



# Convention on the Elimination of All Forms of Discrimination against Women

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## Committee on the Elimination of Discrimination against Women

### Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 172/2021<sup>\*,\*\*</sup>

<i>Communication submitted by:</i>	C.O.E. (represented by counsel, Raffaella Massara)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Switzerland
<i>Date of communication:</i>	24 May 2021
<i>References:</i>	Transmitted to the State Party on 28 May 2021 (not issued in document form)
<i>Date of adoption of views:</i>	2 July 2025
<i>Subject matter:</i>	Return of a lesbian woman who is a survivor of trafficking and sexual and gender-based violence under the Dublin III Regulation to Italy
<i>Procedural issues:</i>	Exhaustion of domestic remedies; lack of substantiation
<i>Substantive issues:</i>	Non-refoulement; gender-based violence
<i>Articles of the Convention:</i>	2 (d) and 6
<i>Article of the Optional Protocol:</i>	4 (2)

\* Adopted by the Committee at its ninety-first session (16 June–4 July 2025).

\*\* The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Hamida Al-Shukairi, Violet Eudine Barriteau, Rangita De Silva De Alwis, Corinne Dettmeijer-Vermeulen, Nada Moustafa Fathi Draz, Yamila González Ferrer, Daphna Hacker, Madina Jarbussynova, Marianne Mikko, Mu Hong, Ana Peláez Narváez, Jelena Pia-Comella, Bandana Rana, Elgun Safarov and Patsilí Toledo Vásquez.



1.1 The communication is submitted by C.O.E., a national of Nigeria, born in 1987. The author claims that the State Party would violate her rights under articles 2 (d) and 6 of the Convention if she were to be removed to Italy, where she was trafficked to from Nigeria. The Optional Protocol to the Convention entered into force for the State Party on 29 December 2008. The author is represented by counsel.

1.2 On 28 May 2021, the Committee, acting under article 5 (1) of the Optional Protocol, through its Working Group on Communications under the Optional Protocol, requested the State Party to refrain from returning the author to Italy pending consideration of her communication.

### **Facts as submitted by the author**

2.1 The family of the author, who identifies as a lesbian, threatened to “bury her alive” when they found out about her sexual orientation. Fearing for her life, the author left her hometown and went to Benin City in the south of Nigeria. While staying with a friend there, she met a woman named A, who offered to find her domestic work in Italy and organized her trip. Before embarking on the journey, the author had to take an oath in a juju ritual that she would repay the money for the trip, failing which, something would happen to her. Using fake identification documents, the author travelled to Tunisia via Mali and Senegal, and then fled to Spain. Upon her arrival in Italy in November 2009, she was placed in a house in Lunghezza (outside Rome), where other young women were also living. Her identification papers were taken from her, and a woman named N (A’s sister) told her that she would have to repay 60,000 euros for her journey and work off the debt as a prostitute.

2.2 The author was forced into prostitution. She was also forced to apply for asylum in Italy under a false identity (in her asylum application, she stated that she was a Liberian national). She applied for asylum with her real identity in 2013, but her application was rejected. To the best of her knowledge, an appeal was filed against that decision. After she had paid 20,000 euros to N, the author indicated that she wished to rent an apartment. However, she was prevented from doing so by N and her boyfriend, through the use of violence (cuts with razor blades to her neck and back and pepper powder to her face and genitals). To conceal the scar on her neck, the author later got a tattoo of a rose.

2.3 The author did not seek help due to threats and her fear of negative consequences. In 2015, she fled the house in Lunghezza. In the following years, she moved around Italy, living in different places. Fearing persecution, she did not seek assistance from the Italian authorities.

2.4 On an unspecified date, at the train station in Milan, the author saw A, who told her that she needed to pay her debt to N. After that encounter, the author started to receive threatening telephone calls from N, who demanded that she repay the money and threatened to send people to beat and kill her. The author was subsequently followed by men in the street and raped. Because of that incident, she left Milan and went to Como, where she found shelter with a Ghanaian man. Following that man’s departure from Italy, and because she was still receiving threatening telephone calls and messages from the trafficking ring, she fled to Switzerland.

2.5 On 4 June 2020, the author applied for asylum in Switzerland. By a submission dated 17 June 2020, the author informed the State Secretariat for Migration that she had collaborated with the non-governmental organization FIZ Advocacy and Support for Migrant Women and Victims of Trafficking. On 25 June 2020, she submitted medical documents (a gynaecological examination had revealed multiple scars on her abdomen) and informed the State Secretariat for Migration that a first meeting with a counsellor at FIZ had been held and that additional meetings had been scheduled. Since then, the author has been supported by FIZ.

2.6 On 29 June 2020, the State Secretariat for Migration held a hearing with the author as a possible victim of trafficking in persons. Having been identified as a potential victim of trafficking in persons, the author was granted a recovery and reflection period to consider possible cooperation with the prosecution authorities. The State Secretariat for Migration granted the author the right to be heard regarding a possible non-admission decision and transfer to Italy under Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the member State responsible for examining an application for international protection lodged in one of the member States by a third-country national or a stateless person (the Dublin III Regulation). The author stated that she did not want to return to Italy because she was at risk of being harmed there by the traffickers. She claimed that she continued to receive threatening telephone calls from A, who, in a recent call, had threatened to mutilate her body.

2.7 On 30 July 2020, the State Secretariat for Migration requested the Italian authorities to readmit the author. The Italian authorities approved the transfer request on 4 August 2020. On 11 August 2020, the author submitted to the State Secretariat for Migration an assessment report prepared by FIZ, dated 31 July 2020, according to which she qualified as a victim of trafficking. While the author had agreed to collaborate with the authorities, there were no plans for a criminal investigation or prosecution in Switzerland.

2.8 On 17 September, 29 October, 30 November<sup>1</sup> and 2 December 2020, the author submitted additional medical reports attesting that she suffered from acute stress reaction, moderate depressive episodes and post-traumatic stress disorder. The psychiatrist stressed that, while there were medical facilities in Italy where she could continue with treatment, it was questionable, from a psychiatric point of view, whether she should receive treatment in the country where she had been trafficked. By a decision dated 8 December 2020, the State Secretariat for Migration rejected the author's asylum application and affirmed her transfer to Italy on the basis that reception conditions in that country were adequate.<sup>2</sup> The fact that the author had been a victim of trafficking in persons was not called into question. Regarding medical treatment, the State Secretariat for Migration noted that Italy had adequate medical infrastructure to provide the necessary care and that the author could register with the national health service to access healthcare. The State Secretariat for Migration stated that it was required to obtain individual guarantees from the Italian authorities only for seriously ill asylum-seekers who would require uninterrupted medical care immediately upon arrival in Italy. It emphasized that the author did not fall into that category.

<sup>1</sup> The medical report of 30 November 2020 contained the following statement: "In Italy, there are medical facilities where it should be possible to continue regular medication and psychotherapy. It would need to be clarified whether access to, availability of and funding for such treatment would be guaranteed. From a psychiatric point of view, however, it is questionable whether C.O.E. should receive treatment in the country where she was trafficked and where the trafficking ring is apparently still active and threatening her. She suffers from anxiety, nightmares and inner turmoil in this regard. A stable and safe environment is a prerequisite for functional recovery from trauma exposure. This would not be guaranteed in Italy at the present time...This would counteract stabilization".

<sup>2</sup> Italy has ratified the Council of Europe Convention on Action against Trafficking in Human Beings and the author would have access to special assistance programmes, even in the case of a negative asylum decision. When organizing the transfer, the State Secretariat for Migration would point out to the Italian authorities that the author was a potential victim of trafficking. It would then be up to the author to inform the Italian authorities of the circumstances of her exploitation.

2.9 On 22 December 2020, the author appealed the decision of the State Secretariat for Migration of 8 December 2020 before the Swiss Federal Administrative Court. She requested that the case be referred back to the State Secretariat for Migration for full determination of the facts and reassessment, and that the State Secretariat for Migration be instructed to obtain individual assurances from the Italian authorities regarding access to the asylum procedure and adequate medical care and accommodation. The author further claimed that a transfer to Italy would be likely to result in a rapid and irreversible deterioration in her state of health. On 23 December 2020, the Court suspended the execution of the transfer as a precautionary measure. By an interim order dated 4 January 2021, the Court granted suspensive effect to the appeal and approved the request for free legal representation. At the same time, the State Secretariat for Migration was invited to comment on the appeal.

2.10 On 13 January 2021, the State Secretariat for Migration requested that the appeal be dismissed on the basis that the reception conditions in Italy were adequate. On 28 January 2021, the author provided further detailed information about her psychological condition and her fear of being found and suffering harm at the hands of the traffickers, if returned. On 12 February 2021, the Court upheld the decision of the State Secretariat for Migration. When informed of the Court's decision, the author became suicidal and was immediately taken to the emergency department of the university hospital in Bern, where she was hospitalized. Since then, the author has been cared for at a psychiatric clinic in a hospital in Emmental. According to the most recent medical report, dated 11 May 2021, the author suffered from acute stress reaction, moderate depressive episodes and post-traumatic stress disorder. The attending physician also stated in the report that she was very withdrawn, which was typical for traumatized people, and that she urgently needed psychotherapeutic-psychiatric treatment to enable her to process the traumas that she had experienced. A return to Italy at that time would involve the almost certain probability of retraumatization, which would reduce the chance of recovery.

2.11 Conditions at asylum reception centres in Italy deteriorated after the Salvini decree entered into force on 5 October 2018.<sup>3</sup> Among the changes adopted was a departure from the two-tier system that had previously served to protect vulnerable asylum-seekers. In January 2020, the Swiss Refugee Council published a report,<sup>4</sup> in which it was indicated that, in Italy, access to housing and medical care was not guaranteed for returnees under the Dublin III Regulation. This prompted the Swiss Federal Administrative Court to establish stricter criteria for the transfer of seriously ill asylum-seekers to Italy. A new decree (No. 130/2020) subsequently stipulated that applicants for international protection who fell under any of the categories defined as vulnerable in the decree on the right to be received (decree No. 142/2015) should be transferred to second-level reception and integration facilities, as a matter of priority (this was communicated by the Ministry of the Interior of Italy in a letter dated 8 February 2021). Among the categories defined as vulnerable in the decree on the right to be received is that of victims of trafficking in persons (article 17). The Swiss Refugee Council sent a letter dated 17 May 2021 stating that the capacity problem in the second-level centres was especially worrying for people with specific needs. Only 2 per cent of spaces in those centres were allocated and equipped for persons with psychological or physical problems. The author therefore asserts that, despite formal protections, she is at particularly increased risk of losing all support.

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<sup>3</sup> Under Act No. 132/2018, implementing Decree-Law No. 113/2018 (known as the "Salvini decree"), the humanitarian protection permit for asylum-seekers in Italy was abolished, in response to perceived abuse of the system.

<sup>4</sup> Swiss Refugee Council, "Reception conditions in Italy: update on the report on the situation of asylum-seekers and beneficiaries of protection, in particular Dublin returnees, in Italy from January 2020", Bern, June 2021.

2.12 Medical care for asylum-seekers in Italy is still accessible only after registration with the national health service. However, registration can take several weeks or even months,<sup>5</sup> during which persons cannot receive adequate medical treatment, especially adequate psychological care.<sup>6</sup> In this context, many doctors in Italy do not accept foreign medical reports, which further increases the waiting time.<sup>7</sup>

2.13 The author claims that she is in an extremely vulnerable situation and has experienced a mental breakdown, which will be exacerbated if she is returned to Italy. Since a final decision on the execution of the author's asylum claim has been made, the Swiss authorities have been in contact with the hospital where the author is currently located, for the purpose of planning the transfer and, therefore, the risk is immediate.

### **Complaint**

3.1 The author claims that her transfer to Italy would violate her rights under articles 2 (d) and 6 of the Convention, as she would be exposed to risks of being subjected to trafficking in persons, prostitution, ill-treatment and gender-based violence. She further claims that her specific needs as a victim of trafficking in persons would not be considered as the State Party has not obtained individual guarantees from Italy.

3.2 The author claims that the authorities have not sufficiently considered in their decisions the fact that she suffers from severe mental disorders and suicidal ideation, directly linked to her trauma in Italy and, hence, that a transfer to Italy could worsen her health and retraumatize her. Moreover, the State Party has failed to identify, assist and protect her as a survivor of trafficking, prevent her revictimization and ensure her access to justice and the punishment of the perpetrators, in violation of her rights under article 6 of the Convention.

3.3 The author claims that she may not receive appropriate housing and care if transferred to Italy, as access to housing and care is not guaranteed for persons transferred under the Dublin III Regulation. In addition, she claims that her asylum application procedure in Italy could be closed, further complicating her access to medical services.

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

4.1 In its observations dated 27 January 2022, the State Party notes that, with regard to the compatibility of the author's transfer to Italy with the provisions of the Convention, States Parties must refrain from any discrimination against women and take measures to eliminate the trafficking and exploitation of women, in accordance with articles 2 and 6 of the Convention. According to the Committee's general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, States must ensure that no woman is returned to a country where she risks persecution or gender-based violence. Women's asylum claims must be examined with due consideration for their particular situations, and reception facilities must meet the needs of victims of violence and trafficking. Trafficking in women is considered a form of gender-based violence, and trafficked women must be informed of their rights and protected from refoulement to places where they risk being revictimized. States must establish mechanisms to identify and protect asylum-seeking women with special needs. Manifestly unfounded or insufficiently motivated communications may be declared inadmissible by the

<sup>5</sup> Ibid., p. 70 ff.

<sup>6</sup> Ibid., p. 83.

<sup>7</sup> Ibid., p. 80 ff.

Committee. The Committee may not substitute itself for national authorities in assessing the facts, except in cases of obvious bias or discrimination. Each State has the sovereignty to define its own procedures for determining refugee status, as long as fundamental procedural guarantees are respected.

4.2 In Italy, asylum-seekers are accommodated in first- or second-level centres. First-level reception centres offer basic medical services, psychological and social assistance and specialized facilities for trafficked women. At second-level centres (which comprise the reception and integration system), priority is afforded to vulnerable individuals, who are provided with medical care, psychological support, language courses and legal advice. Trafficking victims receive special protection, including renewable residence permits that can be converted into work permits, either through a rehabilitation programme, without the obligation to file a complaint, or by testifying against their aggressors. Italy also has local anti-trafficking networks and specific programmes to identify and assist trafficking victims, as well as referral procedures and provisions for suspending the asylum application, which are aimed at establishing a relationship of trust with the victims.

4.3 Reception centres for asylum-seekers in Italy provide medical and psychological services. Under Act No. 173/2020, which came into force in December 2020, asylum-seekers are allowed to enrol in municipal registers, facilitating their access to services and registration with the national health service. Second-level reception centres and support programmes for victims of trafficking in persons offer appropriate psychological care. As indicated in the sixth periodic report submitted by Italy to the Committee on Economic, Social and Cultural Rights, in 2021, many actions in favour of migrants and asylum-seekers have been implemented through the Asylum, Migration and Integration Fund 2014–2020, including projects aimed at protecting and supporting the health of vulnerable asylum-seekers.<sup>8</sup> As at 31 December 2020, 12,834 asylum-seekers and beneficiaries of international protection had received assistance and support, and 5,454 health professionals had been trained in treating post-traumatic vulnerability and psychological distress. In addition, Italy is required to provide adequate medical care under Directive 2013/33 of the European Parliament and of the Council.

4.4 The adoption of Act No. 173/2020 was welcomed by the Office of the United Nations High Commissioner for Refugees, in particular for the attention accorded to vulnerable individuals. In *M.T. v. Netherlands*, the European Court of Human Rights had declared inadmissible the application by a single mother of two minor children regarding her return to Italy, taking into account the legislative changes introduced by Act No. 173/2020.<sup>9</sup>

4.5 If transferred to Italy, the author would be prioritized for admission to a reception and integration centre and could benefit from a support programme for victims of trafficking. The Italian authorities have been informed of her status as a trafficking victim, and this information would be reiterated if she was transferred, allowing for quick identification and referral to an appropriate facility. Even if she was temporarily housed in a first-level reception centre, she would receive psychological support services and have access to national health service benefits. The author's mental disorders are not severe enough to make the transfer contrary to the guarantees of the Convention, and the Italian healthcare system can provide the necessary care. The author's suicidal tendencies do not make the transfer contrary to the Convention, and she would receive appropriate care in Italy. Although the author associates Italy with her mental disorders, her situation would be different if she was

<sup>8</sup> E/C.12/ITA/6, para. 9 ff.

<sup>9</sup> European Court of Human Rights, *M.T. v. Netherlands*, Application No. 46595/19, Decision, 23 March 2021.

transferred as she would receive specific care and support. The Italian authorities would be informed of her mental disorders and her status as a victim of trafficking, and a reserve of medication could be provided to ensure the continuity of her treatment.

4.6 The author's concerns regarding access to care in Italy are no longer current and she could benefit from new procedures facilitating access to the national health service. Italy has infrastructure for protecting victims of trafficking, and the Italian authorities would take adequate measures in the event of new threats. The author's allegations regarding the revocation of care are unfounded, and the practice in question has been declared incompatible with European Union law. Lastly, the Italian authorities are required to provide adequate care under applicable European Union law.

4.7 The author had lived in Italy for about 10 years and had managed to support herself there independently after escaping from her aggressors. She had also corrected her personal information in her asylum application, with the help of a lawyer. Her knowledge of the language and the country should facilitate her cooperation with the Italian authorities. Switzerland, like Italy, has ratified the Council of Europe Convention on Action against Trafficking in Human Beings and has taken into account the author's health condition in its decision. The State Party believes that the author has not demonstrated that she would be exposed to a real risk of serious discrimination if transferred to Italy and invites the Committee to declare the communication inadmissible. Alternatively, the State Party asks the Committee to find that there has been no violation of the guarantees of the Convention.

#### **Author's comments on the State Party's observations on admissibility and the merits**

5.1 On 3 July 2023, the author indicated that she had left the hospital in Emmental on 10 June 2021 and had been housed in an assisted living residence for women (BeWo Plus) by the cantonal authorities. That arrangement had been renewed twice, but not a third time, because she had not followed her psychiatrist's recommendation of inpatient therapy. The author had appealed that decision, arguing that her inability to continue inpatient therapy was due to psychological issues and not a failure to comply. The directorate of security of Bern approved provisional measures allowing her to stay in the assisted living residence. However, due to health issues related to scabies, she was transferred to another assisted living residence (Nordlicht Bern) on 13 February 2023. Her appeal is still ongoing.

5.2 The author affirms that, as has been indicated in medical reports since January 2022, she suffers from chronic sleep disorders and severe psychological trauma, which would make her placement in a first-level asylum centre detrimental to her health and increase her risk of suicide. Her mental state remains concerning, and she received inpatient psychiatric treatment due to acute suicidal tendencies after her sister's death. In the most recent medical report, it is emphasized that regular encounters with men and placement in a first-level asylum centre are contraindicated and could worsen her suicidal tendencies. Her psychiatrist also asserts that a return to Italy is unreasonable due to her past traumatic experiences.

5.3 The author disputes the State Party's observations that she would be prioritized for admission to a second-level reception and integration centre if she was transferred to Italy and that she could benefit from a special support programme for victims of trafficking in persons. She also disputes the claim that, even if she was temporarily housed in a first-level reception centre, she would receive psychosocial support and have access to national benefits. These observations are unconvincing for several reasons, including: in March 2023, there were 43,786 places in second-level reception

and integration centres in Italy, of which only 803 were earmarked for vulnerable individuals; in Rome, where the author would be returned, there are only 38 places for vulnerable individuals; there are no waiting lists for places in such centres, meaning that if an application is approved but no place is available, the application must be resubmitted multiple times; under Act No. 50/2023, which came into force in May 2023, asylum-seekers could once again be excluded from the reception and integration system and the availability of psychological support services and Italian language courses could be reduced; available places for individuals with health issues are often occupied for extended periods, leading to full occupancy and leaving individuals homeless; and the number of available places is insufficient compared with the number of new arrivals in Italy, making it unlikely that the author would have access to such a place if she was transferred.

5.4 The author challenges the State Party's conclusion that the Italian authorities would be well informed of her mental, physical and psychological health and status as a victim of trafficking in persons. She points out that the Swiss Refugee Council considers that the exchange of information between the Italian authorities and the State Party is insufficient, making it likely that Italy would not be properly informed. As a result, the author's needs could be overlooked. Medical reports indicate that her transfer to Italy would compromise her progress and lead to a deterioration in her health, as she associates Italy with traumatic events.

5.5 Regarding the accommodation of individuals returned under the Dublin III Regulation, the Swiss Refugee Council notes that those individuals often remain without housing and adequate medical care for weeks or months. An asylum application in Italy is generally considered withdrawn after 12 months of absence on the applicant's part and the procedure is terminated, which is likely to be the case for the author. If her application is considered new, it could be deemed inadmissible and, during that period, she would not have access to housing or the necessary medical care. The Swiss Federal Administrative Court has confirmed that asylum-seekers returned to Italy can lose their right to support measures.

5.6 The author needs accommodation in a reception and integration centre due to her health condition and vulnerability, but it is unlikely that she would have access to such accommodation. She therefore risks inhumane and degrading treatment in the form of homelessness in Italy, during the period between her return and the formal asylum application and after the conclusion of her asylum procedure. In addition, there is a risk of her being returned to Nigeria, where she would be exposed to multiple risks as a victim of trafficking and due to her sexual orientation.

5.7 The author disputes the State Party's assessment that her temporary placement in a first-level reception centre would be acceptable. The mere fact of being placed in general housing, where she could encounter men, could lead to a severe deterioration in her mental state, increasing her suicidal tendencies. Doctors have repeatedly stated that this type of placement is contraindicated and dangerous for her health.

5.8 Regarding special programmes for trafficking victims, although options for obtaining legal status are provided for under Italian law, their implementation is criticized. According to the author, reports indicate that few residence permits are issued and that victims do not receive provisional permits while waiting, making them vulnerable. Moreover, gaps in the protection of victims in Italy are highlighted in a report published by the United States of America Department of State.<sup>10</sup>

5.9 It is therefore doubtful that the author would be immediately recognized as a victim of trafficking and have access to a special support programme. In addition, she fears reprisals against her and her family if the traffickers learn that she has

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<sup>10</sup> Available at: [www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf](https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf).



denounced them. She fears the consequences of the juju oath that she had to take. Due to those fears, she is not willing to engage in criminal proceedings against the traffickers, making a judicial pathway unviable for her.

5.10 The author disputes the State Party's assertion that her mental disorders are not severe enough to prevent her transfer to Italy, on the basis of the criteria established by the European Court of Human Rights in the case of *Paposhvili v. Belgium*. The author emphasizes that these criteria are met in her case. Placement in collective housing would be unsuitable for the author, as confirmed by several past incidents. Doctors have stated that any regular contact with men is contraindicated and could worsen her mental state, increasing her suicidal tendencies. The lack of places in reception and integration centres results in inadequate care, especially for individuals with mental disorders. The interruption of her treatment could result in a deterioration in her health and increase the risk of suicide. Returning her to Italy would cause such distress that the consequences for her health would be severe or even fatal. In sum, the author's transfer to Italy would pose a real risk of deterioration in her health and physical integrity, constituting a violation of her rights under articles 2 (d) and 6 of the Convention.

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

#### *Consideration of admissibility*

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4), it is to do so before considering the merits of the communication.

6.2 In accordance with article 4 (1) of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. The Committee notes that the author claims to have exhausted all domestic remedies and that the State Party has not challenged the admissibility of the communication on that ground. Accordingly, the Committee considers that it is not precluded by the provisions of article 4 (1) of the Optional Protocol from considering the matter.

6.3 The Committee notes the author's claims that her removal to Italy under the Dublin III Regulation would amount to a violation by Switzerland of her rights under articles 2 (d) and 6 of the Convention. It also notes the State Party's argument that the author has failed to sufficiently substantiate her claims for the purposes of admissibility, to establish that the assessment by the State Secretariat for Migration and the Federal Administrative Court was arbitrary or amounted to a manifest error or a denial of justice and to identify any irregularity in the decision-making process or any risk factors that the authorities failed to take properly into account.

6.4 In the present case, the Committee notes the author's claim that the State Party has failed to undertake an individualized and gender-sensitive assessment of her asylum application and that, if removed to Italy, as a victim of trafficking in persons, she would face a real, serious and personal risk of gender-based violence. It also notes the author's statement, confirmed by medical reports, that moving her to Italy while she is in the process of rehabilitation may be retraumatizing even if she has access to specialized psychiatric treatment, since that is the country in which she was a victim of trafficking in persons and other severe forms of gender-based violence, and where she was subjected to exploitation of prostitution, rape, physical violence and threats to her life. The Committee also notes that the State Party has not sought assurances that she would have access to the specialized medical treatment that she needs as a survivor of trafficking and severe sexual and gender-based violence.

6.5 The Committee notes the claims by the author that a transfer to Italy would likely result in a rapid and irreversible deterioration in her state of health and that, by returning her to Italy without guarantees regarding accommodation and psychiatric support, the State Party would expose her to a real and personal risk of serious forms of gender-based violence and revictimization. In view of the information provided, the Committee considers that the author's claims are sufficiently substantiated for the purposes of admissibility. Accordingly, it proceeds with its examination of the merits of the communication.

*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 author and by the State Party, in accordance with the provisions of article 7 (1) of the Optional Protocol.

7.2 The Committee takes note of the author's undisputed claim that she is a survivor of trafficking in persons and severe gender-based violence, which was inflicted on her in Italy. The Committee also notes the author's claim that, in the light of the gender-based violence that she had sustained in Italy, where she had been trafficked for the purposes of sexual exploitation and forced into prostitution, if she was returned to Italy, without assurances of accommodation and psychiatric support reflecting her status as a victim of trafficking in persons, she would be at real risk of irreparable harm and retraumatization due to her current mental state, and would suffer revictimization and potential persecution. The Committee notes that, as a result of the sustained violence, her mental health deteriorated, leading to suicidal ideation, as ascertained in medical reports by psychiatrists issued in the State Party. It also notes that, in the most recent medical report, it is emphasized that regular encounters with men and placement in a regular asylum centre are contraindicated and could worsen her suicidal tendencies. The Committee further notes the author's uncontested statement that, in Italy, she could face potential deportation to Nigeria, where she would be exposed to multiple risks as a victim of trafficking and due to her sexual orientation.

7.3 The Committee recalls that, according to its jurisprudence, the Convention has extraterritorial effect only when the woman to be returned will be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence.<sup>11</sup> The Committee also recalls that, under article 2 (d) of the Convention, States Parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with that obligation. The Committee further recalls that, under international human rights law, the non-refoulement principle imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she might face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment.<sup>12</sup> The Committee considers, in this regard, that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, was discrimination within the meaning of article 1 of the Convention, and that such rights included the right to life and the right not to be subjected to torture.<sup>13</sup> The Committee further developed its interpretation of violence against women as a form of gender-based discrimination in its general recommendation No. 35 (2017) on gender-based violence against women, updating

<sup>11</sup> See, for example, *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011), para. 8.10, and *R.S.A.A. et al. v. Denmark* (CEDAW/C/73/D/86/2015), para. 7.7.

<sup>12</sup> General recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, para. 21.

<sup>13</sup> General recommendation No. 19 (1992) on violence against women, para. 7.

general recommendation No. 19, reaffirming the obligation of States Parties to eliminate discrimination against women, including gender-based violence against women, stating that the obligation comprised two aspects of State responsibility for such violence, that which resulted from the acts or omissions of both the State Party or its actors, on the one hand, and non-State actors, on the other.<sup>14</sup> A State Party would therefore violate the Convention if it returned a person to another State where it was foreseeable that serious gender-based violence would occur. Such a violation would also occur when no protection against the identified gender-based violence can be expected from the authorities of the State to which the person is to be returned. What amounts to serious forms of gender-based violence depends upon the circumstances of each case and must be determined by the Committee on a case-by-case basis at the stage of consideration of the merits, provided that the author has made a *prima facie* case by sufficiently substantiating her allegations.<sup>15</sup> The Committee recalls that women and girls face an increased risk of being trafficked at all stages of the migration cycle – in transit, in reception and accommodation facilities, at borders and in destination countries. Upon return, they may experience reprisals and revictimization.<sup>16</sup>

7.4 The Committee notes the State Party's contention that all of the author's allegations were thoroughly examined by its immigration authorities. It observes that they were dismissed because the authorities considered that Italy was a safe third country and that the author would thus be able to find the necessary medical treatment, housing and services.

7.5 In that connection, the Committee recalls that it is generally for the authorities of States Parties to the Convention 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 biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice.<sup>17</sup> The issue before the Committee is therefore whether there was any irregularity or arbitrariness in the decision-making process regarding the author's asylum application to the extent that the State Party authorities failed to properly assess the risk of serious gender-based violence if the author was returned to Italy under the Dublin III Regulation. The Committee reiterates that, in carrying out their assessment, States Parties should give sufficient weight to the real and personal risk that a person might face if deported.

7.6 In the present case, the Committee notes the State Party's arguments regarding special protection measures for and access to medical and psychological services available to victims of trafficking in Italy. The Committee also notes, however, that the State Secretariat for Migration had dismissed the author's complaint on the basis of the assumption that reception conditions in Italy should be adequate and that her health condition was not severe enough to require individual guarantees from the Italian authorities. The Committee considers that it was incumbent upon the State Party to undertake an individualized assessment of the real, personal and foreseeable risk that the author would face in Italy, as a survivor of trafficking in persons, forced prostitution and severe gender-based violence who suffers from suicidal ideation as a consequence of such violence and the fear of returning to that country, instead of

<sup>14</sup> General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, para. 21.

<sup>15</sup> *A. v. Denmark* (CEDAW/C/62/D/53/2013), para. 8.6, and *R.S.A.A. et al. v. Denmark*, para. 7.8.

<sup>16</sup> General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, para. 22.

<sup>17</sup> See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5, and *R.S.A.A. et al. v. Denmark*, para. 8.4.

relying on the assumption that she would be able to obtain appropriate medical care.<sup>18</sup> The Committee also takes note of the author's argument that the difficulty of obtaining access to accommodation and to the specialized medical and psychiatric care that she needs in Italy will make it impossible for her, as a victim of trafficking in persons, to achieve a full recovery.<sup>19</sup> The Committee also notes the State Party's assertions that Italy has already agreed to readmit the author and that, if need be, she could file a complaint for trafficking in persons.

7.7 In that connection, and in the light of the author's extreme vulnerability as a survivor of trafficking and other severe forms of gender-based violence, and the fragile mental health she experiences as a consequence thereof, the Committee considers that the State Party has not examined in an individualized and sufficiently thorough manner the author's trauma and the foreseeable consequences on her mental health, including suicidal ideation, if she is forcibly returned to the country where she endured this violence. Returning to Italy represents a heavy burden and may be experienced as a retraumatizing event that must be taken into consideration as a source of real, personal, serious and irreparable harm. The Committee therefore considers that a more thorough and individualized risk assessment was required by the exigencies of the case.

8. Accordingly, acting under article 7 (3) of the Optional Protocol to the Convention, the Committee concludes that the removal of the author would amount to a breach of articles 2 (d) and 6 of the Convention.

9. The Committee makes the following recommendations to the State Party:

- (a) Concerning the author of the communication:
  - (i) Reopen her asylum request, taking into account the Committee's views;
  - (ii) Refrain from returning her to Italy while the reassessment of her case is still pending;
  - (iii) Provide continued specialized medical support.
- (b) General:

Take all measures necessary to ensure that victims of trafficking in persons, exploitation of prostitution and gender-based violence, who are in need of protection, are not returned to the country of their first entry under the Dublin III Regulation without an individualized, trauma-informed and gender-sensitive assessment of the real risk of retraumatization.

10. In accordance with article 7 (4) of the Optional Protocol, the State Party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations. The State Party is also requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all relevant sectors of society.

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<sup>18</sup> See Committee against Torture, *Harun v. Switzerland* (CAT/C/65/D/758/2016), para. 9.9; and Human Rights Committee, *Jasin v. Denmark* (CCPR/C/114/D/2360/2014), para. 8.9.

<sup>19</sup> *Harun v. Switzerland*, para. 9.10. See also Committee against Torture, *A.N. v. Switzerland* (CAT/C/64/D/742/2016), para. 8.10.