



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 947/2019*, **

<i>Communication submitted by:</i>	E.M. and A.C. (represented by counsel from Entraide protestante suisse)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	13 June 2019 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 26 July 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	4 November 2022
<i>Subject matter:</i>	Expulsion to Greece
<i>Procedural issue:</i>	Jurisdiction
<i>Substantive issue:</i>	Risk of torture in the event of expulsion (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainants are E.M., a national of Ethiopia born in 1973, and her daughter A.C., born in 2009. They are facing expulsion to Greece and are of the view that their expulsion would constitute a violation by the State party of article 3 of the Convention. The State party made the declaration provided for in article 22 (1) of the Convention on 2 December 1986. The complainants are represented by counsel.

1.2 On 26 July 2019, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, rejected the complainants' request that it ask the State party to refrain from deporting them to Greece while their complaint was being considered.

Facts as submitted by the complainants

2.1 E.M. left Ethiopia in 1995 following a forced marriage.¹ She lived in Lebanon and the Syrian Arab Republic in precarious conditions for 10 years. In 2005, she arrived in Greece, where she applied for asylum and was granted refugee status. In Athens, E.M. lived with

* Adopted by the Committee at its seventy-fifth session (31 October–25 November 2022).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

¹ E.M. has not provided any further information about the circumstances of the marriage.



A.C.N., A.C.'s father, for eight years.² After the birth of her daughter, she had two miscarriages. In 2013, E.M.'s financial situation became very difficult. She could no longer find work. She and her husband, who could not find a permanent job in Greece, had to live on the streets and sometimes slept in a church.³ They had no health insurance and no access to medical care. Their situation worsened to the point that they had to leave Greece. A.C.N. went to England.⁴ He phoned E.M. just once, from France. E.M. does not know where her husband is now.

2.2 The complainants filed an application for asylum in Switzerland on 12 August 2016. On 20 December 2016, the State Secretariat for Migration dismissed the application. According to the State Secretariat, the expulsion was lawful, as Greece was bound by Directive 2011/95/EU⁵ of the European Parliament and of the Council on minimum standards, which sets out a number of legal safeguards regarding access to employment, education and social assistance for recognized refugees.

2.3 On 9 January 2017, the complainants appealed against this decision. Their appeal was rejected by the Federal Administrative Court on 29 March 2017⁶ on the grounds that they had not shown that they were facing discrimination compared with other destitute Greek or foreign nationals and that E.M. had not demonstrated that she had looked for a job or that the Greek authorities would have remained indifferent to her situation if she had applied for social assistance. The Court was also of the view that there was nothing in the file to suggest that the living conditions in Greece had deteriorated to such an extent as to render the transfer of the complainants to Greece contrary to the obligations arising from article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

2.4 On 14 December 2017, the complainants submitted an initial request for the removal order to be reviewed, which was dismissed by the State Secretariat for Migration on 23 January 2018. The complainants were given a flight plan for a journey to Athens that was scheduled for 5 April 2018, but they did not board the flight.

2.5 A.C. is receiving supportive psychotherapy because of her difficult childhood in Greece. She suffers from serious sleep disorders, hypervigilance and severe anxiety, including a fear of being abandoned.⁷ E.M. has been receiving supportive psychotherapy since October 2017 for anxiety, sleep disorders, brooding and feeling low.⁸ She has not heard from her husband and is raising her daughter alone.

2.6 On 15 May 2018, the complainants filed a second request for a review of the decision to return them to Greece. On 17 May 2018, they were placed under house arrest for six months by the authorities of the State party. On 25 May 2018, the State Secretariat for Migration rejected their request for a review of the removal order and confirmed that they were to be returned to Greece. On 16 July 2018, police officers came to pick up the complainants in order to accompany them to Geneva airport pursuant to the removal order. However, they were not at the accommodation centre that night. On 1 April 2019, the complainants submitted a third request for the removal order to be reviewed.

2.7 On 3 April 2019, the State Secretariat for Migration refused to grant temporary suspensive measures in favour of the complainants. They appealed against this decision on 11 April 2019. On 24 April 2019, the Federal Administrative Court rejected this appeal. On 3 May 2019, the State Secretariat for Migration decided to dismiss a further request for

² According to information gathered by the State Secretariat for Migration, E.M. married A.C.N., a compatriot, in Greece and gave birth to her daughter there.

³ E.M. has provided no further information in this respect.

⁴ E.M. has not specified the date of her husband's departure.

⁵ European Parliament and Council of the European Union, Directive 2011/95/EU of 13 December 2011 on standards for the qualification 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, *Official Journal of the European Union*, L 337, 20 December 2011, p. 9.

⁶ Federal Administrative Court, judgment No. E-169/2017, 29 March 2017.

⁷ See the Lausanne University Hospital medical report dated 2 May 2018.

⁸ See the letter from the association Appartenances dated 9 April 2018.

review submitted by the complainants and confirmed that they were to be returned to Greece. The complainants did not appeal against this last decision. They state that they have exhausted all available domestic remedies and that they have not filed a complaint with any other international body.

Complaint

3. The complainants claim that if they were returned to Greece, the State party would be in breach of article 3 of the Convention. They also claim that returning them to Greece would put them at risk of hardship and destitution and would thus threaten their existence and human dignity. They submit that living conditions that are incompatible with respect for human dignity, such as a lack of housing and of the minimum resources needed to ensure their physical safety and subsistence, constitute inhuman and degrading treatment within the meaning of article 3 of the Convention. They argue that a single woman and a 10-year-old child without housing or social assistance are at high risk of violence, including sexual assault, and face a level of destitution that makes it impossible for them to integrate into society and live a decent life, and that this is a form of torture. They note that women are particularly at risk of losing their bearings and social identity, begging, suffering from psychological distress that can lead to madness and falling ill as a result of health and food insecurity. The complainants submit that it has been noted in many international reports that refugees in Greece do not receive social assistance.⁹ The complainants further argue that they have no family or social support network in Greece and that they are likely to rapidly find themselves in dire financial straits, without any resources and at risk of street violence. This constitutes a risk of torture within the meaning of article 3 of the Convention.

State party's observations on admissibility and the merits

4.1 On 19 December 2019, the State party submitted its observations on the admissibility and merits of the communication. It recalled the facts and the procedures followed by the complainants in Switzerland with a view to obtaining asylum and noted that the asylum authorities had given due consideration to the complainants' arguments.

4.2 The State party submits that, with respect to the existence of a risk related to the application of article 3 of the Convention, the Committee has specified the evidence to be taken into account in order to show the risk to be serious – namely: (a) evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the State concerned; (b) instances of torture or ill-treatment in the recent past and evidence from independent sources; (c) the engagement by the complainant in political activity within or outside his or her country of origin; evidence of the complainant's credibility. The State party notes that, in principle, the burden of proof is upon the complainants, who must present an arguable case – that is, submit substantiated arguments showing that such a risk exists.¹⁰

4.3 As regards the general situation in Greece, the State party submits that the complainants are unable either to prove the existence of a consistent pattern of gross, flagrant or mass violations of human rights in Greece or to show that they would be personally at risk of being subjected to torture in that country.¹¹ The State party maintains, in addition, that the existence of a pattern of human rights violations, mentioned in article 3 (2) of the Convention, is not a sufficient reason to conclude that a particular person would be in danger of being subjected to torture upon his or her return to his or her country. The State party submits that there is no consistent pattern of gross, flagrant or mass violations of human rights in Greece¹² and that the political situation in that country therefore does not preclude the complainants' expulsion.

4.4 The State party argues that the situation of beneficiaries of international protection in Greece cannot be equated with that of asylum-seekers. When it comes to access to

⁹ By way of example, the complainants cite a report on Greece published in July 2017 by the Greek Council for Refugees, which confirms that recognized refugees face difficulties in exercising the rights enshrined in Directive 2011/95/EU.

¹⁰ Committee against Torture, general comment No. 4 (2017), para. 38.

¹¹ *K.N. v. Switzerland* (CAT/C/20/D/94/1997), para. 10.2.

¹² See State Secretariat for Migration decision dated 7 March 2016 (p. 5).

employment, social assistance, health care, education and housing, persons with refugee status have the same rights as nationals, in accordance with the State's obligations under European law.¹³ While recognizing that Greece has been facing an economic crisis for several years and that the living conditions of beneficiaries of international protection are more precarious in Greece than in other European countries, the State party notes that Greek nationals themselves are living in the same conditions. It recalls that the Federal Administrative Court stated in some recent decisions that the Greek social protection system had been criticized in connection not only with asylum-seekers but also with persons who have been granted protection. The State party notes that the unemployment rate is high in Greece, especially among persons with recognized protection status.¹⁴ It also recalls that the Office of the United Nations High Commissioner for Refugees has noted that, in practice, Greek nationals discriminate against persons with protection status. This situation is also linked to the fact that the foreign nationals concerned are not referred to the competent authorities.¹⁵ The State party draws attention to the Federal Administrative Court's assessment that, although the living conditions of refugees in Greece cannot be described as good, they do not amount to inhuman or degrading treatment.¹⁶

4.5 The State party notes that the complainants have never claimed that the asylum procedure in Greece was flawed by irregularities or that they were threatened with expulsion to their country of origin. It does not doubt that it was hard for E.M. and her husband to find a job or that the family was living in difficult conditions in Greece. However, it considers that, in principle, it is up to the complainants to submit substantiated arguments showing that, in their particular case, there is a foreseeable, present, personal and real risk of torture. The State party notes that the complainants were never subjected to torture or ill-treatment by the Greek authorities and have not provided any evidence to suggest that the Greek authorities failed to protect them. It is of the view that the expulsion of a person to the territory of a State that has granted him or her refugee status, regardless of whether it would result in a significant deterioration in his or her material and social living conditions, can constitute a violation only if there are exceptional and compelling humanitarian considerations.

4.6 The State party acknowledges that the complainants have been treated for serious health problems, including mental health problems, linked to the departure of A.C.N. and the instability of their migration situation. However, it considers that these problems are not so serious as to indicate an extreme vulnerability that would prevent the State party from returning them to Greece on account of its obligations under article 3 of the Convention.¹⁷ The State party also believes that Greece has the medical infrastructure needed to ensure that the complainants receive appropriate treatment. In addition, it is of the view that the reports show that their psychological problems are linked to the absence of A.C.N., their irregular status in Switzerland and the threat of having to leave Switzerland. The State party concludes that the communication rather suggests that E.M. chose to emigrate with her daughter in the hope of finding a better and safer future. It also notes that A.C. was enrolled in school in Greece and that it has not been established that she is opposed to being returned to Greece.

4.7 The State party notes that the complainants do not claim to have been subjected to torture or ill-treatment in the past and that this should be taken into account in assessing the risk that they would face upon return. It also notes that E.M. has not engaged in any political activities within or outside her State of origin.¹⁸ The State party asserts that E.M.'s ability to

¹³ European Parliament and Council of the European Union, Directive 2011/95/EU of 13 December 2011 on standards for the qualification 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, *Official Journal of the European Union*, L 337, 20 December 2011, p. 9.

¹⁴ See, inter alia, Federal Administrative Court, judgment No. E-2360/2019, 22 May 2019, recital 8.3.1.

¹⁵ Office of the United Nations High Commissioner for Refugees, "Greece as a country of asylum: UNHCR observations on the current situation of asylum in Greece", December 2014, p. 31.

¹⁶ See, inter alia, Federal Administrative Court, judgment No. E-2360/2019, 22 May 2019, recital 8.3.1.

¹⁷ See, inter alia, European Court of Human Rights, *N. v. United Kingdom*, application No. 26565/05, judgment, 27 May 2008 (on the application of article 3 of the European Convention on Human Rights).

¹⁸ See Committee against Torture, general comment No. 4 (2017), para. 49 (f).

pay travel expenses and obtain forged documents casts doubt on the credibility of her claims that she lacks means and has no contact with her husband or support network in Greece.

4.8 Consequently, the State party considers that there are no substantial grounds for fearing that the complainants would face a real and personal risk of being subjected to torture or cruel, inhuman or degrading treatment if they were returned to Greece and that it cannot be concluded, on the basis of the claims submitted, that they would face a foreseeable, real and personal risk of torture if they were returned. The State party therefore requests the Committee to find that the expulsion of the complainants to Greece would not constitute a violation of its international obligations under article 3 of the Convention.

Complainants' comments on the State party's submission

5.1 On 24 March 2020, the complainants submitted comments on the State party's submission. They argue that, in the present case, the condition that there must be a real and serious risk of ill-treatment in the event of return has been met, given the difficult circumstances that they faced in Greece. They add that this risk increased when they lost contact with A.C.N., whom they relied on to support them financially and to keep them safe. They reiterate that the precarious conditions in which they lived in Greece constitute ill-treatment within the meaning of article 3 of the Convention.

5.2 The complainants submit that, even after they had been in Greece for several months, they were not entitled to social assistance or housing provided by the authorities. They consider that administrative barriers prevented them from effectively benefiting from such assistance, as it can be obtained only by persons with accommodation and an address and is therefore inaccessible to homeless persons. Referring to the case law of the European Court of Human Rights on the material conditions of asylum-seekers in Greece, the complainants argue that the fact that they are at risk of extreme poverty that would undermine their dignity makes them vulnerable and in great need of protection.¹⁹

5.3 The complainants reiterate that they would face a real, concrete and serious risk if they were returned to Greece. They also note that the State party acknowledges the social hardship that Greek nationals themselves may face and the lack of State social assistance. They maintain that this hardship would, a fortiori, be greater for them, as they are at risk of ill-treatment and in particular danger of being assaulted on account of their extremely precarious situation. E.M. asserts that, in the absence of her husband, she no longer has any family or social support network in Greece. She notes that, as a foreigner, she is not proficient in Greek and does not have sufficient knowledge of Greek institutions. The complainants submit that, in the present case, there are exceptional and compelling humanitarian considerations that require a reversal of the decision to return them to Greece. They note that the Committee's refusal to request interim measures to prevent their removal to Greece on the basis of article 3 of the Convention rendered the remedy offered by the Committee meaningless. The complainants state that they are currently living in France.²⁰

State party's additional observations

6. On 27 March 2020, the State party submitted additional observations. It recalls that, under article 22 of the Convention, the Committee may consider a communication submitted by an individual who claims to be the victim of a violation by a State party, provided that the individual concerned is subject to the jurisdiction of that State.²¹ The State party notes that, in the present case, the complainants have left Swiss territory and have been living in France

¹⁹ European Court of Human Rights, *M.S.S. v. Belgium and Greece*, application No. 30696/09, judgment, 21 January 2011, paras. 251, 254 and 263. See also Court of Justice of the European Union, *Federaal agentschap voor de opvang van asielzoekers v. Selver Saciri and Others*, case No. C-79/13, judgment, 27 February 2014, paras. 33 (in which the Court draws attention to asylum-seekers' rights with regard to material reception conditions) and 35 (relating to the requirement to respect human dignity).

²⁰ A certificate of application for asylum is attached to the complainants' submission. It was issued to them on 13 February 2020.

²¹ *H.S.T. v. Norway* (CAT/C/37/D/288/2006), para. 6.2, and *H.W.A. v. Switzerland* (CAT/C/20/D/48/1996), para. 4.2.

at least since 13 February 2020. It considers that the complainants are no longer under its jurisdiction and that they cannot be sent back to Greece by Switzerland. Article 3 of the Convention is therefore not applicable.²² For that reason, the State party invites the Committee to find the communication inadmissible on the grounds that it is manifestly unfounded.

Complainants' comments on the State party's additional observations

7. On 16 June 2020, the complainants informed the Committee that they were still interested in the procedure pending before the Committee even though they were then seeking asylum in France. They note that they do not have a French residence permit and that their asylum application has not yet been processed. They consider that their situation remains unstable and that they may yet be ordered to return to Switzerland, where they lived as asylum-seekers for seven years. The complainants submit that they left for France to avoid being sent back to Greece, where they would be at risk of instability and poverty.

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 According to article 22 (1) of the Convention, the Committee may consider a communication from an individual who claims to be the victim of a violation by a State party of a provision of the Convention, provided that the individual is subject to the jurisdiction of that State and that the State has declared that it recognizes the competence of the Committee under article 22.

8.3 The Committee notes that, according to the complainants themselves, they have left Switzerland and settled in France, where they are seeking asylum. Article 3 of the Convention prohibits the return (refoulement) of a person by a State party to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In the present case, the Committee notes that the complainants' departure from Switzerland means that the authorities of the State party no longer have the power to remove them and that they are therefore not subject to the State party's jurisdiction within the meaning of article 22 (1) of the Convention. In these circumstances, article 3 of the Convention is not applicable. As the communication has become moot, the Committee concludes that it is inadmissible. Since the communication is inadmissible for the reasons set out above, there is no need for the Committee to discuss the State party's argument that the complaint under article 3 should be declared inadmissible on the grounds that it is manifestly unfounded.²³

8.4 The Committee concludes, in accordance with article 22 of the Convention and rule 113 (b) of its rules of procedure, that the complaint is manifestly unfounded and is therefore inadmissible.

8.5 The Committee therefore decides:

- (a) That the communication is inadmissible under article 22 (1) of the Convention;
- (b) That the present decision shall be transmitted to the complainants and to the State party.

²² *H.S.T. v. Norway*, para. 6.3.

²³ *Ibid.*, para. 6.2, and *H.W.A. v. Switzerland*, para. 4.2.