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International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Opinion adopted by the Committee under article 14 of the Convention, concerning communication No. 74/2021*, **

Communication submitted by:	U.I. and G.I. (represented by counsel, Vadim Drozdov)
Alleged victims:	The petitioners
State party:	Switzerland
Date of communication:	29 December 2020 (initial submission)
Date of adoption of opinion:	26 April 2024
Document references:	Decision taken pursuant to rule 91 of the Committee's rules of procedure, transmitted to the State party on 7 January 2021 (not issued in document form)
Subject matter:	Racial discrimination in relation to the return of Roma asylum-seekers to North Macedonia
Procedural issues:	Admissibility; exhaustion of domestic remedies
Substantive issue:	Discrimination on the ground of national or ethnic origin
Articles of the Convention:	2 (1) (a) and 5 (b) and (e) (iv)

1. The petitioners in the communication are U.I., born in 1989, and G.I.,[1] born in 1996, both of Macedonian nationality and Roma ethnicity. They have been subject to an order of removal to North Macedonia as of 11 January 2021 and claim that, should the removal go ahead, the State party would be in violation of their rights under article 5 (b) and (e) (iv) read in conjunction with article 2 (1) (a) of the Convention. Switzerland acceded to the Convention on 29 November 1994 and made the declaration provided for in article 14 on 19 June 2003. The petitioners are represented by counsel.

Facts as submitted by the petitioners

2.1 The petitioners have been married since January 2014 and have three children aged 6, 7 and 9 years. In North Macedonia, they did not have permanent jobs. They earned their living mainly by recycling plastic bottles and other waste. Their income came from the bottles

* Adopted by the Committee at its 112th session (8–26 April 2024).

** The following members of the Committee participated in the examination of the communication: Nourredine Amir, Michal Balcerzak, Pela Boker-Wilson, Chinsung Chung, Bakari Sidiki Diaby, Régine Esseneme, Jian Guan, Ibrahima Guissé, Chrispine Gwalawala Sibande, Gün Kut, Verene Shepherd, Stamatia Stavrinaki, Mazalo Tebie, Faith Dikeledi Pansy Tlakula, Abderrahman Tlemçani and Yeung Kam John Yeung Sik Yuen.

[1] The petitioners have requested anonymity for the purposes of the present communication.

they collected and varied between 20 and 50 Swiss francs a month. The petitioners and their children had no fixed address in North Macedonia and moved from one town to another or from place to place within the same town. However, they lived in the town of Kocani for a relatively long time until they left for Switzerland in 2017.[2] In Kocani, they lived from time to time in a rented house or, when they could not afford the rent, on the street under a plastic tent.

2.2 In North Macedonia, the petitioners tried several times to benefit from public social assistance, which was denied to them. The country's authorities considered the income they received from recycling garbage as regular income. To protest this situation, U.I. took part in a demonstration on 25 January 2016. He has been a member of the Social-Democratic Union of Macedonia, an opposition party, since 2008. He was active during the 2016 election campaign. On 25 December 2016, he was involved in a violent clash over election results between supporters of the Social-Democratic Union of Macedonia and the Democratic Party for Macedonian National Unity. During the confrontation, many people were injured. The police opened a criminal investigation into the incident, which also involved M.M., a senior figure within the Democratic Party for Macedonian National Unity. Two or three days later, U.I. was questioned at a police station in connection with the incident. He complained about the actions of the Democratic Party for Macedonian National Unity supporters and asked for help from the police, who instead forcibly removed him from the premises.

2.3 After the confrontation on 25 December 2016, U.I. repeatedly received threatening telephone calls from a masked number. His unidentified interlocutors reproached him for his support of the Social-Democratic Union of Macedonia. In January 2017, he was visited by several members of the Democratic Party for Macedonian National Unity.[3] They threatened to kill him if he did not testify on M.M's behalf.

2.4 In February 2017, U.I. went to a post office to pick up a summons to appear in court[4] on 6 March 2017 as a witness in the criminal case against M.M.. On his return from the post office, U.I. was accosted by five individuals, presumably associates of M.M.. These people again threatened to kill him if he did not testify to exonerate M.M.. Because U.I. refused, his assailants tried to strangle him. Immediately after this incident, U.I. went to the Kocani central police station to lodge a complaint against his assailants. However, the police officers present refused to register his complaint. They told him that, as a Roma person, he was a "part of the land". Following this incident, U.I. hid in a forest in the nearby mountains. He spent the night in a sleeping bag and, during the day, roamed the neighbouring villages begging for food and money. He rarely visited his family.

2.5 In the meantime, G.I. was repeatedly visited by masked men − probably supporters of the Democratic Party for Macedonian National Unity and associates of M.M. − who, sometimes in the presence of her children, threatened, insulted and beat her because she would not reveal her husband's whereabouts.

2.6 On 22 February 2017, between 5 and 10 masked individuals again broke into the petitioners' home. They applied a cloth soaked in an unidentified liquid to G.I.'s mouth and nose, which caused her to faint. When she woke up the next day, she found herself lying in a forest with her children, her body covered in bruises and her clothes torn. She later realized that she had been raped by her captors.

2.7 Having returned to Kocani, G.I. did not seek medical help, as she was traumatized by her rape. She attempted suicide several times, in North Macedonia and in Switzerland. She tried to hurt herself as much as possible, including by cutting her wrists with a knife, hitting

[2] In its comments, the State party indicates that the present case concerns the petitioners' third application for asylum. U.I. first applied for asylum in Switzerland on 25 February 2010. He subsequently withdrew his application. On 6 February 2011, the petitioners filed a new joint application for asylum. On 19 June 2013, their asylum application was rejected. On 21 August 2013, the petitioners returned to their country of origin with the help of Switzerland, accompanied by their two children born in the meantime.

[3] U.I. recognized these individuals as members of the Democratic Party for Macedonian National Unity because they were wearing the party's colours.

[4] The petitioners did not specify which court.

herself with a stone and rubbing salt in her wounds to worsen the pain. She did not see a doctor after these bouts of self-harm because she did not want the pain to stop.

2.8 On 24 or 25 February 2017, the petitioners and their children left Kocani. They entered Switzerland illegally and, on 1 March 2017, applied for asylum there. In March 2017, G.I. began treatment at the psychiatric department of Frutigen Hospital on account of her mental state.

2.9 On 22 May 2017, a representative of the State Secretariat for Migration conducted separate, detailed interviews with the petitioners, who each explained their reasons for fleeing. On 29 May 2017, the State Secretariat rejected their asylum application. It found that North Macedonia was considered to be a safe country of origin and that the threats against U.I. and G.I.'s rape did not constitute relevant facts making them eligible for asylum. The State Secretariat also indicated that the petitioners could change their place of residence in North Macedonia and thus avoid potential persecution.

2.10 On 7 April 2017, the petitioners lodged an appeal with the Federal Administrative Court against the decision of the State Secretariat for Migration. They claimed that G.I. was suffering from post-traumatic stress disorder as a result of her rape and that she was undergoing psychotherapeutic and medical treatment in Switzerland. The petitioners also pointed out that because of the discrimination they faced in North Macedonia, as Roma persons and because of their poverty, G.I. would not be able to receive the treatment she needed. G.I.'s file before the Tribunal was supplemented on 25 July 2017 with a psychological report dated 3 July 2017, written by a psychiatrist from Frutigen Hospital. It was established in the report that G.I. had post-traumatic stress disorder and was experiencing a moderate to severe depressive episode including suicidal ideation. The report also indicated that she needed psychiatric help and care.

2.11 On 26 July 2017, a doctor from the psychiatric department of Frutigen Hospital provided additional information about G.I.'s mental state. The doctor questioned whether she could obtain adequate treatment and medication in her home country. Nevertheless, he found that neuroleptics, also prescribed to U.I., were available in North Macedonia but were very expensive. The doctor also pointed out that there were numerous indications, including G.I.'s non-verbal behaviour, that she had been raped. This additional information was communicated to the Federal Administrative Court in a letter dated 6 August 2017.

2.12 On 21 November 2019, the Federal Administrative Court asked the petitioners to provide new medical documentation on G.I.'s mental state. On 13 January 2020, a doctor from the psychiatric department of Frutigen Hospital drew up a report describing the treatment under way, G.I.'s psychological state and the benefits of the treatment for her progress. At the beginning of 2020, following the departure from Frutigen Hospital of the psychiatrist in charge of her care, G.I. had to interrupt her treatment.

2.13 On 29 May 2020, the State Secretariat for Migration sent a notice to the Federal Administrative Court confirming its previous decision on the petitioners' situation. The State Secretariat did not dispute the traumatic events experienced by G.I. and their psychological consequences but indicated that her mental state was not such as to put her life in danger in the event of her return to North Macedonia, where the medication she needed was available. The State Secretariat also pointed out that the Social-Democratic Union of Macedonia membership card that U.I. had submitted did not attest to his political activities and could easily have been falsified.

2.14 On 30 July 2020, the Federal Administrative Court rejected the petitioners' appeal. It found that they had not proved that the North Macedonian authorities had failed to provide them with protection after the threats and rape to which they had been subjected or that this alleged failure was due to their membership of the Roma minority. The Court also found that the petitioners had not given the North Macedonian authorities sufficient time to follow up on their complaint, since they had left the country two or three days after the rape. The Court also concluded that G.I.'s mental state was not so serious as to require medical treatment outside of North Macedonia.

2.15 On 6 November 2020, the Biel Medical Centre recommended that G.I. be seen at the University Hospital for Psychiatry and Psychotherapy in Bern. In its report, the Biel Medical

Centre established that G.I. had had a panic attack and was suffering from schizophrenia. On 9 December 2020, two doctors at the University Hospital for Psychiatry and Psychotherapy in Bern diagnosed her with paranoid schizophrenia and confirmed that she had post-traumatic stress disorder. G.I. reportedly heard voices telling her to commit suicide and not to give information to doctors and experienced problems sleeping and nightmares. She also refused to talk to male doctors because of her fear of men.

Complaint

3.1 The petitioners claim that their removal to North Macedonia would constitute a violation of their rights under article 5 (b) and (e) (iv) read in conjunction with article 2 (1) (a) of the Convention. They argue that, although the principle of non-refoulement is not explicitly mentioned in the Convention, the Committee clarified in its general recommendation No. 22 (1996) that States parties were obliged to respect the principle of non-refoulement and non-expulsion of refugees.[5]

3.2 The petitioners argue that there are substantial grounds to believe that, if they were to be returned to North Macedonia, they would face a real risk that their right to security and physical safety would be seriously violated on account of their Roma ethnicity. By putting them at risk of such treatment, the State party would be in violation of article 5 (b) read in conjunction with article 2 (1) (a) of the Convention. They also claim that the Swiss authorities' assessment of their asylum application was inadequate, as it failed to take into account their personal circumstances, including their ethnicity.

3.3 G.I. argues that there are substantial grounds to believe that, if she returned to North Macedonia, she would be deprived of access to the medical care she needs because of her Roma ethnicity. Consequently, her expulsion to that country would constitute a violation by the State party of article 5 (e) (iv) read in conjunction with article 2 (1) (a) of the Convention.

3.4 The petitioners recall the Committee's position that article 5 of the Convention does not of itself create human right but assumes the existence and recognition of such rights.[6] In this respect, the right not to be subjected to torture and other ill-treatment – enshrined in article 7 of the International Covenant on Civil and Political Rights, articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and provisions of other human rights treaties – is relevant to the present case. Article 5 of the Convention indicates that the rights guaranteed, inter alia, by the above-mentioned treaties must be protected without discrimination based on race, colour or ethnic or national origin.

3.5 The petitioners further argue that, as the Committee has not yet defined a position on the assessment of non-refoulement complaints lodged under article 14 of the Convention, it will have to rely on the jurisprudence of other treaty bodies. The petitioners point out that the Committee against Torture has reiterated that although it is for the complainant to establish a prima facie case for an asylum request, this does not exempt the State party from making substantial efforts to determine whether there are grounds for believing that the complainant would be in danger of being subjected to torture if returned.[7]

3.6 The petitioners also argue that, in relation to the asylum process, the Committee on the Elimination of Discrimination against Women has interpreted article 2 (c) of the Convention on the Elimination of All Forms of Discrimination against Women as requiring States to apply a gender-sensitive approach at every stage of the asylum process.[8] The petitioners argue that the Committee should take the same approach when interpreting the Convention. They also point out that the recent jurisprudence of the Committee on the Elimination of Discrimination against Women has recognized that Roma women in North Macedonia are marginalized and face problems gaining access to gynaecological care and

[5] Committee on the Elimination of Racial Discrimination, general recommendation No. 22 (1996), para. 2 (b).

[6] See Committee on the Elimination of Racial Discrimination, general recommendation No. 20 (1996).

[7] *F.K. v. Denmark* (CAT/C/56/D/580/2014), para. 7.6.

[8] Committee on the Elimination of Discrimination against Women, general recommendation No. 32 (2014), para. 25.

discrimination based on both gender and ethnic origin.[9] In addition, G.I. argues that she is unable to meet the costs of her treatment in North Macedonia, where the necessary infrastructure and personnel do not exist.

State party's observations on admissibility and the merits

4.1 On 3 June 2021, the State party submitted its observations on the admissibility and the merits of the communication.

4.2 Invoking article 14 (2) of the Convention, the State party challenges the admissibility of the communication. It considers the submission of the two medical reports dated 6 November and 9 December 2020 submitted by G.I. attesting to the worsening of her medical situation to have been submitted late. The State party considers that these reports, issued after the last decision of the national authorities and the closure of the ordinary asylum process, may be presented in the context of a re-examination procedure under article 111*b* of Act No. 142.31 of 26 June 1998 on Asylum. In the context of this procedure, the applicant is free to argue that his or her circumstances have changed significantly since the first-instance decision or, where applicable, the decision on appeal.[10] The State party points out that the applicant may present evidence that came to light after the ruling on appeal but that concerns facts predating it.[11] The State party also clarifies that new facts and evidence may lead to reconsideration if they are important and decisive, i.e., if they are of such a nature as to influence the outcome of the dispute.[12]

4.3 In the present case, the State party clarifies that the petitioners may apply for re-examination of the first-instance decision ordering their removal if the enforcement of that decision might breach an international commitment made by Switzerland.[13] Such an application may be made at any time. The State party points out that, although article 111*b* of the Asylum Act provides that the application for re-examination must be lodged within 30 days of the discovery of the reason for re-examination, long-standing and repeatedly confirmed jurisprudence has held that this procedural time limit cannot stand in the way of the verification of compliance with international conventions binding on Switzerland and, consequently, of the possibly unlawful nature of the enforcement of removal.[14] The State party further maintains that, insofar as this remedy is available to the petitioners, it is incumbent on them to avail themselves of it before bringing their case before the Committee. By failing to do so, they have not exhausted all available domestic remedies. Consequently, the present communication must be declared inadmissible, as it is based on medical documents issued after the Federal Administrative Court's decision of 30 July 2020.

4.4 On the merits of the communication, the State party indicates that a removal decision can only be considered contrary to the Convention in cases where there are grounds for believing that the person concerned would be exposed to a real, personal and foreseeable risk of being subjected to particularly serious violence or treatment related to discrimination. In the light of the practice of the Committee against Torture in relation to non-refoulement under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the State party reiterates that, in determining whether there are such grounds, the competent authorities must take into account all relevant considerations, including, where applicable: the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights; allegations of torture or ill-treatment in the recent past; the existence of and access to evidence from independent sources to support these allegations; the complainant's engagement in political activities within or outside his

[9] *S.B. and M.B. v. North Macedonia* (CEDAW/C/77/D/143/2019), para. 7.7.

[10] Federal Administrative Court, ruling, 30 April 2010, ATAF 2010/22, para. 2.1.1.

[11] Federal Administrative Court, ruling, 5 June 2013, ATAF 2013/22, paras. 11.4.3–11.4.7.

[12] Federal Supreme Court, ruling, 15 October 2001, ATF 127 V 353, para. 5 (a); Federal Supreme Court, ruling, ATF 118 II 199, para. 5; and Federal Administrative Court, ruling, 16 December 2014, ATAF 2014/39, para. 4.5.

[13] Switzerland, Federal Act No. 142.20 of 16 December 2005 on Foreigners and Integration, art. 83 (3).

[14] Federal Administrative Court, ATAF 2013/22 (see footnote 11 above), paras. 5.4, 9.3.2 and 11.4.2.

or her State of origin; evidence as to the credibility of the complainant; and the general veracity of his or her allegations.[15]

4.5 The State party points out that, in relation to article 6 of the International Covenant on Civil and Political Rights, the Human Rights Committee has referred to the obligation of States parties not to expel a person from their territory if there are substantial grounds to believe that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.[16] The risk must be personal and important weight should be given to the assessment conducted by the State party, which is responsible for evaluating facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice.[17] The State party also points to the position of the Committee on the Elimination of Discrimination against Women with regard to the asylum process, which is that States parties have an obligation to ensure that no woman will be expelled or returned to another State where her life, physical integrity, liberty and security of person would be threatened, or where she would risk suffering serious forms of discrimination, including serious forms of gender-based persecution or gender-based violence.[18] That Committee has also established that it is for the authorities of States parties to evaluate the facts and evidence and the application of national law in a particular case, unless it can be established that the evaluation was conducted in a manner that was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice.[19]

4.6 The State party maintains that, in accordance with the principle of the subsidiarity of international protection in relation to national protection under the Convention relating to the Status of Refugees, the petitioner in a communication must first seek the protection of the country of his or her nationality. National protection is considered adequate when the person concerned has access to effective protection mechanisms in that country and can reasonably be expected to make use of the national protection system.[20]

4.7 The State party highlights the many initiatives taken in North Macedonia with regard to rape, which is criminalized there and carries a sentence of between 1 and 10 years' imprisonment. It highlights the fact that, in December 2017, North Macedonia ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)[21] and subsequently adopted a new definition of rape in the Criminal Code, took measures to produce guidance for victims of sexual violence and, in 2018, established mechanisms to combat violence against women and facilities for the care of victims of such violence.[22]

4.8 The State Party is of the view that North Macedonia is a safe State within the meaning of article 6*a* (2) (a) of the Asylum Act, as confirmed in 2023 by the Federal Council. North Macedonia is also on the European Commission's list of safe States. On 25 March 2020, the European Union agreed to open accession negotiations with North Macedonia, meaning that this State meets the Copenhagen criteria for stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.[23]

4.9 The State party indicates that, for the protection of their fundamental rights, Macedonians/citizens of the Republic of North Macedonia, including members of ethnic

[15] Committee against Torture, general comment No. 4 (2017), para. 49.
[16] See Human Rights Committee, general comment No. 31 (2004).
[17] *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.
[18] See Committee on the Elimination of Discrimination against Women, general recommendation No. 32 (2014).
[19] *S.F.A. and H.H.M. v. Denmark* (CEDAW/C/69/D/85/2015), para. 9.7; *A.S. v. Denmark* (CEDAW/C/69/D/80/2015), para. 8.7; *S.J.A. v. Denmark* (CEDAW/C/68/D/79/2014), para. 7.8; *N.M. v. Denmark* (CEDAW/C/67/D/78/2014), para. 8.6; *A.M. v. Denmark* (CEDAW/C/67/D/77/2014), para. 8.4; and *F.F.M. v. Denmark* (CEDAW/C/67/D/70/2014).
[20] Convention relating to the Status of Refugees, art. 1, para. A (2).
[21] This convention entered into force for North Macedonia on 1 July 2018.
[22] Women Against Violence Europe, "Mapping of Sexual Violence Services in the Western Balkans and Turkey – Executive Summary", September 2019, p. 20.
[23] See European Commission, *North Macedonia 2020 Report*, working paper, 6 October 2020.

minorities, may appeal to an ombudsman whose office has a unit that deals with cases of violence committed by the police or bodies with police powers (for example, prison staff).[24]

4.10 The State party points to the numerous efforts of North Macedonia to protect ethnic minorities, including Roma persons. These efforts include strengthening the powers of the Agency for Community Rights Realization through the adoption of a law to this effect in January 2020.[25] North Macedonia also adopted a Roma strategy in 2014 for the period 2014–2020, covering several priority issues, including employment, education, housing, health care and the strengthening of the place of Roma women in society. The State party also argues that the petitioners' claim that they appealed to the North Macedonian authorities but did not receive adequate protection following the threats and violence to which they were subjected is not based on any concrete or convincing evidence. The State party points out that the petitioners have not produced any documents attesting to the steps they took in their country of origin.

4.11 The State party also points out that the petitioners' statements contain several contradictions. In this regard, it notes that in their communication, the petitioners claim that they had no fixed address in North Macedonia, whereas before the domestic authorities, U.I. stated that he had been a tenant at the same address since the family's return to North Macedonia in 2013 until their new departure to Switzerland.[26] The State party also notes that, before the domestic authorities, U.I. claimed that he was a supporter but not a member of the Social-Democratic Union of Macedonia, whereas in the communication he claims to have been a member since 2008. Moreover, despite the activism he claims to have performed in relation to the elections, he was unable to give any indication of their outcome when interviewed by the State Secretariat for Migration. The State party also points out the contradictions as to the place where U.I. claims to have encountered M.M.'s supporters – sometimes upon leaving the police station, sometimes at the post office.

4.12 The State party notes that, with regard to the abduction of G.I., U.I. claimed that the children had been abducted with her and that the rape had taken place in front of them. However, G.I. claimed that the children were crying when she arrived home. The State party also points out contradictions as to the time and reasons for G.I.'s alleged suicide attempt.

4.13 With regard to the steps taken by the petitioners to obtain assistance from the police in North Macedonia, the State party notes that G.I. stated that they had reported the rape to the police, but that the police had not helped them, while U.I. stated that the police had conducted searches without success. In the State party's view, this statement by U.I. proves that the authorities in North Macedonia did not remain completely impassive and that they did not immediately refuse to take steps to protect them. The State party further notes that the petitioners claimed to have left North Macedonia one or two days after the alleged rape, which in any case would not have given the North Macedonian authorities sufficient time to follow up on any criminal complaint. The State party therefore considers that the Federal Administrative Court was right to find that the petitioners had not demonstrated that they had genuinely sought protection in their country of origin and that the authorities of that country would not be in a position to grant protection to them.

4.14 The State party further points out that U.I. does not claim to have held an important position within the Social-Democratic Union of Macedonia during the elections of 2016. The State party also stresses that there is reason to believe that the alleged trial against M.M. has long since been concluded and that his supporters no longer have any interest, if they ever did, in intimidating the petitioners. The State party recalls that in 2017, the country was governed by the Democratic Party for Macedonian National Unity, whereas the presidency and the position of Head of Government of North Macedonia are currently held by members of the Social-Democratic Union of Macedonia, which would reduce the risk of persecution against the petitioners.

[24] This unit was created in 2018; see the annual reports of the Ombudsman's Office at https://www.theioi.org/ioi-members/europe/macedonia/ombudsman-office-of-the-republic-of-north-macedonia.

[25] See European Commission, *North Macedonia 2020 Report* (footnote 23 above).

[26] The petitioners had already stayed in Switzerland between 2010 and 2013; see footnote 2 above.

4.15 In the light of the foregoing, the State party considers that the present communication contains no evidence of the existence of a serious and specific risk for the petitioners of being subjected, in the event of their return to North Macedonia, to violence or treatment of such gravity that their removal would contravene the principle of non-refoulement. The State party also points out that, should the petitioners encounter discriminatory practices in North Macedonia, or should they consider that this State is in breach of its obligations to assist them or is in any other way infringing their fundamental rights, it would be up to them to assert their rights directly before the North Macedonian authorities, using the appropriate legal channels.

Petitioners' comments on the State party's observations

5.1 On 11 November 2021, the petitioners submitted their comments on the State party's observations.[27] They rejected the State party's claim that their communication is inadmissible.

5.2 First, the petitioners do not dispute that the medical reports concerning G.I. of 6 November and 9 December 2020 were not submitted to the national authorities and were drawn up after the Federal Administrative Court's decision of 30 July 2020. They are of the view, however, that this does not prevent the Committee from declaring the present communication admissible and from examining the documents in question. They dispute the State party's argument that G.I. based her claim about inadequate access to medical care owing to her membership of the Roma community on these medical reports. On the contrary, they maintain that G.I. based her claim regarding her state of mental health on three medical documents that had been submitted to the national authorities. They consider that the medical reports of 6 November and 9 December 2020 contain only additional information that underlines the content of their previous submissions.

5.3 Second, the petitioners challenge the State party's argument of inadmissibility on the ground that the medical reports of 6 November and 9 December 2020 post-date the Federal Administrative Court's decision of 30 July 2020. They recall that the Committee against Torture considered a similar issue in the case of *A.M. v. France*, concerning the admissibility of information that had not been communicated to the authorities prior to the submission of the individual communication.[28] The Committee against Torture observed that the information in question had been received by the complainant, through no fault of his own, after the exhaustion of domestic remedies in the State party and decided that the new information, which had not been submitted to the national authorities, could be taken into account and that the communication was admissible.[29] The petitioners further state that the medical reports of 6 November and 9 December 2020 were not produced for the purposes of the present communication, but rather were an objective medical necessity for G.I. because of the drastic deterioration of her mental health.

5.4 Third, the petitioners reject the State party's argument that they must initiate a domestic review in order to submit the medical reports of 6 November and 9 December 2020 concerning G.I. They recall that the Committee against Torture and the Human Rights Committee have repeatedly stressed that, in the context of non-refoulement, a domestic remedy is effective if it has automatic suspensive effect.[30] The petitioners recall that, in accordance with the principle of non-refoulement, which is recognized in relation to racial discrimination, domestic remedies are effective within the meaning of article 14 (7) (a) of the Convention if they have automatic suspensive effect. They argue that the submission of an application for re-examination under article 111*b* (3) of the Asylum Act does not automatically suspend a removal decision. They also point out that the State Secretariat for Migration has confirmed in its manual on asylum and return that the application for

[27] Petitioners' comments were submitted in Russian on 11 November 2021. They were submitted in English on 3 January 2023.

[28] *A.M. v. France* (CAT/C/44/D/302/2006), para. 9.

[29] Ibid., para. 12.3.

[30] Committee against Torture, general comment No. 4 (2017), paras. 13, 18 (e) and 41; *S.A.C. v. Monaco* (CAT/C/49/D/346/2008), para. 7.2; and *A.P. v. Finland* (CAT/C/60/D/465/2011), para. 8.3. See also *Al-Gertani v. Bosnia and Herzegovina* (CCPR/C/109/D/1955/2010), para. 9.3, and CCPR/C/FRA/CO/5, para. 18.

re-examination is an extraordinary appeal and has no automatic suspensive effect.[31] Since the application for re-examination was not an effective remedy, the petitioners were not obliged to use it before bringing their case before the Committee. They therefore request the Committee to declare their communication admissible under article 14 (7) (a) of the Convention and to take due account of the medical reports of 6 November and 9 December 2020.

5.5 The petitioners reject the State party's arguments that they would not be at risk of torture and ill-treatment because of their ethnicity if returned to North Macedonia.

5.6 The petitioners point out that in their comments on the protection measures available to Roma people in North Macedonia, the State party refers to general facts that do not reflect their personal situation. They also point out that the examples reported by the State party concerning the measures taken by North Macedonia to combat gender-based violence do not take into account G.I.'s membership of the Roma ethnic group and therefore the intersectionality of the discrimination she faces as a Roma woman. The petitioners argue that a full assessment of the protection afforded by the North Macedonian authorities on the issue of discrimination against Roma people should be based not on a list of legal measures adopted, but on the implementation of such measures.

5.7 With regard to the State party's argument that the petitioners did not provide documentary evidence that they had taken steps to obtain protection in their country of origin, the petitioners reiterate that the police systematically refused to register their complaints of threats, violence and rape. They point out that country-of-origin information confirms that perpetrators of violence against women and Roma people often go unpunished. The petitioners therefore argue that, for objective reasons, they have no documentary evidence of the violence and threats to which they were subjected and which they reported to the police.

5.8 The petitioners refute the State party's arguments about contradictions in their statements to the asylum authorities. Regarding their residence, they clarify that they had no permanent place of residence in their country of origin, including during their residence in that country prior to 2011, i.e. before their first entry into Switzerland. They also state that they lived in a rented house in Kocani, where they stayed until their second departure for Switzerland in 2017. They add that when they did not have sufficient resources to pay rent they lived on the streets but always returned to the same rented house when it was financially possible for them to do so.

5.9 Regarding the information on U.I.'s membership of the Social-Democratic Union of Macedonia, which was deemed contradictory by the State party, the petitioners point out that the national representative of the party sent U.I.'s membership card to the Federal Administrative Court in a letter dated 23 November 2017 and the Court acknowledged receipt of this letter in its decision of 30 July 2020. Consequently, U.I.'s membership of the Social-Democratic Union of Macedonia has been established.

5.10 With regard to the assailants' visit to their home, the petitioners dispute the contradiction alleged by the State party. They claim that during the interview, U.I. specified that he was alone the first time the assailants came to his house; the second time they came, he was already on the run and his assailants abducted and raped his wife, who had stayed at home. The petitioners further state that G.I., in her interview of 22 May 2017, indicated that she had been visited by M.M.'s supporters more than 10 times while she was alone with her children. When U.I. indicated that supporters came to his home on a regular basis, he was referring to visits to their home in his absence. Accordingly, the petitioners maintain that this difference in their statements does not constitute a contradiction.

5.11 The petitioners do not dispute the contradictions noted by the State party concerning the periods during which G.I. attempted suicide or the presence or absence of the children at the time of her rape and suicide attempt. Nevertheless, they recall that the Committee against Torture has recognized that, following acts of torture, States parties must be sensitive to the

[31] Switzerland, State Secretariat for Migration, "*Article H2 - Les voies de droit extraordinaires et les demandes multiples (y c. frais de procédure)*", in *Manuel asile et retour*, available at https://www.sem.admin.ch/sem/fr/home/asyl/asylverfahren/nationale-verfahren/handbuch-asyl-rueckkehr.html.

fact that complete accuracy can seldom be expected from the victims.[32] The petitioners add that the Committee against Torture has also recognized that some inconsistencies may exist in the presentation of the facts, provided that the person has demonstrated the general veracity of his or her claims.[33] They also point out that the contradictions in G.I.'s statements are due to the post-traumatic stress disorder that resulted from the sexual violence to which she was subjected, which causes memory loss.[34] The petitioners argue that the presence or absence of G.I.'s children at the time of her rape and the number of times she attempted suicide have no bearing on the veracity of her allegations of rape. They point out that the medical report of 26 July 2017 explains in detail why these allegations are true from a psychotherapeutic point of view. The petitioners also point out that the State party has not contested the fact that G.I. was sexually assaulted.

5.12 Lastly, the petitioners indicate that G.I. is not seeking to avoid deportation to North Macedonia in order to benefit from better care in Switzerland. They argue that the main issue is whether she would be able to obtain in North Macedonia the kind of medical care absolutely necessary to treat her mental disorder to prevent serious risks to her health.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, pursuant to article 14 (7) (a) of the Convention, whether domestic remedies have been exhausted.

6.2 The Committee notes that the petitioners have alleged that a violation of article 5 (b) and (e) (iv) read in conjunction with article 2 (1) (a) of the Convention would occur should the State party decide to return them to North Macedonia, where U.I. risks being subjected to torture and ill-treatment and G.I. would be deprived of post-rape medical care – risks connected to their membership of the Roma ethnic group. The Committee notes that the petitioners' asylum application was considered by the Swiss migration authorities and that the State Secretariat for Migration rejected it in a decision dated 29 May 2017. It also notes that, in a decision dated 30 July 2020, the Federal Administrative Court rejected the appeal lodged by the petitioners against the decision of the State Secretariat. The Committee observes that the petitioners have submitted two new medical reports attesting to the deterioration of G.I.'s health: one issued by the Biel Medical Centre dated 6 November 2020, the other written by two doctors from the University Hospital for Psychiatry and Psychotherapy in Bern dated 9 December 2020.

6.3 The Committee notes, however, the State party's argument that the present communication is inadmissible as the petitioners have not complied with the requirement of the exhaustion of domestic remedies under article 14 (7) (a), of the Convention. It notes that the State party indicates that the reports of 6 November and 9 December 2020, which were issued after the Federal Administrative Court's last decision on the petitioners' asylum application, may be submitted in the context of a re-examination procedure under article 111*b* of the Asylum Act, if they are of such a nature as to influence the outcome of the dispute. The Committee further notes that, according to the State party, an application for re-examination on the basis of the new documents may be made at any time in accordance with established jurisprudence, notwithstanding the requirement under article 111*b* of the Asylum Act that the application be filed within 30 days of the discovery of the ground for re-examination.

6.4 The Committee notes that the petitioners do not dispute the fact that the medical reports of 6 November and 9 December 2020 were submitted after the final decision of the Federal Administrative Court. It also notes that the petitioner indicate that G.I. based her claim of racial discrimination on documents predating said medical reports and that it was only to supplement the reports already submitted that G.I. submitted these new reports. The

[32] Committee against Torture, general comment No. 4 (2017), para. 42.

[33] Ibid., para. 49 (i).

[34] The medical report of 9 December 2020 indicates that G.I. had memory problems that led her to give partially contradictory information.

Committee further notes that the petitioners request the Committee to declare their communication admissible under article 14 (7) (a) of the Convention and to take due account of the medical reports of 6 November and 9 December 2020.

6.5 The Committee notes the petitioners' argument that the Human Rights Committee and the Committee against Torture have established that, in relation to non-refoulement, a domestic remedy is effective if it has automatic suspensive effect. It also notes that, according to the petitioners, article 111*b* (3) of the Asylum Act provides that an application for re-examination does not automatically suspend a removal decision and that this fact was reaffirmed by the State Secretariat for Migration in its manual on asylum and return. The Committee observes that the petitioners did not attempt to use the re-examination procedure available to them in view of the new circumstances relating to G.I.'s health. It also observes that article 111*b* of the Asylum Act provides that the time limit for submitting an application for re-examination to the Secretariat of State is 30 days after the discovery of the ground for re-examination, notwithstanding the State party's argument that, according to long-standing jurisprudence, this time limit does not constitute an obstacle to the re-examination of the removal on the basis of new elements submitted by the petitioners. The Committee notes that the submission of an application for re-examination under article 111*b* of the Asylum Act does not suspend the enforcement of removal, since the competent authority has discretion to grant suspensive effect. In the present case, it considers that this appeal does not have an automatic suspensive effect and does not constitute a remedy to be exhausted.[35] In these circumstances, the Committee considers that the fact that the petitioners did not file an application for re-examination under section 111*b* of the Asylum Act does not constitute grounds for inadmissibility of the communication.

6.6 As the Committee finds no obstacles to admissibility, it declares the present communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 14 (7) (a) of the Convention.

7.2 The Committee observes, at the outset, that it must determine whether an act of racial discrimination within the meaning of article 1 of the Convention has occurred before it can decide whether the State party has failed to fulfil one of the substantive obligations of prevention, protection and redress set out in the Convention.[36]

7.3 The Committee observes that the present communication constitutes a new case in that the petitioners are asking it to rule on an obligation of non-refoulement under article 14 of the Convention. It must determine in the present case whether the return of the petitioners to North Macedonia would constitute a violation of the State party's obligation under article 5 (b) and (e) (iv) read in conjunction with article 2 (1) (a) of the Convention.

7.4 The Committee notes the petitioners' claim that their return to North Macedonia would expose them to a real risk that their right to security and physical safety would be seriously violated on account of their Roma ethnicity, in violation of article 5 (b) read in conjunction with article 2 (1) (a) of the Convention. The Committee also notes the State party's argument that the return of the petitioners would be contrary to the Convention only in the event of a real, personal and foreseeable risk of violence or particularly serious treatment related to discrimination. The State party, basing its analysis of the risk of torture on the jurisprudence of the Committee against Torture in relation to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, reiterates that, in determining whether there are such grounds, the competent authorities must take into account a series of considerations, including, where applicable: the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights; allegations of torture or ill-treatment in the recent past; the petitioner's

[35] See, among others, *Al-Gertani v. Bosnia-Herzegovina*, para. 9.3. See also *S.A.C. v. Monaco*, para. 7.2, and *A.P. v. Finland*, para. 8.3.

[36] *L.R. et al. v. Slovak Republic* (CERD/C/66/D/31/2003), para. 10.2.

engagement in political activities within or outside his or her State of origin; evidence as to the credibility of the petitioner; and the general veracity of his or her allegations.[37]

7.5 The Committee notes that, according to the petitioners, country-of-origin information indicates that in North Macedonia, perpetrators of violence against women and Roma persons often go unpunished and the State party refers in its assessment to general facts that do not reflect their personal situation. The Committee also notes the State party's argument that North Macedonia is considered a safe State within the meaning of article 6*a* (2) (a) of the Asylum Act, that in 2023 this was confirmed by the Federal Council and that, furthermore, North Macedonia is included in the European Commission's list of safe States, which means that it meets applicable criteria regarding the existence of stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The Committee observes that the petitioners have not demonstrated the existence of a situation of systematic violations of human rights, including those of ethnic minorities, in North Macedonia.

7.6 The Committee notes the State party's argument that the petitioners have provided no evidence that they approached the North Macedonian authorities to obtain adequate protection against the alleged violations. It notes that the petitioners have admitted that they have no documentary evidence of the violence and threats to which they were subjected. In these circumstances, the Committee is not in a position to conclude that the petitioners have demonstrated that they have suffered violence in the past, which could justify a possible protection measure under the Convention.

7.7 With regard to the violation of article 5 (e) (iv) of the Convention, the Committee notes the petitioners' allegation that G.I. was raped in North Macedonia by unknown persons apparently closely connected to the Democratic Party for Macedonian National Unity. As a result of the rape, she attempted suicide both in North Macedonia and in Switzerland and developed a tendency towards self-harm, with doctors detecting signs of post-traumatic stress disorder.

7.8 The Committee also notes that the State party highlights contradictions regarding the timing of G.I.'s alleged suicide attempt and the reasons for it. It further observes that the petitioners do not contest the contradictions concerning the periods in which G.I. attempted suicide, or the presence or absence of her children at the time of her rape and suicide attempt, but retort that these contradictions in no way detract from the veracity of their allegations concerning G.I.'s rape. The Committee further notes that the petitioners indicate that G.I. is not seeking to avoid deportation to North Macedonia to benefit from better care in Switzerland but doubt the possibility of their obtaining in North Macedonia the care she needs, as persons of Roma ethnicity and because of their poverty.

7.9 The Committee recalls that it is up to the petitioners to present an arguable case – that is, submit substantiated arguments showing that the risk of their right to security and physical safety being seriously violated because of their ethnic or racial origin is foreseeable, personal, present and real. The Committee recalls that it is not its responsibility to review findings regarding the facts in a case unless it is possible to prove that the decisions of the national courts were clearly arbitrary.[38] The Committee notes that the petitioners had ample opportunity to provide the national authorities, namely the State Secretariat for Migration and the Federal Administrative Court, with supporting evidence and more information about their claims.

8. Acting under article 14 (7) (a) of the Convention, the Committee is of the view, in the light of the material in the case file, that the facts before it do not disclose a violation of any of the provisions of the Convention.

9. Notwithstanding the conclusion reached in the present case, the Committee notes the guarantee provided by the State party that the petitioners may apply for a re-examination of the first-instance decision to order their expulsion if the enforcement of that decision might

[37] Committee against Torture, general comment No. 4 (2017), para. 49.

[38] *Torregrosa Lafuente et al. v. Spain* (CCPR/C/72/D/866/1999) para. 6.2, and *Hart v. Australia* (CCPR/C/70/D/947/2000), para. 4.3.

breach an international commitment made by Switzerland. On the basis of this guarantee, and taking into account G.I.'s vulnerability, which has worsened substantially since the Federal Administrative Court's decision, and the structural barriers Roma women face in gaining access to psychotherapeutic and medical treatment, the Committee invites the State party to accept the petitioners' request for re-examination on the basis of the new reports, which were produced belatedly, and in the meantime to ensure that G.I. receives the care she needs while she remains on the territory of the State party and is able to gain access to medical assistance upon her return.