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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. 171/2021*, **, ***

Submitted by:	Z.E. and A.E. (represented by counsel)
Alleged victim:	The authors
State party:	Switzerland
Date of communication:	19 May 2021 (initial submission)
References:	Transmitted to the State party on 25 May 2021 (not issued in document form)
Date of adoption of decision:	4 July 2025
Subject matter:	Removal of a woman who is a survivor of sexual and gender-based violence and her brother to Greece under the Dublin Regulation
Procedural issues:	Exhaustion of domestic remedies; lack of substantiation
Substantive issues:	Non-refoulement; gender-based violence
Articles of the Convention:	2 (c)–(f), 3 and 12
Article of the Optional Protocol:	4 (1) and (2)

* Adopted by the Committee at its ninety-first session (16 June to 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 Gonzalez Ferrer, Madina Jarbussynova, Marianne Mikko, Hong Mu, Ana Pelaez Narvaez, Jelena Pia Comella, Bandana Rana, Elgun Safarov, and Patsili Toledo Vásquez.

*** An individual opinion by Committee members Hiroko Akizuki, Corinne Dettmeijer-Vermeulen, and Jelena Pia Comella is annexed to the present decision.

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1.1 The communication is submitted by Z.E. (author 1), born on 30 May 1984, and her brother, A.E. (author 2), born on 4 June 1981, Afghan nationals. The authors claim that, if removed to Greece, the State party would violate their rights under articles 2 (c), (d), (e) and (f), 3 and 12 of the Convention. The authors request interim measures to prevent their removal to Greece pursuant to article 5 (1) of the Optional Protocol to the Convention and Rule 63 (1) of the Rules of Procedure of the Committee to avoid possible irreparable damage, namely, real risk of further sexual or gender-based violence, torture or inhuman or degrading treatment. The Optional Protocol entered into force for Switzerland on 29 September 2008. The authors are represented by counsels, Stephanie Motz and Lea Hungerbühler.

1.2 On 25 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 author 1 [1] to Greece pending consideration of her communication and to consider suspending the removal of author 2, as a support person to author 1. On 27 May 2021, the State party informed the Committee that the State Secretariat for Migration had requested the competent authority not to take any steps to transfer the authors to Greece.

Facts as submitted by the authors

Contextual facts

2.1 Author 1 was born on 30 May 1984 in the Islamic Republic of Iran and belongs to the Hazara ethnic group. The authors' parents had been forced to flee from Afghanistan to the Islamic Republic of Iran due to family threats. Author 1 was raped in the Islamic Republic of Iran at 5 years of age, when her cousin started abusing her regularly. At 17 years of age, she was forced to marry and gave birth to two children (in 2007 and 2011). Her husband abused her sexually and physically and she had to be hospitalized as a result. She fled from the Islamic Republic of Iran together with her brother, author 2, in June 2018. They reached Lesbos, Greece, in September 2018 and were interviewed by Greek migration authorities in December 2018.

2.2 In Lesbos, author 1 was raped again, by a man called K. living in the tent next to them. Her brother was unable to protect her from the rape. K. was a person with power in the refugee camp; therefore, when she tried to report the offence, the interpreter refused to translate her statements out of fear of getting into trouble. Author 1 visited the doctor on several occasions for assistance due to suicidal ideation and trauma. [2]

2.3 On 22 January 2019, author 2 was granted international protection in Greece and, on 9 May 2019, author 1 was also granted protection. They received a stamp on their asylum-seeker permits, allowing them to leave the island. In fall 2019, they relocated to Athens (Eleonas camp),

[1] Medical reports indicate that author 1 was diagnosed with severe post-traumatic stress disorder (International Classification of Diseases F43 and F44) and severe depressive episodes with partially psychosomatic symptoms.

[2] The authors provide medical reports, dated 7 December 2018 and 20 August 2019, by Greek psychiatrists, mental health certificate dated 2 June 2020 by Médecins sans frontières, and medical reports issued in Switzerland.

but there was no safety for them because author 1's husband had been following them with the aim of killing them because they had escaped from him. The authors reported this to the police, but the police did not take any action. Author 1 was informed that her husband was looking for her in Eleonas camp. Given his death threats and the past severe sexual and gender-based violence she had suffered, she was terrified, notably due to the lack of police protection. At that point, author 2 was forced to leave the camp (in spring 2020, i.e. six months from the validity date of the residence permit) and author 1 was terrified to stay there alone. They decided to leave the camp and hide in an apartment. They were able to pay the rent for one month and afterwards became homeless.

2.4 They received their refugees papers in autumn 2020. Due to their new status, no housing, financial aid or other support was provided by Greece. The authors were forced to fend for themselves in the streets, with no protection from sexual or physical assaults. They were no longer able to obtain any medical and mental health treatment, since the services were available only to asylum-seekers and not to recognized refugees. They were terrified of author 1's husband, who had followed them and against whom police provided no protection.

2.5 As a consequence, author 1 and her brother, on whom she is emotionally dependent, were forced to flee to have their basic needs met and to get protection from sexual and gender-based violence. They arrived in Switzerland on 1 November 2019 and sought asylum that same day. As part of a Eurodac search on 3 November 2019, it transpired that they had been granted international protection in Greece. Swiss authorities sent a readmission request to the Greek authorities, which was accepted on 12 November 2020.

2.6 On 20 January 2020, the State Secretariat for Migration ordered the authors' removal from Switzerland on the basis of the readmission agreement with Greece, asserting that Greece was bound by international obligations and that non-governmental organizations (NGOs) in Greece could support the authors. The authors note that the State Secretariat for Migration failed to consider that, despite the presence of such organizations in Greece, author 1 had experienced sexual abuse, had been raped and had been followed by her husband and hence would face great danger upon return.

2.7 On 25 March 2021, the authors appealed to the Federal Administrative Court, arguing that a removal would put author 1 at risk of sexual abuse, torture and inhuman treatment due to the lack of social, medical and legal support and police protection, homelessness and the vulnerable situation of the authors. In a judgment dated 7 April 2021, the Court joined both authors' procedures and dismissed the appeals on the basis that Greece was a safe third country and that the authors would be able to get the necessary medical treatment, finding that the presumption of safety had not been rebutted. This resulted in an official exit date of 9 April 2021.

2.8 The authors attended an appointment with migration authorities on 7 May 2021and were informed that the forced return was scheduled for 7 June 2021 and pre-removal detention for 27 May 2021.

2.9 The authors note that there is no available domestic remedy to appeal against the judgment by the Court. Therefore, there are no

remedies available to them that would be likely "to bring effective relief" from imminent irreparable harm.

Complaint

3.1 The authors allege that their removal to Greece would violate their rights under articles 2 (c) -(f), 3 and 12 of the Convention. Switzerland failed to undertake an individualized, gender-sensitive assessment of author 1's asylum application, contrary to articles 2 (e) and (f) and 3 of the Convention, as her interview was in the presence of a male interpreter. She was not given any opportunity to provide a properly recorded and detailed account of the gender-based threats and violence she experienced in Greece, so Switzerland failed to consider these gender-specific risks.

3.2 If removed to Greece, author 1, who depends heavily on author 2's support, will face a real, serious and personal risk of sexual violence and a lack of medical treatment, in breach of articles 2 (c) -(f), 3 and 12 of the Convention, as the removal of refugees with a particular vulnerability to Greece, with its desolate living conditions, violates the prohibition on non-refoulement. A separation from her brother, as her only person of trust, would involve further destabilization for her.

3.3 The authors claim that the authorities disregarded persistent and extreme gender-based discrimination and violence in Greece. They claim a complete lack of State protection and psychological assistance for recovery, supported by extensive evidence of inhuman treatment of recognized refugees in Greece, in particular single women. Sexual violence is widespread and systematic in Moria refugee camp and in Athens; police presence is insufficient, and the police fail to take appropriate measures to protect female refugees from violence. Assistance to survivors of sexual violence lacks. Shelter for victims of gender-based violence is limited and case management - inadequate. Police officers are not sensitive to sexual violence and do not intervene. Incidents – if reported – are often not even recorded and criminal proceedings are not initiated. The Working Group on the issue of discrimination against women in law and in practice has raised concern about the constant risk of sexual violence, a risk that has led to the fact that refugee women do not dare to go to the toilet but rather end up urinating in bottles or wearing diapers at night. In its concluding observations on the seventh periodic report of Greece (CAT/C/GRC/CO/7), the Committee against Torture expressed its concern about the increasing sexual violence that female refugees face and the lack of protection.

State party's observations on admissibility and the merits

4.1 On 27 January 2022, the State party focusing on factual clarifications and legal arguments, offered a detailed account of the author's circumstances in the Islamic Republic of Iran and the legal proceedings that ensued.

4.2 The State party maintains that author 2 is not actively entitled to submit an individual communication to the Committee under the Optional Protocol. Only author 1 has the active legitimacy and the victim status to invoke a possible violation of the Convention. Moreover, the complaints that the Convention has been violated relate exclusively to

author 1. The brother simply claims to have witnessed the alleged abuse and the impact of the sexual and gender-based violence on his sister and to be an important support for her. The State party invites the Committee to declare the communication by author 2 inadmissible for lack of victim status.

4.3 According to the State party, "exhaustion of domestic remedies" means that, in principle, there must be a final judgment against which an ordinary appeal may no longer be lodged with the Federal Court. Sex-based discrimination claimed before the Committee must have been expressly invoked at the stage of the domestic proceedings. [3] The authorities must be given the opportunity to examine the substance of the author's arguments regarding a possible violation of the Convention and to take a decision on the matter. It is important, in national proceedings, to raise the violation of rights guaranteed by the Convention at an early stage. Author 1 did not raise before the Federal Administrative Court, at least not explicitly, the complaints she raised before the Committee.

4.4 The State party notes that the author essentially claims a violation of article 3 (prohibition of torture) of the European Convention on Human Rights on the grounds that Greece was not complying with its obligations towards persons who had been granted international protection and that she was at risk of being exposed to inhuman and degrading treatment. She argued that her state of health had not improved and that, as long as there was no individual guarantee that she would receive adequate and uninterrupted medical treatment, her return to Greece would be contrary to article 3 of that Convention. She also stated that she was a vulnerable person with serious health problems and that she had been raped in Greece. She argued that her removal would put her in a situation of extreme material distress. She referred to the problems generally faced by refugee women in Greece.

4.5 The State party points out that the author had never stated in her appeal that the hearing and individual risk assessment had not been gender-appropriate. She alleged that her state of health had not been sufficiently considered and argued that the mere fact that Greece had been designated as a safe third country would not be sufficient to return her there. Under the procedural aspects of article 3 of the European Convention on Human Rights, the authorities would be required to examine the current and general situation in Greece. In addition, she criticized the risk assessment in general terms. The State party invites the Committee to declare the communication inadmissible for failure to exhaust domestic remedies.

4.6 The State party recalls that the Committee cannot replace the national authorities in assessing the facts and evidence, unless it can be established that the assessment is biased or based on prejudicial gender stereotypes that constitute discrimination against women, is manifestly arbitrary or amounts to a denial of justice.[4] The Committee has dealt with several communications in which the author claims that she would be expelled to a State where she would be at risk of suffering serious forms of discrimination. Most of these communications have been

[3] See communications 8/2005 and 35/2011.

[4] Communications 108/2016, para. 6.8, and 30/2011, para. 6.4.

declared inadmissible by the Committee, because the author's complaints were not sufficiently substantiated.[5]

4.7 The State party notes that the author's personal interview on 6 November 2020 complied with the legal requirements of article 5 of the Dublin III Regulation. It transpires from the interview and the file that the author had the opportunity to give a detailed account of her experience in Greece. Regarding the author's state of health, the State party notes that, on 4 February 2021, the State Secretariat for Migration had ordered a psychiatric report to be drawn up on the author. In her communication, the author does not explain what she would have liked to add to what she said in her personal interview.

4.8 The State party clarifies that the author was interviewed by a woman in the presence of her legal representative and an interpreter. During the interview, the author's legal representative requested a medical examination of the author and the provision of psychological and/or psychiatric treatment but did not raise any objections to the establishment of the facts of the case. At the end of the interview, the legal representative confirmed that she had no further questions, so it can be assumed that the alleged sexual or gender-based violence had been sufficiently clarified during the interview. The author confirmed that she understood the statements in the minutes and that they corresponded to her free expression.

4.9 The asylum authorities' decisions reasoning shows that they had considered the arguments presented by the author at the various stages of the procedure, and the general situation, including the healthcare available in Greece. The authorities examined the case in compliance with their obligations under the Convention. The State party recalls that, according to the Committee, "provided they respect the procedural guarantees under international law, sovereign States are in principle free to determine the nature and structure of their refugee status determination systems and to establish their procedures".

4.10 The State party considers that the author has not sufficiently substantiated for the purposes of admissibility, how the asylum procedure would have resulted in discrimination based on gender. Nothing suggests that the asylum authorities did not carry out a sufficiently thorough examination of the author's asylum application or that the examination of her application, as a woman seeking asylum, could be vitiated by procedural flaws.

4.11 The State party submits that, under article 31*a* (1) (a) of the Asylum Act, the State Secretariat for Migration will not consider an asylum application if the applicant can return to a safe third country, within the meaning of article 6*a* (2) (b), in which she has previously resided. Under Article 6*a* (2) (b) of the Asylum Act, the Federal Council designates safe third countries, i.e. those in which it considers that the principle of non-refoulement within the meaning of article 5 (1) is effectively observed. Greece has been designated as a safe third country. The legal presumption that safe third States respect their obligations under international law is not irrefutable. As the Federal Administrative Court

[5] Communications 39/2012; 40/2012; 49/2013; 51/2013; 59/2013; 76/2014; 80/2015; 81/2015; 82/2015; 85/2015; 94/2015; 96/2015; 101/2016; and 108/2016.

pointed out in its judgment of 7 April 2021, it is up to the persons concerned to rebut this presumption.

4.12 Pursuant to article 83 (5) of the Federal Act on Foreign Nationals and Integration of 16 December 2005, the Federal Council designates the States of origin or provenance or the regions of these States to which return is reasonably required. If the foreign national being returned or expelled comes from one of these States, or from a European Union or European Free Trade Association State, enforcement of the return or expulsion is in principle required.

4.13 In its ruling of 7 April 2021, the Federal Administrative Court pointed that Greece is a signatory to the European Convention on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol relating to the Status of Refugees of 31 January 1967. The Court assumes that Greece complies with its obligations under these instruments. The Court recognized that, while living conditions in Greece are difficult, they cannot be qualified as inhuman or degrading treatment under article 3 of the European Convention on Human Rights and do not constitute a situation of existential urgency. The Court emphasized that people with international protection status are treated in the same way as Greek nationals as to assistance and access to the courts and public schools. They are treated in the same way as other foreign nationals as to employment and accommodation. Persons benefiting from protection may avail themselves of the guarantees of Directive/2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification and status of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (the Qualification Directive) concerning access to employment (art. 26), access to education (art. 27), social assistance (art. 29), healthcare (art. 30) and access to housing (art. 32).

4.14 The State party submits that Greece has implemented this Directive and that there are no indications that it would in the long term deny the author the minimum living conditions guaranteed by the Directive and expose her to a situation of existential emergency.

4.15 As to living conditions in Greece, it is clear from the statements made by the authors and from the decision of the State Secretariat for Migration that they have received support from Greece. The Court found that, although they had lived in Athens for more than a year, they had not sufficiently informed themselves about the possibilities for assistance offered by the Greek authorities and private organizations. The fact that they were able to rent a room shows that it is possible for refugees to find accommodation. The Court noted that, after their arrival in Greece, they could have sought to enrol in a support programme.

4.16 The State party notes that the author has a sister in the United States of America who supports her financially. In this respect, the author's statement that she was homeless before leaving Greece may be questioned. In any case, the sister living in the United States can be expected to support her siblings in the future, if necessary. The mere possibility that the author might find herself, in an indeterminate future

and for unforeseeable reasons, in such a difficult living situation that it would amount to an existential emergency and permanent treatment contrary to human rights does not meet the threshold required to admit the existence of a real risk under article 3 of the European Convention on Human Rights.

4.17 The State party emphasizes that, since leaving the Islamic Republic of Iran, the author has always stayed with her brother. The Greek authorities respected the relationship of dependence between the sister and her brother. They were housed together in Moria and Eleonas camps. The author was never alone in Greece. It follows from the decision of the State Secretariat for Migration that the author should, as far as possible, be returned to Greece with her brother. Consequently, the author's specific vulnerability as a woman travelling alone cannot be accepted.

4.18 Furthermore, it follows from the decision of the State Secretariat for Migration that the generally difficult living conditions in Greece and the lack of housing affect the entire population in Greece. It must be acknowledged that, for economic reasons, it can be difficult for persons with protection status to find accommodation. Due to the high unemployment, the persons concerned are often dependent on limited State assistance benefits. In terms of access to State benefits, there may be discrimination between persons with protection status and Greek nationals, because the persons concerned are not referred to the relevant authorities. Even though the integration of persons with protection status into Greece's social structures may be difficult, the high requirements for a concrete risk of inhuman or degrading treatment or confirmation of a situation of material urgency are not met in this case.

4.19 The State party notes that author 1 obtained refugee status in Greece on 9 May 2019, and not on 5 November 2018 as claimed. Author 2 stated during his individual interview on 6 November 2020 that he could have participated in the Hellenic Integration Support for Beneficiaries of International Protection programme.

4.20 The Federal Administrative Court concluded in its judgment of 7 April 2021 that the author's medical problems did not fall within the scope of "other very exceptional cases" mentioned by the European Court of Human Rights in *Paposhvili v. Belgium* [6] as possibly raising an issue under article 3 of the European Convention on Human Rights. The author is not a seriously ill person who, if returned to Greece, would face a real risk of being exposed to a serious, rapid and irreversible decline of her health that would result in intense suffering or a significant reduction in her life expectancy, as the medical care she needs is guaranteed in Greece.

4.21 Contrary to the author's allegations, the Federal Administrative Court concluded that the State Secretariat for Migration had established the relevant medical facts concerning the authors sufficiently. The Court considered that there was adequate medical infrastructure in Greece for persons with international protection status. According to the Court, post-traumatic stress disorder can be treated in Greece. The author received psychiatric and psychological support in Greece through

[6] European Court of Human Rights, *Paposhvili v. Belgium*, Application No. 41738/10, Judgment, 13 December 2016, para. 183.

regular individual sessions with a specialist doctor. It follows from the letter from Médecins sans frontières dated 2 June 2020 that the author had benefited from individual sessions with a psychiatrist and individual counselling sessions with a psychologist from February 2020 until the date of the letter. That letter demonstrates that the author's claim that she had received individual sessions only at the beginning of their stay in Eleonas camp is not correct. Based on the statements made by the authors, the author voluntarily interrupted the treatment offered by Médecins sans frontières when she left Eleonas camp. The presence of the authors in Eleonas camp was tolerated even after they had been granted international protection status. The psychiatric reports of 2018 and 2019 show that, during her stay on Lesbos, the author's health problems were treated with medication.

4.22 In view of the fact that Greece fulfilled the requirements of the Qualification Directive; that the Greek authorities would be informed of the author's medical needs before the transfer; that, once in Greece, the author could turn again to Médecins sans frontières; that the reports available to the State Secretariat for Migration did not indicate a need for further inpatient psychiatric treatment; and that the author could benefit from support from her brother and sister, the State Secretariat for Migration considered that the reports available to the State Secretariat for Migration did not indicate the need for further inpatient psychiatric treatment and that it was not necessary to obtain individual guarantees from the Greek authorities regarding the author's medical treatment. After a detailed analysis of the situation, the Court also found that such guarantees were not necessary.

4.23 As to the psychiatric report of 17 May 2021, according to which the author would not be able to travel because of danger to herself and according to which continued treatment in the State party would be useful, the State party notes that the author has been receiving trauma therapy from a female specialist doctor since 23 December 2020. One aspect of this therapy is to teach the author the "skills" that should enable her to better manage stressful situations. The State party stresses that the author's ability to travel will be definitively examined shortly before her transfer to Greece. The State Secretariat for Migration will consider the author's current state of health when organizing her transfer and will inform the Greek authorities prior to the transfer of any medical treatment the author requires. Other medical examinations may be carried out as part of the organization of the transfer. Finally, the author should be returned to Greece with her brother.

4.24 As to the feeling of insecurity in Greece and the author's fear of her husband and maternal uncle, the State party stresses that Greece is a State governed by the rule of law, with a functioning police force and judicial system. If necessary, the author and her brother can turn to those authorities.

4.25 As to the allegation that the author's husband followed her to Greece, the Federal Administrative Court noted that the statements of the author and her brother on this subject were contradictory and questionable. The authors have spoken to the police in the past. They reported the alleged incident with the author's husband to the police, who did what they could. The author did not leave Greece immediately after obtaining her refugee document, which is an indication that there was no threat in Greece. Several organizations in Athens specialize in

assistance for victims of sexual violence and offer a comprehensive range of services.

4.26 Given that the authors were transferred to Eleonas camp in Athens in February 2020, the situation on Lesbos was no longer relevant at the time of their departure from Greece. During her stay in Moria camp, the author was assisted by the WISH organization.

4.27 The State party considers that the author has not sufficiently substantiated that her return to Greece would expose her to a real, personal and foreseeable risk of being subjected to serious forms of sexual violence. Nor has she demonstrated that the assessment made by the authorities was biased or based on prejudicial gender stereotypes that discriminate against women, was manifestly arbitrary or amounted to a denial of justice. The State party invites the Committee to declare the communication inadmissible under article 4, paragraph 2 (c), of the Optional Protocol.

4.28 On the merits, the State party notes that the authorities examined the author's case in compliance with their obligations under the Convention. In her communication, she did not provide information that would demonstrate a lack of gender-sensitive hearing or assessment of the alleged risk in Greece. The State party asserts that there is no real, personal and foreseeable risk that the author would be subjected to serious forms of discrimination, sexual or gender-based violence or inhuman treatment if returned to Greece.

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

5.1 On 17 March 2023, the authors stated that they had submitted a request for reconsideration with the State Secretariat for Migration on 1 July 2022, after the Federal Administrative Court had altered its assessment of the situation in Greece in a leading judgment dated 28 March 2022.

5.2 The State Secretariat for Migration summarily examined the request for reconsideration, found it devoid of merit and requested an advance fee (600 Swiss francs) before admitting the reconsideration request. Given the authors' lack of financial means, they were not able to pay this fee, leading to an inadmissibility decision. The appeal against the decision was accepted by the Federal Administrative Court, which forced the State Secretariat to issue a material decision on 16 January 2023. As the State Secretariat rejected the reconsideration request based on the same arguments, an appeal was submitted against this decision again, which, at the time the comments were submitted to the Committee, was pending before the Court.

5.3 The authors maintain that communications can be submitted not only by or on behalf of women, but also by or on behalf of people of other genders, too.[7] This interpretation was adopted by the Committee also in the case of *M.W. v. Denmark* (CEDAW/C/63/D/46/2012), in which it granted victim status to M.W.'s son, O.W., and laid out the foundation for a more inclusive interpretation of victim standing before the Committee. The Committee even stated that the victim status of O.W.

[7] Art. 2 of the Optional Protocol to the Convention provides active legitimization to "individuals" or "groups of individuals".

was not conditional on having submitted the communication together with his mother; rather, O.W. would have had victim status if he had petitioned on his own.[8] Moreover, this interpretation of victim status makes sense in light of the fact that persons identifying with the female gender are not the only ones who can experience or who are affected by sexual and gender-based violence.

5.4 Author 2 helped author 1 to flee from her violent husband and tried to protect her from being raped. He has been affected by sexual and gender-based violence, as he witnessed everything that happened to author 1 and was not able to prevent it, which must have been traumatizing for him, especially as author 1 is his sister, with whom he has a very close relationship. Accordingly, author 2 has been highly affected by sexual and gender-based violence as well. There are no grounds to disallow the inclusion of a female author's brother as a complainant before the Committee when other close male family members, such as husbands or sons, are approved as complainants, as shown above.

5.5 The well-being of the women highly depends on the close relationship and presence of the relevant male person, which establish an extraordinary dependency that justifies the inclusion of such male person as complainant before the Committee. In the present case, author 1 and her mental state are highly dependent on author 2. She must not be separated from her only person of trust, which the State party also confirms in its observations: the State party underlines that a return to Greece would have to take place for both of them together, that the Greek authorities recognized the relationship of dependence and that the Federal Administrative Court acknowledged the dependency of author 1 on author 2 and issued one decision for both of them together. Finally, if the proceedings regarding author 1 and author 2 had not been done together, that is, if the interim measures granted by the Committee for author 1 had not been extended to author 2 , it must be assumed that author 2 would have already been removed by the State party and author 1 would have been left alone without her only person of trust – which, as the State party accepted, would leave author 1 in an even more helpless and stressful situation and would not be acceptable.

5.6 The authors note that there is no duty under the Convention to raise a claim of sexual and gender-based violence within a specific domestic procedure. On the contrary, it is important only that author 1 has raised the claim she wishes to bring "in substance at the domestic level" so as to enable "the domestic authorities and/or courts" to have an opportunity to deal with the claim. The sexual and gender-based violence was explicitly mentioned in early medical reports that were submitted to the State Secretariat for Migration in February 2021 and even as early as December 2020; during author 1's interview under the Dublin III Regulation; and in the appeal to the Federal Administrative Court. These reports, the statements in the interview and the reasoning in the Court appeal, were sufficient evidence indicating a pertinent experience of sexual and gender-based violence, so the State party ought to have identified author 1 as displaying specific protection needs and investigated this aspect further.

[8] Jessica Tueller, "Not hers alone: victim standing before the CEDAW Committee after *M.W. v. Denmark*", *The Yale Law Journal*, vol. 131 (2021).

5.7 During the Dublin interview, of which only a summary statement, exists on file, author 1 mentioned incidents of sexual and gender-based violence but was not specifically asked about them, although that would have been imperative, given that she is a young woman who fled Greece. In addition to stating that she had been raped in a camp in Greece, author 1 stated that, throughout her stay in Greece, she had felt at risk the whole time. Since author 1 declared herself a survivor of sexual and gender-based violence at this very first opportunity, the State Secretariat for Migration violated its obligation to investigate on its own initiative, to explicitly ask the authors about sexual and gender-based violence and to conduct a gender-sensitive interview with a female-only team.

5.8 Author 1 required an all-female team – including a female translator – to be able to have the confidence to recount the traumatizing experiences of sexual and gender-based violence.

5.9 The authors raised that no individualized risk assessment had been conducted in their appeal dated 25 March 2021. The Federal Administrative Court recognized this claim in its final decision, stating that the authors claimed that the State Secretariat for Migration had simply relied on the assumption that Greece was safe. The authors did in fact challenge the lack of an individualized risk assessment in the course of the domestic proceedings, and the State party's observations are inaccurate. Moreover, it is the State party's obligation to conduct an individualized risk assessment in each case.

5.10 In all decisions issued by the State Secretariat for Migration or the Federal Administrative Court, the State party refers simply to theoretical legal commitments by Greece based on various international conventions. Not a single piece of evidence was brought up by the State party besides the rights that the authors should have in theory, but that they in fact do not have. Country reports by respected organizations were disregarded in all decisions. The simple listing of relevant international law provisions without assessing their implementation in practice, does not fulfil the requirements for an individual, gender-sensitive case assessment as foreseen by articles 2 (e) and (f) and 3 of the Convention. The authors would face a real risk of homelessness and a lack of food, social assistance and medical and psychological support, as well as lack of protection from future sexual and gender-based violence.

5.11 The authors claim that, since spring 2020, the housing situation for beneficiaries of protection in Greece had further worsened. In March 2020, an amendment to Law No. 4636/2019 came into force, according to which recognized refugees receive State housing for 30 days only, instead of six months, from the date of recognition, which has a significantly negative impact on recognized refugees in Greece. In addition to this, Emergency Support to Integration and Accommodation (ESTIA II), a project that provided accommodation for vulnerable people, had closed entirely by the end of 2022, and the Greek Government gives priority to Ukrainian refugees when it comes to housing, rendering it close to impossible for refugees like the authors to find any shelter.

5.12 In Greece, author 1, a survivor of serious sexual and gender-based violence, would, under hardly any circumstances, have access to the rehabilitation services that she urgently requires and currently has in the State party. While author 1 indeed did have the chance to attend several

mental health support sessions in Greece provided by an NGO, this can by no means be considered actual therapy, which is clearly indicated and desperately required. Rather, the sessions in Greece were a crisis intervention, which falls far short of constituting the required rehabilitation, and it remains entirely unclear whether even this minimal access to crisis intervention would be available upon return. While it is not disputed that there are certain medical and mental health services being offered in Greece (although the State party does not mention any specialized mental health services), the relevant question is whether the authors would have access to them upon return to Greece.

5.13 Author 1 claims that, within the readmission request by the State Secretariat for Migration dated 10 November 2020, her urgently required treatment was not even mentioned: no references to her health issues were made, despite her having suffered from sexual and gender-based violence and severe mental health issues. Therefore, in the readmission process, the State Secretariat for Migration failed to inform the Greek authorities about the facts relevant to the deportation to Greece. In the exit interview, the migration office threatened author 1 with coercive measures such as detention and forced deportation by a special flight, accompanied by the police, which reflects a lack of consideration of her health problems, as the transfer modality was not adapted to particularly vulnerable persons.

5.14 The Federal Administrative Court, in its precedent ruling dated 28 March 2022, [9] decided that the return of vulnerable individuals recognized as refugees to Greece is unreasonable and can no longer be executed. According to that new case law, the authors would clearly be considered particularly vulnerable and the execution of the return would no longer be considered reasonable. As the Court recognized, the situation on the ground differs significantly from theoretical legal obligations and requires an individual assessment of the case, which the State party did not conduct. In Greece, international commitments regarding human rights are disregarded and, in cases of judicial review, decisions, even by the European Court of Human Rights, are not implemented. Charities (overburdened with work, substantially underfinanced and difficult to access) are being restricted in their work by the Greek authorities. They cannot replace the functions that should be assumed by the State, when it comes to the protection of survivors of sexual and gender-based violence.

5.15 According to the authors, a simple reference to the alleged possibility that the authors could seek help from the police or other organizations, in particular in cases of threats of sexual and gender-based violence, is not sufficient to address the specific risks that they would face upon return to Greece, since those organizations would not offer relief. The State party's argument can be refuted given author 1's previously tried to get help from the police after she had seen her violent husband but had not received either assistance or a referral to a support service for survivors of sexual and gender-based violence. It is widely known that young single women, who are at a real risk of exploitation and sexual abuse, are without legal or physical protection by the police in the Attica region.

[9] Federal Administrative Court, No. E-3427/2021, E-3431/2021, Judgment, 28 March 2022.

5.16 Furthermore, it is not realistic that the authors' sister could be able – remotely, from the United States– to look after her traumatized and suicidal sister and protect her from sexual and gender-based violence in Greece, since the sister's financial resources are very limited.

Additional submissions of the parties

6.1 On 15 May 2023, the State party noted that the authors had submitted a new medical report, dated 15 February 2023, attesting that author 1 suffers from post-traumatic stress disorder, had been following treatment since December 2020, and that forced removal would constitute a danger, given her history of suicidal tendencies, impulsivity and irritability. The State party considers that this report does not contain new elements that would alter its arguments and conclusions.

6.2 As to the evolution of the jurisprudence of the Federal Administrative Court, the State party explains that stricter conditions on the removal to Greece apply for certain vulnerable groups such as families with children, unaccompanied minors and persons suffering from grave illness. For all other persons, including pregnant women and ill persons (including persons suffering from post-traumatic stress disorder and depressive episodes), the presumption that a removal to Greece is in principle "*reasonnablement exigible*" remains valid. The State Secretariat for Migration has considered the evolution of Court jurisprudence in its decision of 16 January 2023. The author's appeal against that decision is still pending and therefore there has been no exhaustion of domestic remedies in this regard.

7. On 31 May 2023, the author stated that she had no further comments.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 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.

8.2 The Committee takes note of the State party's argument regarding the lack of victim status of author 2. The Committee recalls that article 2 of the Optional Protocol establishes that communications may be submitted by or on behalf of "individuals", without limiting the victim status to "women". Article 2 also provides that communications may be submitted by or on behalf of individuals, under the jurisdiction of a State party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State. The Committee notes the authors' assertion of their close connection and the fact that author 2 has been an important support person for author 1. However, the Committee considers that the authors have failed to provide sufficient information that would indicate that author 2 would suffer violations of rights under articles 2 (c), (d), (e) and (f), 3 and 12 of the Convention if removed to Greece, as the complaints relate exclusively to author 1. The Committee considers that the authors' general reference to author 2's witnessing of the alleged abuse and the impact of the sexual and gender-based violence on author 1 is insufficient to establish his victim status under the Optional Protocol. In the light of the foregoing, the Committee considers

that it is precluded, by the requirements of articles 2 and 4 (2) (c) of the Optional Protocol, from considering the communication in relation to author 2.

8.3 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 the State party's challenges to the admissibility on this ground, given that author 1 did not raise before the Federal Administrative Court, at least not explicitly, the complaints she raised before the Committee, while discrimination on the grounds of sex claimed before the Committee must be expressly invoked at the stage of the domestic proceedings.

8.4 The Committee recalls its jurisprudence, establishing that authors must have raised, in substance, at the domestic level the claims that they wish to bring before the Committee[10] in order to give the domestic authorities and courts an opportunity to take a decision thereon.[11] It notes that the author, as early as her Dublin interview on 6 November 2020, mentioned incidents of sexual and gender-based violence wherein she stated that she had been beaten twice and choked in Eleonas camp and that she had been raped in Moria camp. She also mentioned these incidents in her appeal to the Federal Administrative Court of 25 March 2021, thereby giving the authorities the opportunity to examine those claims. The Committee notes that the author, in her appeal to the Court of 25 March 2021, raised the fact that no individualized risk assessment had been conducted. In light of the above, the Committee considers that author 1 has exhausted domestic remedies because she had specifically claimed in her Dublin interview and in her appeal to the Federal Administrative Court that she had been subjected to rape and beatings in Greece, which could have resolved the substance of the claim brought before the Committee. Accordingly, it considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from examining the communication.

8.5 The Committee notes author 1's claims that her removal to Greece under the Dublin Regulation would amount to a violation of her rights under articles 2 (c)–(f), 3 and 12 of the Convention. It also notes the State party's argument that the author has failed 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 has failed to identify any irregularity in the decision-making process or any risk factors that the authorities failed to take properly into account.

8.6 The Committee recalls that, under international human rights law, the principle of non-refoulement imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, notably arbitrary deprivation of life or torture

[10] *Kayhan v. Turkey* (CEDAW/C/34/D/8/2005), para. 7.7; *M.A. v. Switzerland* (CEDAW/C/80/ D/145/2019), para. 6.7; *S.T.H. v. Switzerland* (CEDAW/C/87/D/165/2021), para. 7.5.

[11] *N.S.F. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/38/D/10/2005), para. 7.3; *M.A. v. Switzerland*, para. 6.7; *S.T.H. v. Switzerland*, para. 7.5.

or other cruel, inhuman or degrading treatment or punishment.[12] It reiterates 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, amounts to discrimination within the meaning of article 1 of the Convention and that such rights include the right to life and the right not to be subjected to torture.[13] The Committee reaffirms the obligation of States parties to eliminate discrimination against women, including gender-based violence, reiterating that the obligation comprises two aspects of State responsibility for such violence: that which results from the acts or omissions of both the State party or its actors, on the one hand, and non-State actors, on the other.[14]

8.7 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 and reconsideration applications and that, if removed to Greece, she would face a real, serious and personal risk of gender-based violence and would lack medical treatment as a survivor of sexual and gender-based violence, owing to her experience in Greece where she was subjected to rape and beatings.

8.8 The Committee notes the claims by author 1 according to whom, by returning her to Greece, the State party would expose her to a real and personal risk of serious forms of gender-based violence. In view of the information provided, the Committee considers that author 1's claims are sufficiently substantiated for the purposes of admissibility. Accordingly, it proceeds with the examination of the merits of the communication.

Consideration of the merits

9.1 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.

9.2 The Committee notes of the author 1 undisputed claim that she is a survivor of gender-based violence inflicted to her since her early age in Iran, for which she has been recognised as a refugee in Greece. The Committee also notes the author's claim that she sustained gender-based violence in Lesbos, Greece, where she was raped irrespective that she was with her brother. The Committee notes that the sustained violence led to her mental health deteriorating to suicidal ideation. The Committee observes that the author's vulnerable mental health is ascertained by medical reports by psychiatrists issued in Greece and in the State party.

9.3 The Committee reiterates 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.[15]

[12] General recommendation No. 32 (2014), para. 21.

[13] General recommendation No. 19 (1992) on violence against women, para. 7.

[14] General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992), para. 21.

[15] See, for example, *M.N.N. v. Denmark*, para. 8.10. and *R.S.A.A. et al v Denmark*, (CEDAW/C/73/D/86/2015), para. 7.7

9.4 The Committee 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 imposed 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.[16] The Committee also considers 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.[17] 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 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.[18] 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.[19]

9.5 The Committee notes the State party's contention that the author's allegations were thoroughly examined by the immigration authorities. It observes that they were dismissed because the authorities considered that Greece was a safe third country and that the author would be able to find the necessary medical treatment and services.

9.6 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,[20] 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. The issue before the Committee is whether there was any irregularity and arbitrariness in the decision-making process regarding the author's asylum application to

[16] General recommendation No. 32, para. 21

[17] General recommendation No. 19, para. 7

[18] *Idem* para. 21

[19] *A. v. Denmark*, para. 8.6. and *R.S.A.A. et al v Denmark*, (CEDAW/C/73/D/86/2015), para.7.8

[20] R.P.B. v. Philippines (CEDAW/C/57/D/34/2011), para. 7.5 and *R.S.A.A. et al v Denmark*, (CEDAW/C/73/D/86/2015), para.8.4

the extent that the State party authorities failed to properly assess the risk of serious gender-based violence in the event of the return of the author to Greece under the Dublin III Regulation. The Committee notes the author's statement that although she was interviewed by a woman, the interpreter was a man. 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.

9.7 In the present case, the Committee considers that it was incumbent upon the State party to undertake an individualized, trauma-informed and gender-based assessment of the real, personal and foreseeable risk that the author would face, as a woman victim of gender-based violence suffering suicidal ideation. 9.8 The Committee considers that the State party did not appear to accord due weight to the author's vulnerable status as a refugee, victim of gender-based violence with suicidal ideation. Therefore, the Committee considers that a more thorough risk assessment would have been required by the exigencies of the case.[21]

10. Accordingly, acting under article 7 (3) of the Optional Protocol to the Convention, the Committee concludes that the removal of author 1 would amount to a breach of articles 2 (c) -(f), 3 and 12 of the Convention.

11. The Committee makes the following recommendations to the State party:

(a) Concerning author 1 of the communication:

(i) Reopen her asylum request, taking into account the Committee's views;

(ii) Refrain from returning her to Greece, while the reassessment of her case is still pending.

(b) General:

Take all measures necessary to ensure that refugees victims of gender-based violence are not returned to the country of their first entry under Dublin Regulation, without an individualised, trauma-informed and gender-sensitive assessment of the real risk of irreparable harm.

12. 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 the views and recommendations of the Committee. 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.

[21] See ECtHR, 21 January 2011, *M.S.S. v. Belgium and Greece*, paragraph 254, and ECtHR, *N.H. and Others v. France*, 2020, paragraph 100.

Annex I

Joint individual opinion by Committee members Hiroko Akizuki, Corinne Dettmeijer-Vermeulen and Jelena Pia Comella (dissenting).

1 We agree with the Committee that it is precluded, by the requirements of articles 2 and 4 (2) (c) of the Optional Protocol, from considering the communication in relation to author 2.

2 We also agree with the Committee's view that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from examining the communication of author 1.

3 We are however of the opinion that the communication of author 1 is inadmissible under article 4 (2) (c) of the Optional Protocol;

4 We reiterate that, according to the Committee's 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.[1]

5 We agree with the Committee's observations as noted under paragraph 8.6.

6 We also agree with the Committee that it was incumbent upon the State party to undertake an individualized and gender-based assessment of the real, personal and foreseeable risks that the author would face, as a woman victim of gender- based violence. However, we note that in our opinion the State party has done due diligence and undertaken the required individualized and gender-based assessment.

7 We recall that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence in a particular case,[2] unless it can be established that this evaluation was biased or based on gender stereotypes that constitute discrimination against women, or that it was clearly arbitrary, gender-biased or amounted to a denial of justice.

8 We note that the Convention must be interpreted in accordance with the general principles of international law. In suchinterpretation, due account must be taken of the context in which the Convention is applied, which, according to article 31 (3) (c) of the Vienna Convention on the Law of Treaties, includes "any relevant rules of international law applicable in the relations between the parties", including the Dublin III Regulation. Yet, we consider that it is not the Committtee's compentence to assess whether national authorities applied or interpreted the Dublin III Regulation correctly; Rather, it is for the Committee to ensure that such application or interpretation is in line with the State party's obligations under the Convention.[3] We note that Dublin III itself provides that a state may not transfer an applicant to an otherwise responsible state if it would expose him or her to "a risk of inhuman or degrading treatment," given "systemic flaws in the asylum procedure

[1] See, for example, *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011), para. 8.10, and *F.H.A v. Denmark* (CEDAW/C/75/D/108/2016), para. 6.5.

[2] See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5, and *K.I.A. v. Denmark* (CEDAW/C/74/D/82/2015), para. 9.6.

[3] See, by analogy, *J.M. v. Chile* (CRC/C/90/D/121/2020), para. 7.4.

and in the reception conditions for applicants" in that state. We consider that States should interpret this provision in line with their obligations under CEDAW to refrain from returning an individual where a real, personal and imminent risk exists that she will be exposed to gender-based violence.

9. We note, however, the State party's arguments that the author was interviewed by female staff, with interpretation, offered ample opportunities to elaborate on her statements, and that a psychiatric report was ordered. We further note that, while the author mentioned the episode of sexual violence in Greece, the focus of her asylum request was her health situation. In this regard, migration authorities assessed the author's claims but noted, among other issues, that the psychiatric reports of 2018 and 2019 showed that her health issues had been medically treated during her stay in Lesbos and that her medical condition did not reach the threshold to engage the State party's non-refoulement obligations. With regard to the risk of facing serious violations of human rights, including sexual and gender-based violence (SGBV), which is the focus of the present communication, we note that this risk was also assessed by national authorities, which concluded that Greek authorities would be able to protect her against such violence. Regarding the alleged risk by her former husband, raised before the Committee in a very generic manner, we note that this was also assessed by the FAC, which deemed the authors' statements contradictory. The Court further noted that the author did not leave Greece immediately after obtaining her refugee status, which was taken as an indication that there was no threat against her in Greece. We also note the State party's argument that since leaving Iran, the author had always stayed with her brother and the Greek authorities respected the relationship of dependence between the sister and her brother, so they were housed together in the Moria and in the Eleonas camps and the author was never alone in Greece, leading to the conclusion that the author could therefore not be considered as a woman travelling alone.

11. We note the FAC judgement of April 7th, 2021, where the Court considers: "*On February 4, 2021, the SEM commissioned the preparation of a psychiatric report. In the psychiatric report subsequently submitted by the February 13, 2021, the complainant (Z.E.) was certified with (PTSD) and dissociative disorder. This was followed by further medical reports from 26 February 2021 and from 2 March 2021. The discharge report of the 26 February 2021 from Psychiatric Clinic Münsterlingen stated, among other things, that there were no longer any indications that the complainant was acutely suicidal or at risk of harming others."*

12 Considering these circumstances, we cannot conclude that the assessment of the author's claims was clearly arbitrary or that it amounted to a denial of justice. We further consider that the author has not sufficiently substantiated, for the purposes of admissibility, that her claim that, as a woman survivor of sexual and gender-based violence, she would face a real, personal and foreseeable risk of sexual violence if she were returned to Greece. Accordingly, we conclude that the communication is inadmissible under article 4 (2) (c) of the Optional Protocol.