



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

Distr.: General  
23 July 2024

Original: English

## Committee against Torture

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

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

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

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

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



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

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

2.1 The complainant was born and raised in Chechnya, Russian Federation. He and his ex-wife – also a Russian national of Chechen origin – got married in 2005. In 2006, their first son was born, but died the same year following a bomb attack on their home.<sup>1</sup> The complainant fled to Poland with his wife and applied for asylum. In Poland their second child was born. In the camp where they lived, the hygiene conditions were very poor and the mother developed severe asthma and frequent vomiting. Their daughter was born with severe breathing difficulties. Therefore, after the birth she had to stay in hospital for one month. There was no bed for the mother, so she slept in a chair for the whole month. The complainant went to the hospital every day to bring food.

2.2 The complainant and his wife believed that in Poland they were being sought by the Russian secret services.<sup>2</sup> Therefore, after one and a half years in Poland, the family fled to Austria, where they again applied for asylum. The application was rejected,<sup>3</sup> so the family fled to Switzerland, where they applied for asylum on 5 July 2009. In September 2009, the complainant was admitted to outpatient treatment in the crisis intervention centre of the University Psychiatric Services Bern – a hospital specializing in the treatment of mental health conditions.<sup>4</sup>

2.3 In 2010, the complainant's brother was detained by the authorities in Chechnya. While in custody, he was tortured, including with electric shocks. The authorities demanded a ransom from the family for his release. After the ransom was paid, the complainant's brother was released, but he died a few days after the release from the effects of the electric shocks. The official reason given for his death was heart failure.<sup>5</sup>

2.4 On 16 November 2012, the family's asylum application was rejected. The appeal against that decision was rejected by the Federal Administrative Court on 17 July 2013. In August 2013, the complainant attempted suicide,<sup>6</sup> so he was hospitalized in the crisis intervention centre in Bern and then resumed outpatient treatment there.

2.5 On 4 December 2014, the family requested that the decision of 16 November 2012 be re-examined, which was rejected by the State Secretariat for Migration on 5 November 2015. On 12 January 2016, the Federal Administrative Court rejected their appeal.<sup>7</sup> The complainant's last appointment at the University Psychiatric Services Bern before his departure from Switzerland was in July 2016. At that time, he was diagnosed with post-traumatic stress disorder, recurrent depressive disorder and was treated with mirtazapine and quetiapine.

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

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<sup>1</sup> The complainant believes that the soldiers wanted to put pressure on him because he was suspected of collaboration with Chechen rebels.

<sup>2</sup> The complainant has not provided any further details.

<sup>3</sup> The complainant has not provided any further details.

<sup>4</sup> The complainant has not provided any further details. He mentions that he was in outpatient treatment between February and October 2010.

<sup>5</sup> No evidence was provided.

<sup>6</sup> This is confirmed in his medical history.

<sup>7</sup> On 16 May 2017, the Federal Administrative Court also rejected an application for review of the judgment of 12 January 2016.

windows. He did not know where he was. He was tortured with electric shocks and beaten. His captors demanded information about the opponents of the Government of Chechnya abroad and wanted him to become an informant. His family had to pay a ransom of 11,000 euros, after which the complainant was released.<sup>8</sup> The torture further damaged the complainant's mental health: he was constantly scared, had nightmares and was barely able to concentrate.

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

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

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

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

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

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<sup>8</sup> The complainant submitted four photographs with bruises on his face and back. However, there is no way of knowing when the photographs were taken.

2.12 On 17 July 2020, the complainant resumed psychiatric treatment at the University Psychiatric Services Bern. On 23 July 2020, the Federal Administrative Court rejected his appeal against the decision of the State Secretariat for Migration, considering that there were no grounds for believing that the asylum procedure and reception conditions for asylum-seekers in Poland showed systemic weaknesses that would create a risk of inhuman or degrading treatment. The Court also noted that nothing sufficiently concrete could be inferred from the case file as to the intensity, stability and seriousness of his relationship with his children, of whom he could not even give the exact dates of birth when he took up residence. Last, the Court noted that the complainant had not claimed to have any health problems that would prevent him from being transferred to Poland. On 10 September 2020, the complainant was granted joint custody of his children.

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

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

2.15 On 29 October 2020, the State Secretariat for Migration rejected his request. As far as the complainant's medical condition was concerned, the State Secretariat noted that Poland had an adequate medical infrastructure and was obliged under article 19 (1) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, to provide him with the necessary medical care, which included at least emergency care and essential treatment of illness and serious mental disorders. By an interim decision of 20 November 2020, the Federal Administrative Court upheld the findings of the State Secretariat and considered that the complainant's appeal did not have a chance of succeeding, and that the Court would only review it upon prepayment of procedural fees of SwF1,500. The complainant did not pay the court fees.

### **Complaint**

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

3.2 The complainant notes that in July 2020, the European Court of Human Rights established the existence of a State policy in Poland of not accepting for review applications for international protection submitted by foreigners, in particular by Russian nationals of Chechen origin, at the border between Belarus and Poland.<sup>9</sup>

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<sup>9</sup> European Court of Human Rights, *M.K. and Others v. Poland*, Applications No. 40503/17, No. 42902/17 and No. 43643/17, Judgment, 23 July 2020, paras. 209 and 210.

3.3 The complainant also states that the Swiss authorities did not seek assurances from their Polish counterparts that he would not be detained upon arrival in Poland. He claims that according to a recent report about the asylum system in Poland, the authorities detain asylum-seekers returned to Poland under the Dublin III Regulation, even if they are victims of violence and suffer from a severe psychological condition.<sup>10</sup> The report mentions that asylum-seekers suffering from mental conditions are not provided with adequate treatment.<sup>11</sup> The complainant also notes that in 2019, the Committee expressed concern that in the State party there was insufficient capacity to identify asylum-seekers who were victims of torture and a lack of adequate protection and care for survivors of sexual and gender-based violence.<sup>12</sup>

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

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

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

4.2 On the merits, the State party considers that the allegation that the success of the complainant's treatment depends on proximity to his children should be put in the context of the fact that he has already lived apart from them for four years and of the likelihood of a stable environment in Poland. The State party declares that Poland has an adequate medical infrastructure and states that the Polish authorities have expressly confirmed to the Swiss authorities that Poland can provide adequate medical services and that these are accessible in practice because asylum-seekers and refugees have access to psychological treatment on an equal footing with Polish nationals. The State party explains that according to the case law of the Federal Administrative Court, the transfer of vulnerable asylum-seekers to Poland is permissible insofar as the Polish authorities are informed in advance and in an appropriate manner of the state of health of the person concerned and of the treatment he or she needs.

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

4.4 As to the country report of 2019, invoked by the complainant to allege that persons with post-traumatic stress disorder are put in detention, the State party notes that with regard to persons returned under the Dublin III Regulation, the report mentions only one case, in which the Polish authorities had not been properly informed of the state of health of the person in question.<sup>13</sup> The 2020 update of the Asylum Information Database country report on Poland states that according to Polish law, asylum-seekers whose psychophysical state suggests that they are victims of violence cannot be placed in detention centres.<sup>14</sup> The State party further notes that in the same report, while vulnerable asylum-seekers are sometimes detained in practice, that is primarily a problem of identifying victims of torture or violence.<sup>15</sup> For the State party, this does not mean that the Polish authorities have a general practice of

<sup>10</sup> Asylum Information Database, *Country Report: Poland* (2019 update), p. 70.

<sup>11</sup> *Ibid.*, pp. 62 and 63.

<sup>12</sup> CAT/C/POL/CO/7, para. 25 (d).

<sup>13</sup> *Country Report: Poland*, p. 89.

<sup>14</sup> P. 77.

<sup>15</sup> *Ibid.*

detaining victims of torture, especially if they are informed of the vulnerability of the person in question during the transfer procedure. Within the framework of the Dublin III regulation, as part of the transfer, the Swiss authorities will communicate the necessary information to the Polish authorities and there is no reason to fear that the complainant will be detained without the authorities knowing of his mental state.

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

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

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

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

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

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

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

5.2 The complainant affirms that the Swiss authorities failed to obtain personal assurances from the Polish authorities that they were informed in detail about his special needs as a victim of torture and were willing and able to take them into account. In domestic proceedings, the Swiss authorities merely assumed that in Poland the complainant would have access to appropriate living conditions and medical treatment. They did not ascertain whether appropriate rehabilitation services in Poland were actually available and accessible to the complainant in order to satisfy his right to rehabilitation as a victim of torture, nor did they seek assurances from the Polish authorities that the complainant would have immediate and continuing access to such treatment.

5.3 The complainant also regrets that the Swiss authorities did not seek assurances from their Polish counterparts that he would not be detained upon arrival in Poland.<sup>16</sup> He insists that the Polish authorities continue to detain asylum-seekers who have been victims of violence and suffer from a severe psychological condition, in violation of the law, and that Poland lacks an adequate mechanism for identification of victims of torture and violence.<sup>17</sup>

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

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

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

5.7 Finally, the complainant points to publicly available information, which reveals the deficiencies that asylum-seeking Russian nationals of Chechen origin face in Poland. He indicates that recent official statistics on the granting of international protection status at first instance to applicants from Russia show that in 2022, the Head of the Office for Foreigners in Poland rejected 83.7 per cent of applications, thereby affecting 630 Russian nationals.<sup>18</sup> Accordingly, on the basis of that information, it is highly unlikely that in Poland, the complainant – a Russian national of Chechen origin – would be granted asylum by the Head of the Office for Foreigners.

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

### *Consideration of admissibility*

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

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the

<sup>16</sup> He refers to the 2022 update of the Asylum Information Database country report on Poland (p. 38).

<sup>17</sup> *Ibid.*, pp. 89–91.

<sup>18</sup> *Ibid.*, p. 7.

present case, the State party has not challenged the admissibility of the complaint on this ground.

6.3 The Committee notes that the State party has contested the admissibility of the communication in respect of X, Y and Z, stating that the complainant's transfer to Poland does not meet the threshold of inhuman or degrading treatment for his children. The complainant contests this allegation. The Committee recalls that, for a communication to be admissible under article 22 of the Convention and rule 113 (b) of its rules of procedure, it must, *inter alia*, rise to the basic level of substantiation required for purposes of admissibility.<sup>19</sup> In other words, complainants must establish a *prima facie* case by providing evidence that rises to the basic level of substantiation to support their claims.<sup>20</sup> The Committee considers that the complainant has failed to provide evidence that would rise to the basic level of substantiation to support his claim that his children are at serious risk of ill-treatment, contrary to article 16 of the Convention, if he is transferred to Poland. The Committee therefore finds that the complainant's claims under article 16 on behalf of X, Y and Z are insufficiently substantiated for the purposes of admissibility.

6.4 The Committee considers that the complainant has not shown that the facts, as presented by him, raise separate issues under articles 14 and 16 of the Convention.<sup>21</sup> It therefore decides to proceed to its consideration of the merits of the allegations submitted under article 3 of the Convention.

#### *Consideration of the merits*

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

7.2 The Committee recalls, at the outset, that the Dublin III Regulation is based on the principle that an asylum application must be examined by the authorities of the Member State of the European Union that received the first asylum application (the application is examined by a single Member State). However, article 3 (2) of the Regulation states that it may be impossible to transfer an applicant for asylum to the "State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment". In the light of these provisions and article 3 of the Convention, the Committee notes that the scope for States to exercise discretion in the context of the application of the Dublin Regulation demands an individual examination of each situation, in order to prevent a situation where deportation would expose the person concerned to a real and serious risk of cruel, inhuman or degrading treatment or punishment, or acts of torture. A similar interpretation has been adopted by several human rights bodies. Thus, the Human Rights Committee, in its *View on Jasin v. Denmark*, concluded that an individual decision taken pursuant to the Dublin Regulation could violate the complainants' rights under article 7 of the Covenant.<sup>22</sup> The Committee also draws attention to the jurisprudence of the European Court of Human Rights which, in a judgment handed down on 21 January 2011, in the case of *M.S.S. v. Belgium and Greece*, concluded that a decision concerning expulsion adopted by the State party pursuant to the Dublin Regulation constituted a violation of article 3 of the European Convention on Human Rights. Accordingly, the Committee is entitled to examine decisions adopted by national authorities on the ground that they may violate article 3 of the Convention.<sup>23</sup>

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

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

<sup>20</sup> *S.S. v. Australia* (CAT/C/74/D/935/2019), para. 7.6.

<sup>21</sup> *Harun v. Switzerland* (CAT/C/65/D/758/2016), para. 8.7.

<sup>22</sup> See *CCPR/C/114/D/2360/2014*.

<sup>23</sup> *Harun v. Switzerland*, para. 9.2.



7.4 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Poland. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights.

7.5 The Committee recalls its general comment No. 4 (2017), according to which the non-refoulement obligation exists whenever there are “substantial grounds” for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group 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”.<sup>24</sup> It also recalls that the burden of proof lies with the author of the communication, who must present an arguable case, that is to say submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when complainants are in a situation where they cannot elaborate on their case, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the communication is based.<sup>25</sup> The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.<sup>26</sup>

7.6 The Committee also recalls that States parties should consider whether the nature of the other forms of ill-treatment that a person facing deportation is at risk of experiencing might change so as to constitute torture, before examining the question of non-refoulement.<sup>27</sup> Severe pain or suffering cannot always be assessed objectively in this context. It depends on the negative physical and/or mental repercussions that the infliction of violent or abusive acts has on the individual concerned, taking into account all relevant circumstances of each case, including the nature of the treatment, the sex, age and state of health and vulnerability of the victim and any other status or factors.<sup>28</sup>

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

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

<sup>24</sup> General comment No. 4 (2017), para. 11.

<sup>25</sup> *Ibid.*, para. 38.

<sup>26</sup> *Ibid.*, para. 50.

<sup>27</sup> *Ibid.*, para. 28, read in conjunction with para. 16.

<sup>28</sup> *Ibid.*, para. 17.

the Polish authorities are informed in advance and in an appropriate manner of the state of health of the person concerned and of the treatment he or she needs.

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

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

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

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