



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1096/2021* **

<i>Communication submitted by:</i>	N.A. (represented by AsyLex)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	19 October 2021 (initial submission)
<i>Document references:</i>	Decisions taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 21 October 2021 (not issued in document form)
<i>Date of present decision:</i>	9 May 2024
<i>Subject matter:</i>	Deportation to Romania under Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 (the Dublin III Regulation); summary removal ("chain refoulement") to Afghanistan
<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 N.A., a national of Afghanistan born in 1997. 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 21 October 2021, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, issued a request for

* 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, Peter Vedel Kessing, Liu Huawen, Maeda Naoko, Abderrazak Rouwane and Bakhtiyar Tuzmukhamedov. 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), Ana Racu did not participate in the examination of the communication.



interim measures, asking 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.

Facts as submitted by the complainant

2.1 The complainant's uncle is part of the Taliban regime in Afghanistan, and forced the complainant's sister into marriage with a Taliban fighter. The complainant objected, and was therefore tortured by the Taliban.¹ Fearing for his life, he left the country illegally late in 2019. He first arrived in the Islamic Republic of Iran, and from there he went on to Türkiye, Greece, North Macedonia, Serbia and finally Romania.²

2.2 When the complainant entered Romania, on 6 March 2021, he had to stay in a metal container without a bed, furniture or toilet for the first three days. When he asked to go to the toilet or to get food, he was beaten. The authorities threatened to expel him unless he provided his personal information and submitted to fingerprinting. His fingernails were broken by the police,³ and he was severely beaten by the authorities several times. Afterwards, he had to stay in the metal container for another night and then had to go to a quarantine centre, where he remained for a few days. The complainant was then taken to a police station, where he was again beaten, and again threatened with expulsion if he did not submit to fingerprinting. He was taken to a camp-like reception centre; the accommodation had no light and had dirt on the floor, and the mattresses were full of bugs. There, he was arbitrarily beaten by the local authorities several times. When he requested medical assistance owing to kidney pain, he was beaten and threatened with expulsion to Serbia if he did not stop complaining. He was repeatedly denied food and a blanket. Due to the inhuman and degrading living conditions, the complainant left the centre. After leaving, he lived in an abandoned property, then in the forest. Many of the other people living in those spaces were criminals, and the complainant was beaten there too. When he tried to get help from the police, he was referred to a police station that did not exist. Although the living conditions were harsh, it was still better than at the reception centre. After more than two months, the complainant finally managed to leave Romania. He travelled, in the back of a truck, to Italy, where he was intercepted by the Italian police and his fingerprints were taken. After three or four days, the complainant left Italy and entered Switzerland illegally, by train, on 17 May 2021, and filed an asylum application the same day.

2.3 On 3 June 2021, the complainant had a preliminary interview with the State Secretariat for Migration of Switzerland, to provide his personal details. On 8 June 2021, with the assistance of counsel, the complainant was granted the right to be heard. On 9 June 2021, the State Secretariat for Migration requested the Romanian authorities 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).⁴ On 22 June 2021, Romania accepted the request, informing the Swiss authorities that the complainant had made an asylum application, but that his file had been closed on 29 April 2021, since he had left, in March, the accommodation allocated to him.

2.4 On 9 August 2021, the State Secretariat for Migration rejected the complainant's asylum application without examining his grounds for asylum. It noted that the complainant had submitted an asylum application in Romania on 11 March 2021, and considered that 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. It also noted that there were no systemic deficiencies in the asylum and reception system of Romania.

¹ No details of the torture were provided.

² No details of the journey were provided.

³ The complainant provided an undated photograph, allegedly of his hands.

⁴ 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 As to the complainant's allegations of ill-treatment suffered in Romania, the State Secretariat of Migration noted the absence of any evidence. Because Romania was governed by the rule of law, the complainant could, if necessary, file a complaint with the competent authorities concerning the violence by police or private persons that he had allegedly experienced. Regarding the complainant's health problems,⁵ the State Secretariat assumed that access to the necessary medical treatment was guaranteed in Romania, which offered adequate medical care.

2.6 On 25 August 2021, the Federal Administrative Court of Switzerland rejected the complainant's appeal, noting that even if the situation of asylum-seekers in Romania might be problematic, that was not sufficient for the Court to conclude that there were systemic issues that demonstrated that Romania was fundamentally unwilling or unable to grant beneficiaries of protection the rights and benefits to which they were entitled. As of the date of the decision on the appeal, no systemic weaknesses in the asylum system in Romania had been found by the Federal Administrative Court, the European Court of Human Rights or the Court of Justice of the European Union.

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 Federal Administrative Court also noted that the health problems alleged by the complainant – aerocolia, probable intestinal colic due to slow transit and post-traumatic stress disorder, and a memory disorder that had not yet been investigated by a doctor – were not of such severity that his transfer to Romania was precluded for humanitarian reasons and that there was no evidence that Romania would deny him adequate medical treatment.

2.8 After the judgment by the Federal Administrative Court, the complainant's mental condition deteriorated further. His condition worsened to such an extent that on 8 October 2021, he was admitted to a centre for psychosocial care. He was diagnosed with post-traumatic stress disorder and a moderate episode of depression caused by the planned removal.

Complaint

3.1 The complainant claims that by removing him – a highly vulnerable victim of torture – to Romania, the State party would violate his rights under articles 3, 12, 14 and 16 of the Convention.

3.2 He alleges that Romania treats asylum-seekers in a degrading and inhuman way, that it has the worst health-care system in the European Union because it spends the least on its medical system among all of the European Union countries, and that it is therefore clearly not able to provide appropriate health care for asylum-seekers. The complainant's removal to Romania, where he has no access to housing, mental health services or medical, legal and social support, and where he would be exposed to a serious and real risk of further torture and inhuman and degrading treatment, without any State protection, would amount to torture and ill-treatment. In Romania, the complainant also risks a removal to his home country, Afghanistan, as his asylum request in Romania will not be treated further since he left the country. He also experienced torture in Afghanistan, and would face torture or inhuman and degrading treatment again upon his return.⁶

3.3 The complainant recalls that he declared on several occasions before the Swiss authorities that he had been tortured numerous times in Romania, which makes the risk of being tortured again in Romania personal and present. As a consequence, the burden of proof is reversed, and it lies with the referring authorities to receive individual guarantees that the complainant will not be tortured in Romania again. However, the Swiss authorities did not

⁵ A medical report dated 24 June 2021 confirmed that the complainant had intestinal colic, and on 16 July 2021, the complainant was diagnosed with post-traumatic stress disorder but refused the proposed medication.

⁶ No details were provided by the complainant.

provide this evidence, but rather relied on general statements as to the situation of the judicial system in Romania. They did not take into account that a victim of torture does not trust the authorities and will not make complaints against members of police forces, out of fear of punishment.

State party's observations on admissibility and the merits

4.1 In observations dated 7 April 2022, the State party recalls in detail the decisions issued at the domestic level. It considers that 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.

4.2 The State party notes that by leaving the Romanian asylum centre 12 days after filing his asylum application, the complainant did not give the Romanian authorities the possibility of taking adequate care of him, so he cannot claim that the Romanian authorities did not give him access to an asylum procedure according to minimum standards. By accepting the readmission request, the Romanian authorities recognized the complainant as an asylum-seeker and expressly confirmed their willingness to continue processing his application. Thus, the complainant cannot claim to have been subjected to pushbacks, which affect people who are deported after having been prevented from accessing an asylum procedure or those who have refused to lodge an asylum application.

4.3 Upon his return to Romania, the complainant would be in a different situation. 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. When removing an individual to another country, the State Secretariat executes the removal only if the person is fit to travel. 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. Nothing indicates that the complainant will be subjected to treatment contrary to the Convention after his arrival in Romania. The State Secretariat is not aware of any cases in which 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 being subjected to treatment contrary to the Convention if transferred through the Dublin procedure.

4.4 The State party notes that Romania is free to place people in places that amount to detention centres, in accordance with national and international law. It is also legitimate for a State to ask people residing illegally on its territory to identify themselves and formalize their presence by lodging an asylum application in accordance with national and international law. Following fingerprinting, the complainant was released from the place of detention and placed in a camp-like centre for asylum-seekers, which he left on his own initiative shortly afterwards. Therefore, following his transfer to Romania, the complainant no longer risks being detained for the same reason.

4.5 The State party submits that the 2020 report on Romania contained in the Asylum Information Database⁷ does not mention any serious problems with conditions of reception in Romania. While the report indicates that the situation for failed asylum-seekers in Romania is sometimes problematic, it cannot be concluded 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. The State party recalls that the complainant's allegations that he was tortured during his stay in Romania are not supported by evidence.

4.6 The State party notes that the complainant's mental health deteriorated after the final decision of 25 August 2021 was handed down. In addition to the post-traumatic stress disorder that had already been diagnosed, the complainant experienced a moderate depressive episode, which, owing to when it occurred, could not be taken into account in the August judgment. However, even in the light of that deterioration, there is no serious reason to believe, based on the level of treatment available in the country of destination, that the complainant faces a real risk of being exposed to a serious, rapid and irreversible decline that

⁷ Asylum Information Database, *Country Report: Romania – 2020 Update*. Available at https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-RO_2020update.pdf.

would result in intense suffering or a significant reduction in life expectancy. Romania has an adequate medical infrastructure, even if it is not identical to that in Switzerland.

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

5.1 In comments dated 17 July 2023, 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 have access to material reception conditions. For example, a report published by KlikAktiv, a non-governmental organization in Serbia,⁸ revealed cases in which asylum-seekers were deported from European Union member States (Austria, Belgium, Germany and Slovakia) to Romania based on the Dublin III Regulation and then removed to Serbia. While they were in Romania, none of the asylum-seekers in those cases had access to the asylum procedure, although they tried to submit asylum applications. For the complainant, this shows that pushbacks happen even when a person is returned under the Dublin III Regulation. In addition, in a report submitted to the Committee on Economic, Social and Cultural Rights,⁹ the Border Violence Monitoring Network noted that allegations of the use of torture and ill-treatment had been documented in the majority of pushback operations conducted by Romania.

5.2 The complainant maintains that his claims are supported by a decision, dated 2 March 2023, issued by a court of first instance in the Kingdom of the Netherlands.¹⁰ 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 based its decision on the above-mentioned report published by KlikAktiv. The court requested the immigration service to further investigate the risk that persons transferred through the Dublin procedure face of being deported without their asylum application being processed or during the processing of their application.

5.3 The complainant submits that a recent study 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 and a lack of community support, and rarely sought out mental health care.¹¹ He left the asylum centre only because of the unbearable living conditions and inhuman treatment in the centre, which cannot be blamed on him. Rather, they point to a failure on the part of the Romanian authorities to provide adequate care for asylum-seekers. Also, the complainant cannot be expected to complain to the authorities of the very State that treated him inhumanely and that has caused him severe suffering.

5.4 The complainant refers to the 2020 and 2021 reports on Romania in the Asylum Information Database, which include findings from various organizations that indicate that asylum-seekers in Romania have experienced a large number of collective expulsions, severe violence, including beatings with batons, and other forms of ill-treatment by police officers, including threats of violence, denial of access to food, water and medical assistance, and discrimination.¹²

5.5 Contrary to the State party's assertion that no systematic, grave, flagrant or massive human rights violations can be identified and that the complainant could not demonstrate that he was personally at risk of suffering such violations, the complainant insists that Romania has deplorable reception conditions and a hostile environment towards asylum-seekers,

⁸ KlikAktiv, "Formalizing pushbacks: the use of readmission agreements in pushback operations at the Serbian-Romanian border".

⁹ Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FICO%2FROU%2F46493&Lang=en.

¹⁰ See <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2023:3170> (in Dutch).

¹¹ 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 (November 2022).

¹² Asylum Information Database, *Country Report: Romania – 2020 Update*, pp. 22 and 23; and *Country Report: Romania – 2021 Update*, pp. 24–26.

including widespread police violence, and that there is a risk of “chain refoulement” to Afghanistan, where he would face torture and other cruel and inhuman treatment, including lack of access to efficient medical treatment. Given his serious health conditions, the complainant considers that, if returned to Romania, he would be at personal risk of being subjected to renewed cruel, inhuman and degrading treatment, including torture, in violation of articles 3, 14 and 16 of the Convention.¹³

5.6 The complainant refers to two medical reports that he submitted. In the report dated 15 September 2022, the complainant’s psychiatrist concluded that in the absence of treatment, the complainant was at risk of a deterioration of his psychological state with severe depressive decompensation. In the report dated 3 July 2023, it is noted that the complainant was diagnosed with post-traumatic stress disorder and a severe depressive episode without psychotic symptoms. The complainant considers that the medical reports demonstrate that he has already experienced threats and violence, including torture, in Afghanistan. The State party should have examined this experience and the larger context, namely, the oppression of the Taliban regime, which is still standing strong. Thus, the possibility that the complainant could be sent back to Afghanistan constitutes an acute threat of a violation of the principle of non-refoulement. However, this was completely neglected, because the State party merely referred to the obligations of Romania under international law in a general manner. The complainant’s prescribed treatment includes a combination of medication and supportive psychotherapy, with appointments twice per month. In Switzerland the complainant has access to adequate health care. A return to Romania would result in him not receiving psychiatric treatment and very likely taking his own life owing to the precarious situation.

5.7 As to the State party’s claim of non-exhaustion in respect of article 12 of the Convention, the complainant submits that he had presented all available evidence to demonstrate that he had been victim of ill-treatment and torture, both in Afghanistan and Romania, but the State party failed to comply with its duty to investigate and, thus, to fulfil its obligation under article 12.

State party’s additional observations on admissibility and the merits

6.1 In a submission dated 1 September 2023, the State party explains that there was nothing at the moment of his Dublin interview to prevent the complainant from indicating that he had health problems as a result of torture or ill-treatment suffered in his country of origin or in a transit State, but he did not do so. It also appears from a medical report dated 16 July 2021, issued following his first appointment with a psychiatrist, that the complainant had left his country because his life had been threatened and that he had suffered a head injury at the age of 10, following a bomb attack. While he had the opportunity to report torture or ill-treatment, he again failed to do. The only somatic problem he reported during his Dublin interview was a kidney problem, for which he was subsequently treated in Switzerland, and which he attributed to having drunk undrinkable water, and not to physical ill-treatment.

6.2 As regards the complainant’s medical situation, the State party considers that the nature of the new medical documents submitted is not such as to alter the conclusions of its decision not to examine his asylum application or its position on the admissibility and merits of the present communication. Even if the complainant demonstrates mental health issues with persistent symptoms, the treatment and medication initiated in Switzerland could continue in Romania.

6.3 The State party notes that Romania has not sent citizens of Afghanistan back to Afghanistan since the third quarter of 2021, that is, since the Taliban took power. Romania is therefore complying with its legal obligations, in particular by offering effective protection against refoulement and by not sending people back to regions in crisis. The complainant’s fear of being returned to Afghanistan after his return to Romania is therefore unfounded.

Additional information from the complainant

7. In a submission dated 25 March 2024, the complainant states that he did mention the abuse he suffered in Romania during his Dublin interview. Additionally, he submits that

¹³ The complainant considers that his case is similar to *A.N. v. Switzerland* (CAT/C/64/D/742/2016).

numerous statistics compiled by Eurostat suggest that Afghan nationals have been ordered to leave European countries, including Romania, in 2021, 2022 and 2023, and that some of them have been forcibly returned.¹⁴ Finally, he submits two medical certificates, dated 13 and 25 March 2024, which attest to the diagnosis of post-traumatic stress disorder and a moderate depressive episode. He now also has suicidal thoughts. Without referring to any source, the complainant declares that Dublin returnees are systematically placed in detention centres upon their return, which would, as illustrated by the medical certificates, be extremely detrimental to his mental health.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

8.2 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 the State party's allegation that the claim under article 12 of the Convention should be declared inadmissible because the complainant has not exhausted domestic remedies and because it is insufficiently substantiated. The Committee notes that the complainant has responded that the State party has failed in its duty to investigate his allegations of torture and ill-treatment suffered in Afghanistan and Romania. The Committee notes that the alleged acts took place outside the State party's jurisdiction. The Committee considers that it is precluded, *ratione loci*, from examining the complainant's allegations under article 12 in respect of acts committed outside the State party's jurisdiction.

8.3 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.¹⁵ In the absence of further explanations, the Committee considers that this aspect of the communication is insufficiently substantiated.

8.4 The Committee is, however, of the view that, for the purposes of admissibility, the complainant has provided sufficient information as to the risk of irreparable harm that he would allegedly face if he were to be returned to Romania and has therefore substantiated his allegations under article 3 of the Convention. Accordingly, the Committee declares the claim admissible and proceeds with its consideration of the merits.

Consideration of the merits

9.1 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.

9.2 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 European Union member State that received the first asylum application (the application is examined by a single member State). However, article 3 (2) of the Regulation recognizes 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 the 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 III Regulation demands an individual examination of each situation, in order to prevent a situation where a deportation would

¹⁴ See https://ec.europa.eu/eurostat/statistics-explained/index.php?title>Returns_of_irregular_migrants_-_quarterly_statistics#Non-EU_citizens_ordered_to_leave.

¹⁵ *Harun v. Switzerland* (CAT/C/65/D/758/2016), para. 8.7.

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. For example, the Human Rights Committee, in its Views on *Jasin v. Denmark*,¹⁶ concluded that an individual decision taken pursuant to the Dublin Regulation could violate the complainants' rights under article 7 of the International Covenant on Civil and Political Rights. The Committee against Torture also draws attention to the jurisprudence of the European Court of Human Rights, namely, the judgment handed down on 21 January 2011 in the *M.S.S. v. Belgium and Greece* case, in which the Court concluded that a decision concerning expulsion adopted by the State party pursuant to the Dublin Regulation constituted a violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Accordingly, the Committee against Torture is entitled to examine decisions adopted by national authorities on the ground that they may violate article 3 of the Convention.¹⁷

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

9.4 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 Romania. In assessing this risk, the Committee must take into account all relevant 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.

9.5 The Committee recalls paragraph 11 of its general comment No. 4 (2017), 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 the person is facing deportation, either as an individual or as a member of a group that 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". It recalls that the burden of proof is upon the author of the communication, who must present an arguable case – that is, 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.¹⁸ 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. The Committee 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.¹⁹

9.6 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.²⁰ 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.²¹

9.7 The complainant asserts that after he entered Romania without authorization in March 2021, police officers beat him in order to obtain his fingerprints and he suffered from further

¹⁶ [CCPR/C/114/D/2360/2014](#).

¹⁷ *Harun v. Switzerland*, para. 9.2.

¹⁸ General comment No. 4 (2017), para. 38.

¹⁹ *Ibid.*, para. 50.

²⁰ *Ibid.*, para. 28, read in conjunction with para. 16.

²¹ *Ibid.*, para. 17.

ill-treatment. The Committee recalls its concern regarding allegations of ill-treatment during migrant pushback operations in Romania²² and notes the disturbing allegations in the reports cited by the complainant regarding pushback operations at the border between Romania and Serbia.²³ The Committee recalls that the occurrence of human rights violations in a country is not, of itself, sufficient for the Committee to conclude that the complainant is personally at risk of being tortured if deported to that country.

9.8 The Committee further notes the lack of any evidence provided by the complainant in support of his allegations of torture and ill-treatment by the Romanian police. While he has submitted a photograph that allegedly demonstrates that his fingernails were broken by the police, the Committee notes that the complainant has failed to provide evidence that would link that photograph to himself, to the alleged perpetrator and to the time of the event. The Committee also notes that the complainant has not lodged any complaint before the Romanian authorities. It considers that this aspect of an absence of complaints to the Romanian authorities further indicates a lack of evidence of such mistreatment. The Committee is of the opinion that the complainant has not substantiated his claim regarding torture and ill-treatment by the Romanian authorities.

9.9 The Committee then notes the complainant's allegation that if transferred to Romania he would not have access to an adequate and fair asylum procedure in that country and would risk chain refoulement to Afghanistan. In this regard, it notes the State party's submission that the complainant's presence in Romania would be lawful if he were transferred under the Dublin III Regulation. While taking note of the reports pointing to failures in the Romanian asylum process, the Committee considers that those reports do 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. There are also no concrete elements in the file to indicate that the complainant would not benefit from a fair asylum procedure in Romania.

9.10 The complainant also claims that his state of mental health, in particular, post-traumatic stress disorder, depressive episodes without psychotic symptoms, and suicidal ideation, precludes his removal to Romania, where he would not have access to adequate medical care. The Committee notes the complainant's allegations that he was refused medical care in Romania. However, the Committee also notes the absence of any evidence to prove that he sought medical care in Romania, and that such assistance was denied. 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 have access to free primary health care and emergency hospital aid, as well as medical assistance and free treatment in cases of acute and chronic illnesses,²⁴ 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.²⁵ The Committee notes the State party's information that when transferring a person under the Dublin III Regulation, the State Secretariat for Migration executes the transfer only if the person is fit to travel and that the authorities in the receiving country are informed in advance of the state of health of the person and of the medical treatment he or she needs. The Committee therefore considers that the complainant has not demonstrated 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.

9.11 The Committee lastly notes 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 was provided, however, does not make it possible to conclude that deportation to Romania under the Dublin III Regulation would put the complainant at risk of torture or inhuman or degrading treatment.

²² CAT/C/ROU/CO/3, para. 23.

²³ See also *F v. Switzerland* (CAT/C/78/D/1085/2021).

²⁴ European Union Agency for Asylum, "Information on procedural elements and rights of applicants subject to a Dublin transfer to Romania", paras. 1.2 and 1.5. See also *F v. Switzerland*.

²⁵ European Union Agency for Asylum, "Information on procedural elements", paras. 1.6 and 1.7.

10. In the light of the foregoing, and on the basis 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 Romania would expose him to a real, foreseeable, personal and present risk of being subjected to treatment contrary to article 3 of the Convention.

11. The Committee, acting under article 22 (7) of the Convention, concludes that the deportation of the complainant to Romania 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 find a violation, it requests the State party to inform Romania about the complainant's medical needs in order to facilitate the continuity of his medical treatment upon his arrival in Romania, and also requests the State party to ensure that the complainant will not be detained upon arrival.
