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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2901/2016*, **

Communication submitted by:	X (represented by counsel, Zsolt Szekeres)
Alleged victim:	The author
State party:	Hungary
Date of communication:	8 December 2016 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 9 December 2016 (not issued in document form)
Date of adoption of decision:	29 March 2019
Subject matter:	Deportation to Bulgaria
Procedural issues:	Admissibility – victim status; admissibility – *ratione materiae*; victim status
Substantive issues:	Aliens' rights – expulsion; cruel, inhuman or degrading treatment or punishment; effective remedy; torture
Articles of the Covenant:	7, and 2 (3) (a) read in conjunction with 7
Articles of the Optional Protocol:	1 and 3

1.1 The author of the communication is X, a national of Pakistan born on 14 July 2000. He claims that Hungary has violated his rights under article 7, and article 2 (3) (a) read in conjunction with article 7, of the Covenant. The Optional Protocol entered into force for Hungary on 7 December 1988. The author is represented by counsel, Zsolt Szekeres of the Hungarian Helsinki Committee.

1.2 On 9 December 2016, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from removing the author to Bulgaria while the communication was under consideration by the Committee. On 24 April 2017, the

* Adopted by the Committee at its 125th session (4–29 March 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

Committee, acting through the Special Rapporteur, decided to grant the State party's request to examine the issue of admissibility separately from the merits.

The facts as submitted by the author

2.1 At the time the communication was submitted, the author was an unaccompanied child seeking asylum while residing with a Hungarian family. In 2016, he had fled Pakistan due to a fear of persecution on account of his Baloch ethnicity since ethnic Baloch are systematically persecuted by the authorities in Pakistan. The author's father, brother and cousin were persecuted in Pakistan on account of their ethnicity by State agents. The author's father was forcibly disappeared in 2008. When a conflict between the armed forces and the Baloch people resumed in 2014, the author's cousin and brother were both shot by State agents. Fearing a similar fate, the author fled Pakistan with his cousin S., also a child.

2.2 On 20 May 2016, the author entered Bulgaria on foot. The Bulgarian authorities apprehended him and took him to a police station, where he was fingerprinted. He did not apply for asylum at that time. For two days, the police detained the author at the station, where he was subjected to severe ill-treatment. The police agents only gave him one expired tin of fish to eat, and brutally grabbed him by the face and shouted at him.

2.3 On 30 May 2016, the author was transferred to the Busmantsi immigration detention camp, where members of the camp staff subjected him to severe ill-treatment and degrading treatment. He was only given soup without vegetables or meat to eat, and was repeatedly shouted at for not eating fast enough. When the author left his table with a piece of bread in his hand, one of the guards hit him in the stomach with excessive force, leaving the author staggering for hours.

2.4 On 8 June 2016, the author was transferred to the Voenna Rampa refugee camp. The reception conditions were extremely dire: there was no hot running water, and each bed had to be shared by two people due to overcrowding. As a result of the unhygienic conditions, the author suffered extensive bedbug bites. He was again fingerprinted, and applied for asylum. During the application process, the author claimed that he was an adult, because he had been told by the Bulgarian authorities that this was the only way he could remain together with his cousin.

2.5 On 11 June 2016, the dire conditions in the camp prompted the author to leave Bulgaria. He crossed the border into Serbia, where he spent five days. On the night of 16 June 2016, he crossed the border from Serbia into Hungary on foot, and on 17 June 2016, he immediately applied for asylum upon apprehension by the Hungarian police.

2.6 During processing, despite the author's protests, the Hungarian border police misspelled the author's first name when registering him, and also registered an erroneous date of birth (1 January 1998 instead of 14 July 2000). The author was then taken to the asylum authority of the Office of Immigration and Nationality, which immediately placed him in the Kiskunhalas asylum detention facility. Although the Office of Immigration and Nationality had promised the author that he would only be detained for a few days, the District Court of Kiskunhalas twice prolonged his detention. As a result, he was detained from 17 June 2016 to 7 October 2016.

2.7 In several submissions to the Office of Immigration and Nationality, the author stated that he was underage. However, in its responses dated 24 June, 7 July, 16 August and 6 September 2016, the Office stated that it had no doubts concerning his age because the author had confirmed his date of birth with his signature. The Office also informed the author that should he wish to have his age assessed, he would need to cover the costs of the examination. In its response dated 16 August 2016, the Office rejected the documents that the author had submitted as proof of his identity and age.

2.8 On 15 July 2016, the Office of Immigration and Nationality issued a decision stating that on the basis of Regulation No. 604/2013 of the European Parliament and of the Council of the European Union 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), and the record in the Eurodac database stating that the

author had previously entered Bulgaria, Bulgaria was responsible for the author's asylum application. The Office thus ordered the author's transfer to Bulgaria. The author had only one brief interview before this decision was issued. During that interview, he was not asked any questions about Bulgaria, and was not given an opportunity to comment on the potential applicability of the Dublin III Regulation. He challenged the removal decision, but did not have legal assistance during this process.

2.9 Thereafter, the author's asylum counsel submitted an expert opinion, issued by a psychologist from the Cordelia Foundation for the Rehabilitation of Torture Victims, to the Office of Immigration and Nationality. The psychologist stated that the author was suffering from post-traumatic stress disorder and was terrified by the prospect of returning to Bulgaria. The psychologist also indicated that the author had suffered inhuman and degrading treatment, and that separation from his cousin would further impair the author's psychological well-being. The psychologist stated that the author's mental state required that he be housed in an open reception facility.

2.10 On 7 October 2016, the Office of Immigration and Nationality ordered the author's release from detention on the basis of the psychologist's opinion. On 3 November 2016, the Administrative and Labour Court of Győr ruled that the decision of the Office of Immigration and Nationality of 15 July 2016 to transfer the author to Bulgaria was lawful, because it was in line with the Dublin III Regulation. The Court did not evaluate reception conditions in Bulgaria, or the author's individual circumstances. The decision is final and may not be appealed.

2.11 On 4 November 2016, at the author's request, the Office of Immigration and Nationality issued a decision placing the author with a Hungarian host family in Monor. The Office also ensured the author's continued access to therapy sessions. Thus, while residing with his host family, the author received regular therapy. His condition was slowly improving, though he routinely had nightmares and dreaded returning to Bulgaria. According to his psychologist, he needed continuous therapy and stable support to "restore the integrity of his personality".

2.12 After the present communication was registered, the author provided, in further correspondence dated 23 January 2017, a letter issued by the Immigration and Asylum Office on 13 January 2017. The letter stated that on 2 January 2017, the Office had withdrawn its decision to remove the author to Bulgaria, and that Hungary was the State responsible for conducting his asylum proceedings.

The complaint

3.1 The author alleges that by removing him to Bulgaria under the Dublin III Regulation, the State party would violate his rights under article 7 of the Covenant, because there are substantial grounds for believing that he would face a real risk of irreparable harm amounting to inhuman or degrading treatment in Bulgaria. The conditions in Bulgaria amount to such treatment, due to systemic deficiencies in both reception conditions and asylum procedures. The author asserts that the asylum system in Bulgaria does not systematically allow identification of vulnerable asylum seekers, in particular children, and lacks a system designed to respond to children's needs. Moreover, in Bulgarian reception centres, asylum seekers face poor hygiene conditions and nutrition, abusive and violent treatment by guards, overcrowding, substandard and insalubrious material conditions, and a lack of medical care, education for children, interpreters, and information on asylum procedures.[1] Reports also indicate that the Government of Bulgaria has not taken action to remedy conditions in reception facilities, and that detainees in these facilities may receive insufficient food for survival, and may be subjected to deliberate deprivation of food and liquids and to ill-treatment and humiliation.[2] Given credible reports that asylum seekers entering Bulgaria and returnees under the Dublin III Regulation are likely to be detained,

[1] The author cites, inter alia, the "Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 18 to 29 October 2010", Strasbourg, 15 March 2012.

[2] The author cites, inter alia, Pro Asyl, "Humiliated, ill-treated, and without protection: refugees and asylum seekers in Bulgaria", December 2015.

the author's transfer to Bulgaria would cause irreparable damage, by seriously compromising his fragile mental state and his recovery since beginning therapy in Hungary. Reports indicate that Bulgarian authorities routinely detain asylum seekers without considering the individual circumstances of their cases.[3]

3.2 Bulgaria does not allow asylum seekers access to mental health services, as such access is limited to holders of a residence permit.[4] Furthermore, Bulgaria does not have a procedure to identify vulnerable asylum seekers. Given the author's diagnosis of severe post-traumatic stress disorder, his inability to access mental health services in Bulgaria would seriously damage his health. Belgium recently suspended returns to Bulgaria under the Dublin III Regulation, on the grounds that there were no assurances that Dublin III returnees would have access to an asylum procedure and would not face extremely difficult reception conditions during the examination of their claims.[5] In Bulgaria, no guidelines or practices exist to accommodate the specific needs of minor asylum seekers, including unaccompanied children.

3.3 Several reports indicate that the Bulgarian authorities treat asylum seekers with excessive force and brutality,[6] including inside reception facilities. Moreover, growing far-right tendencies are fuelling anti-refugee sentiment and leading to violence in the country.

3.4 The author also claims that the State party violated his rights under article 2 (3) (a), read in conjunction with article 7, of the Covenant, in that neither the decision of the Office of Immigration and Nationality to return him to Bulgaria nor the judicial review of that decision by the Administrative and Labour Court of Győr provided him with effective remedies. The author had only one hearing during his asylum proceedings, and was not questioned at that time about the individual circumstances relating to his potential transfer to Bulgaria. This violated his right to be heard. The arguments provided by the authorities were purely legalistic and did not demonstrate an individualized examination of his case.

State party's observations on admissibility

4.1 In its initial observations dated 7 February 2017, the State party considers that the communication is manifestly ill-founded and is thus inadmissible under article 2 of the Optional Protocol, because the relevant circumstances have ceased to exist. The State party refers to the decision of the Immigration and Asylum Office of 2 January 2017, in which the Office withdrew its previous decision stating that Bulgaria was responsible for the author's asylum case. Accordingly, the author will not be deported to Bulgaria, as the author has confirmed. The author has also left his assigned accommodation in Hungary, and his whereabouts are unknown. According to article 66 (2) of the law on asylum, if an asylum applicant leaves a designated place of accommodation without permission for more than 48 hours for an unknown destination, and fails to submit an appropriate explanation for the absence, the asylum authorities shall render a decision on the basis of the information available, or shall terminate the procedure. In compliance with these provisions, the asylum authority conducted the procedure and, in a decision dated 20 January 2017, rejected the author's request for international protection.

4.2 In addition, the author's claims are manifestly ill-founded. When the author was apprehended by Hungarian police, he had no identity documents. At his police hearing, which was conducted in Urdu, he stated that his date of birth was 1 January 1998. He accepted the Urdu interpretation provided, stating that he understood the interpreter. The author signed each page of the written transcript of the hearing after it had been translated. During questioning by the police, the author did not request correction of his personal data,

[3] Ibid.

[4] The author cites, inter alia, the European Council on Refugees and Exiles, "Reception and detention conditions of applicants for international protection in light of the Charter of Fundamental Rights of the EU", January 2015.

[5] The author cites the European Council on Refugees and Exiles and European Legal Network on Asylum, "Research note: reception conditions, detention and procedural safeguards for asylum seekers and content of international protection status in Bulgaria", February 2016.

[6] The author cites, inter alia, Pro Asyl, "Humiliated, ill-treated, and without protection: refugees and asylum seekers in Bulgaria", December 2015.

contrary to his assertion. Similarly, during his asylum interview on 17 June 2016, he did not raise any objections to the Urdu interpretation provided, and stated that his date of birth was 1 January 1998 and that his real name was the name under which he had been registered by the State party's authorities. The author also signed the translated transcript of the interview. Thus, before both the police and the asylum authorities, the author made the same statement concerning his date of birth, and accepted the interpretation and the translated transcript provided.

4.3 It was only later, on 23 June 2016, that the author filed a statement indicating that he was underage, and requesting transfer to an open reception centre. In view of the information stated above, however, there was no reason to doubt the date of birth previously provided by the author. In further petitions filed on 30 June and 30 August 2016, the author provided the asylum authority with documents issued under a different last name. He stated that he had not told the truth about his name or his date of birth, and that his real date of birth was 14 July 2000. No similarity could be identified between the photos in the new documents provided, and the photo of the author in the asylum database. The asylum authority thus questioned the authenticity of the documents. The Administrative and Labour Court of Győr, in its final decision, reaffirmed the asylum authority's opinion that the author should not be considered a child, deeming that the asylum authority had assessed the available documents in accordance with the law.

4.4 The author did not raise his claim of post-traumatic stress disorder or unsatisfactory health before the asylum authority. On one occasion, he mentioned that he was stressed due to his detention, but did not mention any other reasons for his stress, including any reasons that had arisen before his arrival in Hungary.

4.5 During his interview with the police, the author stated that he had left Pakistan for economic reasons and due to unemployment. He said that he had not faced threats, violations or degrading treatment on the grounds of race, religion or ethnic origin. One day later, during his interview before the asylum authority, he stated that the Taliban had killed his brother, and that he had left Pakistan due to "the Taliban threat". In response to a question as to whether he had any health problems, he stated that he had no problems and was healthy. Due to the inconsistencies in his assertions regarding his state of health and his personal data, the asylum authority considered that his good faith and credibility were questionable. It thus rejected his request for an age-determination process to be carried out, at government expense. At the same time, the asylum authority accepted the expert opinion, and with due regard to the author's vulnerability, terminated his detention.

4.6 The communication is also inadmissible as an abuse of the right of submission under article 3 of the Optional Protocol, because the fact that the author has left his assigned accommodation in Hungary for an unknown location indicates a lack of good faith and cooperation on his part.

4.7 In further observations dated 3 July 2017, the State party reiterates that because the Immigration and Asylum Office withdrew both its decision attributing responsibility for the author's asylum case to Bulgaria and its decision concerning the author's removal, the communication is unfounded and is therefore inadmissible. Concerning the author's argument that the State party exposed him to a risk of irreparable harm, the State party observes that the Covenant does not guarantee that an individual cannot be "exposed to the danger of being expelled" to a country where she or he would be subjected to torture or cruel, inhuman or degrading treatment or punishment. Rather, the Covenant guarantees against expulsion of an individual to a country where he or she, upon return, would face the risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment. Thus, because the author is not subject to removal by the State party, his claim under article 7 of the Covenant is not arguable.

4.8 During his asylum interview, the author did not complain of any abuse, threats or discrimination in Bulgaria; such claims would have justified a finding that his removal to Bulgaria would be unlawful. The author had an opportunity to invoke these alleged circumstances and to submit evidence, both during administrative proceedings and in his request for review of the decision of the Immigration and Asylum Office.

4.9 In response to the author's claim that he did not have access to an effective remedy, his appeal was unsuccessful due to the lack of information provided by him. This lack of information cannot be attributed to the State.

4.10 The State party reiterates its initial observations concerning the author's age and the age-determination process. In response to the author's further comments relating to his departure from Hungary to Austria, the State party also observes that according to the Austrian age-determination document the author refers to, the author indicated his date of birth as 4 July 2000. This means that the author was 16 at the time he requested asylum in Hungary, however he had stated before the Hungarian asylum authority that he was 18.

Author's comments on the State party's observations

5.1 In comments dated 21 March 2017 and 18 September 2017, the author informs the Committee that he left Hungary for Austria. He maintains that the Hungarian Immigration and Asylum Office withdrew its original decision ordering his removal to Bulgaria almost one month after the Committee granted interim measures. This delay is indicative of bad faith. Moreover, the Office made the decision not to remove the author only after the Committee granted interim measures. The mere fact that the author was not removed – due to the intervention of the Committee – does not mean that the State party did not violate the cited articles of the Covenant, and does not absolve the State party of respecting its obligations under international law.

5.2 The State party should not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of, inter alia, expulsion. The author was able to claim before the State party's authorities that his return to Bulgaria might have constituted a violation of article 7, and article 2 (3) (a) read in conjunction with article 7, of the Covenant. However, the Hungarian authorities did not fulfil their obligation to furnish effective guarantees to protect the author from arbitrary removal to Bulgaria.

5.3 The State party did not provide any relevant legal reasoning concerning the author's claim under article 2 (3) (a) of the Covenant. Both the administrative and the judicial procedures were compromised by significant procedural errors, but the State party has not commented on these claims. The judicial review conducted by the Administrative and Labour Court of Győr did not provide an effective remedy. The principle of an effective remedy should apply both to the implementation of the Dublin III Regulation and to the legal and factual situation in the receiving State. The author reiterates his claims regarding the lack of an individual hearing and cites jurisprudence of the European Court of Human Rights concerning the standards of effective review of an expulsion order.

5.4 Regarding the author's age, the author maintains that the Immigration and Asylum Office did not carry out an age assessment or accept the identity document he proffered. The author was clearly recognizable in the photo he submitted, contrary to the State party's assertion. Moreover, his age has been assessed by the Austrian authorities and they found him to be a child. The failure of the Hungarian authorities to assess the author's age, despite his repeated requests, underscores the systematic failure to guarantee his right to an effective remedy. When intercepted by the Hungarian police, and during the early stages of his asylum procedure, the author was a scared, traumatized unaccompanied child. He was far from his home, in a foreign country, and was dealing with a complex and unfamiliar legal procedure. Unaccompanied children cannot be expected to immediately trust authorities, whom they may deeply mistrust as a result of past persecution. In many cases, asylum seekers only narrate their true story when they have learned what their rights are. Once the author learned that he in fact belonged to a vulnerable group, he immediately informed the authorities of the truth. He cannot be blamed for being confused about the safest and best way to initiate and proceed with his asylum case, especially in light of the fact that he suffered from severe post-traumatic stress disorder.

5.5 Since the author's departure from Hungary, his counsel in Hungary has been in contact with him and with the organization providing him with legal aid in Austria. The author has expressed a wish to see current proceedings before the Committee reach a conclusion, in order to help himself and other asylum seekers.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement and that it is not precluded by article 5 (2) (a) of the Optional Protocol from considering the communication.

6.3 The Committee notes the State party's argument that the communication is inadmissible because, given that the author voluntarily left the State party's territory and currently resides in Austria, he is no longer subject to removal by the State party to Bulgaria. The Committee recalls its jurisprudence according to which a person can only claim to be a victim in the sense of article 1 of the Optional Protocol if he or she is actually affected.[7] The Committee observes that, because the author has left the State party's jurisdiction, he does not face a foreseeable removal by the State party that could expose him to a risk of treatment contrary to article 7 of the Covenant. The Committee therefore considers that his claim under article 7 is inadmissible under article 1 of the Optional Protocol.

6.4 The Committee notes the author's claim that he was denied access to an effective remedy, in violation of article 2 (3) (a), read in conjunction with article 7, of the Covenant. Taking into account the inadmissibility of the author's claim under article 7, the Committee considers that it is precluded by article 1 of the Optional Protocol from examining this aspect of the claim. The Committee also recalls its jurisprudence stating that the provisions of article 2 of the Covenant lay down general obligations for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.[8] For this reason, the Committee finds the author's claim under article 2 (3) (a), read in conjunction with article 7, of the Covenant, inadmissible under articles 1 and 3 of the Optional Protocol.[9]

6.5 The Committee therefore decides:

(a) That the communication is inadmissible under articles 1 and 3 of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the author.

[7] Human Rights Committee, *Aumeeruddy-Cziffra et al. v. Mauritius*, communication No. 35/1978, para. 9.2; and Human Rights Committee, *Hertzberg et al. v. Finland*, communication No. 61/1979, para. 9.3.

[8] *Ch.H.O. v. Republic of Korea* (CCPR/C/118/D/2195/2012), para. 9.4; and *X v. Czech Republic* (CCPR/C/113/D/1961/2010), para. 6.6.

[9] In the light of its findings, the Committee does not deem it necessary to examine the admissibility of the communication under article 5 (2) (b) of the Optional Protocol.