, pp. 24–26.

¹¹ Border Violence Monitoring Network, "Written input for the 69th session of the Committee on Economic, Social and Cultural Rights", p. 2.

owing to fear, lack of information, inadequate support services and inefficient redress mechanisms in Romania.¹² The Asylum Information Database 2020 report on Romania states that asylum-seekers reported poor management of reception facilities, including poor hygiene conditions (some facilities were described as filthy) and a lack of information about their rights. In the same report, it was also stated that only one organization, the ICAR Foundation, was considered to have the necessary experience to assist torture survivors and traumatized asylum-seekers. A recent study that was conducted with the assistance of non-governmental organizations indicated that asylum-seekers in Romania faced many barriers in accessing the health-care system, including financial, legal, structural and linguistic barriers, as well as a lack of community support, and rarely sought out mental health care.¹³

5.3 The rejection by Romania of the complainant's asylum application without stated reasons or proper consideration demonstrates the considerable deficiencies of the Romanian asylum system. The complainant would be unable to access reception facilities in Romania and could be deported to the Syrian Arab Republic in violation of the principle of non-refoulement. He was previously targeted by the Syrian authorities, belongs to the Kurdish minority group and is from the embattled city of Al `Malikiya, which was bombarded by Türkiye in late November 2022. He reported to a psychiatrist in Switzerland that because he had refused to participate in the war in the Syrian Arab Republic, he had been beaten by government soldiers. Even if the complainant were able to file a new asylum application in Romania, the reports published in the Asylum Information Database in 2020 and 2021 suggest that a second asylum application would not give him the right to material reception conditions.

5.4 In addition, according to the United States Department of State in 2021, the Office of the United Nations High Commissioner for Refugees stated in a report that asylum-seekers who were considered to pose a risk of absconding could be detained in public custody centres or in closed reception facilities and that the period of detention could be as long as 18 months.¹⁴ The complainant previously "absconded" in Romania and thus, he could be placed in administrative detention for up to 18 months if he returns.

5.5 The State party disregarded the fact that, instead of receiving the necessary medical care immediately after his arrival in Romania, the complainant was detained, handcuffed and beaten for hours for the purpose of obtaining his fingerprints. That incident adversely affected his mental health.

5.6 The asylum procedure for the complainant in Romania was initiated without his knowledge. His application was rejected without consideration of his reasons for seeking asylum. It is unimaginable that the complainant would find himself in a different and better situation if he were deported there. The complainant disputes the State party's interpretation of the Committee's jurisprudence on various points.

5.7 Since the State party's authorities examined the complainant's case, his mental health has deteriorated. The most recent relevant medical records, dated 4 and 22 November 2022, stated that the complainant had persistent post-traumatic stress disorder, major depressive episodes without psychotic symptoms and adjustment disorder with depressive reaction. He is currently taking antidepressants and is receiving outpatient psychotherapeutic talk therapy two to three times a week. If he were deported, he would be likely to attempt suicide again.

5.8 In further comments of 25 April 2023, the complainant maintains that his claims are supported by a decision issued by a court of first instance in the Netherlands on 2 March 2023.¹⁵ The court requested the immigration service to re-examine the application of an asylum-seeker contesting his transfer to Romania under the Dublin III Regulation. The court

¹² United States Department of State, "2021 country reports on human rights practices: Romania" pp. 3 and 18.

¹³ Liliana Dumitrache and others, "Experiences and perceived barriers of asylum seekers and people with refugee backgrounds in accessing healthcare services in Romania", *Healthcare*, vol. 10, No. 11 (2022).

¹⁴ United States Department of State, "2021 country reports on human rights practices: Romania" pp. 18 and 19.

¹⁵ See [case Nos. NL22.24529 and NL22.24530](#).

based its decision on a recent report cited by the asylum-seeker and published by a non-governmental organization in Serbia.¹⁶ The court requested the immigration service to further investigate the risk for persons transferred through the Dublin procedure of being deported without their asylum application being processed or during the processing of their application.

State party's additional observations on admissibility and the merits

6.1 In its submission of 13 February 2023, the State party reiterates its previous arguments. Under the Dublin III Regulation, the State party would inform the authorities of Romania before returning the complainant there and his entry into Romania would be lawful, unlike his original entry into the country. Consequently, the complainant's allegations relating to pushback operations are not relevant.

6.2 The State party also reiterates that in Romania, an applicant may resume an asylum procedure by filing a new application for asylum. According to a report made available in the Asylum Information Database, Romania in principle grants refugee status and subsidiary protection to applicants from the Syrian Arab Republic.¹⁷ Asylum applications by Syrian nationals are considered to be manifestly well-founded. For example, in Timișoara, Romania, all Syrian nationals receive protection.

6.3 The complainant left Romania before stating the basis of his asylum claim and before the substance of his asylum application could be examined by the authorities. His departure from Romania was voluntary and the authorities in Romania did not attempt to send the complainant back to the Syrian Arab Republic or to another country.

6.4 The State party reiterates that there is no reason to believe that material conditions of reception in Romania are systemically deficient. The 2021 Asylum Information Database report does not change that assessment. According to that report, all asylum-seekers transferred to Romania through the Dublin procedure have been housed in the Vasile Stolnicu and Tudor Gociu centres. An unknown number of other asylum-seekers have also been housed in the Giurgiu centre. It is to be expected that individuals housed in reception centres are sheltered and fed. Moreover, the law in Romania requires the provision of material reception conditions for asylum-seekers in the Dublin framework.¹⁸

6.5 The State party contests the statement in the Asylum Information Database 2021 report on Romania, according to which failed asylum-seekers who submit renewed asylum applications do not have the right to material reception conditions. That statement was not further explained and was accompanied only by a reference to a law in Romania that does not address the material conditions of reception. Thus, the statement is questionable and insufficiently substantiated, and does not demonstrate systemic deficiencies in conditions of reception for asylum-seekers in Romania; nor does the statement demonstrate a foreseeable, present, personal and real risk that the complainant will be subjected to treatment contrary to the Convention in Romania.

6.6 Regarding the complainant's health, the State party reiterates its previous claims. The new medical reports submitted by the complainant were issued after the Swiss procedures had concluded. The State party's migration authorities could not therefore examine them. According to the medical report, dated 22 November 2022, the complainant's post-traumatic stress disorder has slightly improved over the past two years. His health problems are not of such gravity as to represent a risk of being exposed in Romania to a serious, rapid and irreversible decline in his state of health that could result in intense suffering or a significant reduction in his life expectancy.

6.7 The State Secretariat for Migration is not aware of any instances in which individuals who have been transferred through the Dublin arrangement have encountered ill-treatment after their arrival in Romania. The complainant does not justify or prove the existence of such a risk for him.

¹⁶ KlikAktiv, "Formalizing pushbacks: the use of readmission agreements in pushback operations at the Serbian-Romanian border".

¹⁷ Asylum Information Database, *Country Report: Romania, 2020 Update*.

¹⁸ Asylum Information Database, *Country Report: Romania, 2021 Update*, pp. 66 and 100.

6.8 In a further submission of 20 June 2023, the State party responded to the information from the complainant regarding the decision of a court in the Netherlands. That decision was made by a court of first instance and is an isolated finding that does not reflect the jurisprudence of the Netherlands concerning transfers to Romania under the Dublin procedure. The decision was primarily based on a report by klikAktiv, which presents certain weaknesses. In the report, klikAktiv indicated that over the two-year period examined, it had collected a total of four oral reports regarding the transfer to Serbia of persons returning from Romania under the Dublin procedure. However, it had only collected material evidence in two cases. In addition, the report contained only photos of documents concerning the case of the individual in question and did not demonstrate that Romania would not have correctly carried out an asylum procedure before applying the Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorization.

6.9 Moreover, even if the allegations in the report of klikAktiv are well-founded, they do not apply to the complainant, who is subject neither to transfer to Serbia, nor to a pushback operation. The complainant applied for asylum in Romania in 2020 and the one-year time limit to request readmission to Serbia has passed. The State Secretariat for Migration is not aware of any case in which a returnee has been subjected to pushback after return to Romania under the Dublin procedure. Pushback operations occur only in the border zone, whereas the complainant would be transferred to Bucharest, pursuant to applicable regulations. The State party's authorities would inform the authorities in Romania before transferring him and would specify any needs specific to him. Thus, his entry into Romania would be legal. Furthermore, after his transfer to Bucharest, he would have the right to access an asylum procedure under the law. Finally, the asylum system and conditions of reception in Romania for asylum-seekers do not suffer from systemic deficiencies. Thus, the judgment of the first instance court in the Netherlands and the report of klikAktiv do create inferences in favour of the complainant.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 In accordance with article 22 (5) (b) of the Convention, the Committee 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 the complainant has not responded to the State party's argument that his claim under article 12 of the Convention is inadmissible because he has not exhausted all domestic remedies. The Committee therefore declares that claim inadmissible under article 22 (5) (b) of the Convention.

7.3 The Committee notes the complainant's claims that the State party would violate his rights under articles 3, 14 and 16 of the Convention by transferring him to Romania under the Dublin III Regulation. 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.¹⁹ In cases involving refoulement, complainants must present an arguable case by submitting substantiated arguments to demonstrate that the danger of being subjected to torture upon removal is foreseeable, present, personal and real.²⁰ In other words, they must establish a *prima facie* case by providing evidence that rises to the basic level of substantiation to support their claims.²¹ Extraterritorial claims relating to article 16 of the Convention could fall within

¹⁹ For example, *Y.H. v. Sweden* (CAT/C/76/D/979/2020), para. 7.4.

²⁰ General comment No. 4 (2017), para. 38.

²¹ See *S.S. v. Australia* (CAT/C/74/D/935/2019).

the scope of a State party's non-refoulement obligation under article 3 of the Convention if the ill-treatment that a person facing deportation risks experiencing could likely change so as to constitute torture.²²

7.4 The complainant asserts that after entering Romania without authorization in 2020, he was beaten by police officers in order to obtain his fingerprints. The Committee recalls its serious concern regarding allegations of ill-treatment during migrant pushback operations in Romania²³ and notes the disturbing allegations in the reports cited by the complainant regarding pushback operations at the border between Romania and Serbia. With respect to the complainant's personal circumstances, the Committee notes that during his intake interview with the State Secretariat for Migration on 15 October 2020, he stated that the police had stopped and fingerprinted him somewhere (later determined to be at the border between Romania and Bulgaria) but had allowed him to continue his journey. Then he was arrested in the forest and remained there for 10 days. According to the record of the interview with the State Secretariat for Migration, the complainant did not state that he had been beaten. The Committee notes the complainant's assertion that during that preliminary interview, he did not know that he had previously been in Romania. Nonetheless, the Committee notes the lack of clarity regarding the complainant's contact with the police in Romania, in particular whether he had one or two encounters with them, whether he was fingerprinted and arrested during the same incident, and whether he sustained any physical injuries. During his interview with the State Secretariat for Migration on 23 October 2020, the complainant stated that the police had stopped him, beaten him, taken his fingerprints by force and detained him for one day. In the communication, the complainant states that the police took his fingerprints and then released him. He was dropped off in a forest, where he spent 10 days before being taken to a railway station. Elsewhere in the communication, the complainant states that police took him to a prison by force, threatened and beat him with sticks for the purpose of obtaining his fingerprints, then released him one day later. He spent one or two days on the street, then was taken by a smuggler to a forest for almost one week. In his comments on the State party's observations, the complainant states that the police beat him for hours but he provided no further details. The Committee notes that the complainant stated during his interview with the State Secretariat for Migration on 23 October 2020 that he was healthy. It further notes that the complainant's presence in Romania would be lawful if he were transferred under the Dublin III Regulation. The Committee considers that the complainant has not provided adequate details for the purposes of admissibility to establish that he was subjected to torture or ill-treatment in Romania or that he is entitled to redress from the State party for those acts under article 14 of the Convention; or that the State party would violate his rights under articles 3 or 16 of the Convention by exposing him to a real, personal, foreseeable and present danger of being tortured during a pushback operation in Romania.

7.5 The complainant alleges that if he were removed from Romania to the Syrian Arab Republic, he could face torture or ill-treatment owing to his Kurdish ethnicity, the civil war and the intense fighting in the area from where he comes. However, the Committee recalls that the existence of a general risk of violence in a country does not constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon returning to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.²⁴ While the complainant stated to a psychiatrist in 2021 that he had been beaten and threatened by the authorities in the Syrian Arab Republic because he had refused to participate in the civil war, he did not provide any further information to the Committee. Accordingly, the Committee considers that the complainant has not sufficiently substantiated those aspects of the communication.

7.6 The complainant also claims that the State party would violate his rights by removing him to Romania because the authorities there might not properly examine his claim before summarily removing him to the Syrian Arab Republic. The Committee notes that the complainant's asylum application was rejected in an administrative phase after his departure from Romania and arrival in Switzerland, and that he could reasonably have been deemed to

²² General comment No. 4 (2017), para. 16.

²³ CAT/C/ROU/CO/3, para. 23.

²⁴ For example, *R.K. v. Switzerland* (CAT/C/75/D/951/2019), para. 7.11, and *M.F. v. Switzerland* (CAT/C/59/D/658/2015), para. 7.7.

have relinquished his claim. The complainant did not wish to remain in Romania and did not attempt to seek protection there, and the substance of his claim was not examined owing to his voluntary departure from the country. Romania is required to readmit the complainant under article 18 (1) (d) of the Dublin III Regulation and indeed recalled that obligation in the statement in which it agreed to readmit him. In the report cited by the complainant, it is stated that asylum applications from the Syrian Arab Republic are considered manifestly well-founded in Romania and that in 2022, only 21.51 per cent of admissible asylum applications from Syrian were rejected on the merits.²⁵ The Committee notes that there are no concrete elements to indicate that the complainant would not benefit from a fair asylum procedure in Romania. It further notes that, according to article 51 of Law No. 122/2006 in Romania, asylum cases are closed when applicants deliberately relinquish their applications in an administrative phase. According to the General Inspectorate for Immigration in Romania in 2023, when a person is returned to Romania under the Dublin III Regulation, if the person's previous application for protection in Romania was rejected and nine months have passed since the person was in Romania, the person may ask to file a new asylum application.²⁶ An appeal may be filed before a court if the request is rejected.²⁷ Under article 88 of Law No. 122/2006, access to a new asylum procedure will be granted if the complainant claims new elements that could not have previously been presented for reasons that were out of the applicant's control (unless those actions were taken in order to obtain protection in Romania); or if transformation of a political, social, military or legislative nature has taken place in the country of origin that could have grave consequences for the applicant. A decision on the application will be taken within five days.²⁸ With respect to the report by klikAktiv, cited by the complainant, the Committee notes the State party's observations in paragraphs 6.8 and 6.9 above and also refers to its findings in paragraph 7.5. It considers that the report does not support the complainant's claim 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. The Committee thus considers that that aspect of the communication is insufficiently substantiated.

7.7 The complainant also claims that he might not benefit from adequate conditions of reception in Romania. However, the Committee recalls that the complainant did not personally seek reception in Romania. According to a report in the Asylum Information Database that was cited by the complainant, "Asylum-seekers who do not have means of subsistence are entitled to reception conditions from the moment they have expressed their intention to apply for asylum until the completion of the asylum procedure and the expiry of their right to stay in Romania."²⁹ According to the same source, material reception conditions are available to (and are not reduced for) individuals who are transferred to Romania under the Dublin procedure. Once an asylum application is submitted, "the applicant is entitled to receive assistance, according to the amended Law No. 122/2006 on asylum in Romania. Accommodation in a reception centre is available upon request by the applicant by filling out a form and comprises personal hygiene and cleaning products, as well as necessary goods for preparation, cooking and serving meals. The accommodation form can be completed immediately after the request for international protection has been submitted or at any time during the entire period of the asylum procedure. Also, applicants receive material assistance for food, clothes and other expenses, if they lack the means of subsistence".³⁰ According to the same source, the accommodation is provided immediately and the applicant is informed about his or her rights and obligations at the time the application is submitted. On request, if the applicant has no material resources for subsistence, he or she is provided with 20 Romanian lei per person per day for food, an allowance for the purchase of clothing of

²⁵ Asylum Information Database, *Country Report: Romania, 2022 Update*, pp. 87 and 88.

²⁶ European Union Agency for Asylum, "Information on procedural elements and rights of applicants subject to a Dublin transfer to Romania", provided by the General Inspectorate for Immigration (Romania), 13 April 2023, p. 1 and para. 2.1.

²⁷ *Ibid.*, para. 2.2. See also para. 4.3.

²⁸ *Ibid.*, para. 2.2.

²⁹ Asylum Information Database, *Country Report: Romania, 2022 Update*, p.100.

³⁰ European Union Agency for Asylum, "Information on procedural elements and rights of applicants subject to a Dublin transfer to Romania", para. 1.1.

200 lei in winter and 135 lei in summer, and other expenses in the amount of 12 lei per person per day.³¹ Under certain circumstances, applicants can access the labour market three months after the date of their asylum application if the asylum procedure is still ongoing.³² Asylum-seekers have the right to submit requests, notices or complaints regarding material reception conditions and a decision to withdraw or limit financial assistance may be appealed.³³ While the complainant states that material conditions of reception may be reduced for subsequent asylum applicants, the Committee notes the statement of the General Inspectorate for Immigration that the law in Romania permits the limitation and withdrawal of the financial allowance provided by the State for subsequent applicants in the following exceptional circumstances: (a) the asylum-seeker leaves his or her place of residence without informing the responsible authority; (b) the asylum-seeker does not comply with the obligation to present him or herself for appointments; or (c) the asylum-seeker constantly violates the internal regulations of the accommodation centre.³⁴ The Committee further notes that according to the same source, the decision to limit or withdraw financial assistance is adopted after an individualized assessment and only applies to the allowance for so-called “other expenses” (for example, local transportation), while the allowance for food and clothes is guaranteed. In those circumstances, the Committee considers that the complainant has not sufficiently substantiated his argument that he would face a present, personal, foreseeable and real danger of being subjected to ill-treatment that could constitute torture in the form of inadequate reception conditions in Romania.

7.8 The complainant also claims that his state of mental health, in particular, post-traumatic stress disorder, major depressive episodes without psychotic symptoms, adjustment disorder with depressive reaction and suicidal ideation, precludes his removal to Romania, where he would not have access to adequate medical care. The Committee notes that the complainant did not personally seek medical care in Romania. It considers that the medical documentation provided by the complainant indicates that his mental state is linked to the prospect of the rejection of his claim in Switzerland and does not establish that he is presently at risk of self-harm. According to a report, dated April 2023, of the General Inspectorate for Immigration in Romania, following a transfer under the Dublin III Regulation, asylum applicants can access free primary health care and emergency hospital aid, as well as medical assistance and free treatment in cases of acute and chronic illnesses,³⁵ and the authorities conduct an assessment to identify vulnerable persons, such as those with mental illnesses and persons who have been subjected to serious forms of violence.³⁶ The Committee notes the State party’s information that when transferring a person under the Dublin III Regulation, the State Secretariat for Migration considers a person’s possible suicidal tendencies and only executes the transfer if the person is fit to travel; the transfer is carefully prepared and takes medical expertise into account; the authorities in Romania are informed in advance of the state of health of the person and of the medical treatment he or she needs; and the State Secretariat for Migration expressly confirmed that procedure in its decision on the complainant’s case. The Committee considers that the complainant has not sufficiently substantiated that his state of mental health and the level of medical care in Romania would place him in real, personal, present and foreseeable danger of being subjected to ill-treatment constituting torture upon transfer to Romania.

7.9 The Committee considers that the complainant’s claims under article 3, 14 and 16 of the Convention are insufficiently substantiated for the purpose of admissibility. It also considers that the complainant has not exhausted domestic remedies with respect to his claim under article 12 of the Convention. It therefore concludes, in accordance with article 22 and 22 (5) (b) of the Convention, and rule 113 (b) of its rules of procedure, that the communication is inadmissible.

³¹ 10 lei are equivalent to approximately \$2.2.

³² European Union Agency for Asylum, “Information on procedural elements and rights of applicants subject to a Dublin transfer to Romania”, para. 1.2.

³³ *Ibid.*, para. 1.9.

³⁴ *Ibid.*, para. 1.4.

³⁵ *Ibid.*, paras. 1.2 and 1.5.

³⁶ *Ibid.*, para. 1.7. See also para. 1.6.

8. Accordingly, the Committee decides:
- (a) That the communication is inadmissible under article 22 and 22 (5) (b) of the Convention;
 - (b) That the present decision shall be communicated to the complainant and to the State party.
-