



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. 122/2017^{*,**}

<i>Communication submitted by:</i>	Rahma Abdi-Osman (represented by counsel, Gabriella Tau)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Switzerland
<i>Date of communication:</i>	28 November 2017 (initial submission)
<i>References:</i>	Transmitted to the State party on 1 December 2017 (not issued in document form)
<i>Date of adoption of views:</i>	6 July 2020
<i>Subject matter:</i>	Deportation to Italy; discrimination against women; risk of trafficking, exploitation and prostitution
<i>Procedural issue:</i>	Communication manifestly ill-founded
<i>Articles of the Convention:</i>	2 (d), 3 and 6
<i>Articles of the Optional Protocol:</i>	4 (2) (c)

* Adopted by the Committee at its seventy-sixth session (29 June–9 July 2020).

** The following members of the Committee took part in the consideration of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Mohamed Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song, Genoveva Tisheva, Franceline Toé-Bouda and Aicha Vall Verges.



Background

1.1 The author of the communication is Rahma Abdi-Osman, a national of Somalia born on 1 January 1988. Her application for asylum was rejected and she risks being sent back to Italy. She claims that, by sending her back, Switzerland would breach articles 2 (d) and 6 of the Convention on the Elimination of All Forms of Discrimination against Women. The Optional Protocol to the Convention entered into force for Switzerland on 29 December 2008. The author is represented by counsel, Gabriella Tau.

1.2 On 1 December 2017, the Committee, acting under article 5 (1) of the Optional Protocol to the Convention and rule 63 of its rules of procedure, through its Working Group on Communications under the Optional Protocol, requested the State party to refrain from returning the author to Italy pending consideration of her communication. On 7 December 2017, 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 author to Italy.

Facts as submitted by the author

2.1 The author was born in El Bur, Galguduud Province, in Somalia. In 2008, she was taken from her family by a member of the Somali group Al-Shabaab, who forced her to marry him. The author's father was killed when he tried to intervene. The author was then held captive and subjected to degrading treatment by her husband. She was regularly beaten and raped. As a result of the rapes, the author gave birth to a child, who was taken from her by force and of whom she has had no news. She became pregnant twice more but was forced to have abortions.

2.2 The author decided to flee through Libya and Italy. She applied for asylum in Italy on 8 November 2013 and was granted subsidiary protection there. During her stay in Italy, she entered into a traditional marriage with an Italian national of Somali origin, who had been admitted to Switzerland on a temporary basis and resided in the canton of Sankt Gallen. On 2 November 2015, the author arrived in Switzerland. On 10 November 2015, she applied for asylum. She immediately contacted her husband, who was in the canton of Sankt Gallen. At her hearing, the author stated that she had come to Switzerland to join her husband. She also stated that she suffered from gynaecological problems as a result of being raped and that she needed medical care. The author was sent to the canton of Fribourg. As the spouses were dependent on social assistance, they could not afford to see each other regularly.

2.3 The Swiss authorities asked Italy to readmit the author under the Dublin III Regulation,¹ and Italy agreed to her readmission on 26 January 2016. On 1 March 2016, the State Secretariat for Migration decided not to consider the author's asylum application and ordered her return to Italy. On 14 July 2016, the Swiss authorities took the author to the Italian border by car. The author was not directed to the competent Italian authorities and her medical file was not transmitted to Italy. The author was not informed that she had to go to the *questura* in Florence, the competent authority for her integration in Italy. With just 30 Swiss francs in her possession, she wandered the parks of Como with other migrants for 12 days. In August 2016, the author finally made her way back to Switzerland and settled with her customary husband in Sankt Gallen with a view to starting a family.

¹ Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

2.4 The author claims that, since she was sent back, her mental health has deteriorated, as attested by psychiatric and psychological reports. A report dated 13 July 2016 confirms that she is suffering from various types of trauma and significant post-traumatic stress disorder. The report attests that she was held captive by the Somali group Al-Shabaab in Somalia, which kept her as a sex slave for years, and that she was sexually abused during the two years she spent in Italy. Medical reports also confirm that she has been the victim of numerous crimes classified as acts of terrorism and that she has been exposed to the horrors of the war and the hostilities in Somalia.

2.5 On 12 August 2016, the author filed a new asylum application in Switzerland through her lawyer, as well as a request to move to another canton. On 10 October 2016, the State Secretariat for Migration issued a second decision of non-consideration and ordered the author's return to Italy. On 20 October 2016, it denied the author's request to move to another canton. On 5 December 2016, the Federal Administrative Court annulled the decision of the State Secretariat on appeal and ordered a further investigation into the case. On 25 January 2017, the State Secretariat for Migration issued another decision of non-consideration and ordered the applicant's return to Italy. On 19 July 2017, the Court rejected the author's appeal.

2.6 On 16 August 2017, the author requested the State Secretariat for Migration to reconsider its decision, in particular with regard to her removal to Italy. She also brought new facts to bear, namely, that she was pregnant and due to give birth in February 2018, and that she and her husband had entered into a civil marriage in Switzerland on 7 April 2017. On 22 August 2017, the State Secretariat refused to consider her request. On 29 September 2017, the Federal Administrative Court upheld that refusal on appeal, on the grounds that the appeal had been frivolous and constituted an abuse of right.

2.7 On 29 March 2018, the author further informed the State Secretariat for Migration that she had given birth to a daughter on 21 February 2018. In those circumstances, she argued, it would be unthinkable to send her back to Italy, as she would find herself alone there with a newborn child in her care. She claimed that forcing her into such conditions would constitute a violation of the Convention. She had already been subjected to gender-related trauma, in particular sex slavery, forced marriage and abortions. Sending her back would subject her to an additional violation, as she would have the responsibility of raising her newborn child in psychologically and physically challenging circumstances, alone and far away from her husband.

2.8 The author makes reference to numerous reports on the context in Italy in the face of the Mediterranean migration crisis² and on vulnerable asylum seekers, in particular women victims of trafficking and prostitution. The author stresses that, while it is possible, in principle, to get access to health care in Italy, only partial financial coverage by the State is possible during the first two months, and access would be limited for the author because of social exclusion.³ Furthermore, Italy does not have a system to identify trafficked persons and its primary reception centres for asylum seekers do not have a service offering psychological support.⁴

² The author cites statistics of the Office of the United Nations High Commissioner for Refugees, available at <https://data2.unhcr.org/en/situations/mediterranean>.

³ Médecins sans frontières, "Fuori campo – Richiedenti asilo e rifugiati in Italia: insediamenti informali e marginalità sociale", March 2016.

⁴ Médecins sans frontières, "Neglected trauma – Asylum seekers in Italy: an analysis of mental health distress and access to healthcare", 15 July 2016.

2.9 The author cites the conclusions in a report by the Group of Experts on Action against Trafficking in Human Beings of the Council of Europe,⁵ in which the Group of Experts states that it is aware of the extreme difficulties that Italy is experiencing owing to the unprecedented influx of migrants and refugees and praises the significant efforts that the country has made to confront that challenge with the help of international organizations and civil society. In the report, which was prepared following a visit made in September 2016, the Group of Experts revealed shortcomings in the detection of trafficked persons among the migrants. It paid particular attention to the situation of Nigerian women and girls, who had been coming to Italy in increasing numbers, and of whom many were likely to have been trafficked for purposes of exploitation in Europe. The Group of Experts expressed its concern about the lack of early identification of such trafficked persons and about the manner in which forced removals of trafficked persons to their countries of origin were conducted. The Group of Experts urged the Italian authorities to improve the identification of victims of trafficking among migrants and asylum seekers by setting up clear, binding procedures and providing systematic training to immigration police officers and staff working in primary assistance and reception centres.

2.10 The author also describes the situation in migrant shelters in Italy. Despite the addition of extra spaces, a total breakdown of the reception system could be avoided over the past two years only because large numbers of arriving migrants left the State's primary reception centres voluntarily, to evade the identification procedures and the application of the Dublin III Regulation.⁶ Moreover, although there are intake procedures for asylum seekers, migrants have to wait weeks or even months before they can submit their asylum applications and, during that time, they have no access to accommodation. In addition, those who have been granted international protection or humanitarian status must leave the reception centres. Investigations have confirmed that even vulnerable persons, such as victims of torture, have no guarantee of being housed in one of the centres for asylum seekers operated by the State and do not have access to adequate support services.⁷

2.11 The author also refers to a joint report by the Danish Refugee Council and the Swiss Refugee Council on vulnerable persons transferred to Italy under the Dublin III Regulation. Through six case studies, it is clearly demonstrated that persons transferred to Italy face considerable difficulties, that they are at risk of having their rights violated and that the manner in which families and vulnerable persons are received by the Italian authorities is very arbitrary.⁸

Complaint

3.1 The author claims that the State party would breach its obligations under articles 2 (d) and 6 of the Convention by sending her back to Italy.

3.2 The author argues that, under article 2 (d) of the Convention, the State Secretariat for Migration, the Federal Administrative Court and the cantonal authorities responsible for returning her to Italy are obliged to refrain from any act of discrimination against women. The author refers to the Committee's general recommendation No. 32 (2014) on the gender-related dimensions of refugee status,

⁵ Group of Experts on Action against Trafficking in Human Beings, "Report on Italy under rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings", 30 January 2017, GRETA(2016)29.

⁶ The author again cites the report by Médecins sans frontières, "Fuori campo".

⁷ See International Rehabilitation Council for Torture Victims, "Falling through the cracks: asylum procedures and reception conditions for torture victims in the European Union – IRCT Regional Report 2016", p. 30.

⁸ Danish Refugee Council and Swiss Refugee Council, "Is mutual trust enough? The situation of persons with special reception needs upon return to Italy", 9 February 2017.

asylum, nationality and statelessness of women, according to which States parties may not take a decision concerning a person within their jurisdiction that has as a necessary and foreseeable consequence that the person's basic rights under the Convention will be seriously at risk in another jurisdiction.⁹ She adds that States parties have an obligation to ensure that no woman will be expelled or returned to another State where her life, physical integrity, liberty and security of person would be threatened, or where she would risk suffering serious forms of gender-based persecution or gender-based violence.¹⁰ The author holds that sending her back to Italy would expose her to a "real, personal and foreseeable risk" of becoming a victim of serious forms of discrimination against women, in particular gender-based violence. That serious form of discrimination would be a "necessary and foreseeable" consequence of her being sent back to Italy.

3.3 With regard to article 6, the author argues that, in view of the facts documented above, she would be at great risk of ending up on the street, homeless and exposed to prostitution, if she were removed to Italy again. She claims that this risk has already materialized during her two earlier stays in Italy, which is confirmed by the conclusions of the above-mentioned reports. The author adds that the individual assessment that the State party made of her case was insufficient, and that the State party therefore failed to recognize the exceptional circumstances she was facing and the imperative need to protect her as a victim of forced marriage and serious sexual abuse. The author refers to the Committee's general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, in which the Committee states that rape and sexual slavery may amount to torture or cruel, inhuman or degrading treatment, and recommends that States parties provide appropriate and accessible protective mechanisms to prevent further violence against women.¹¹

3.4 In view of the foregoing, the author holds that it is highly likely that, if she were sent back to Italy, she would have no access to housing, medical care, adequate protection and/or the care needed for her effective rehabilitation as a victim of forced marriage and sexual violence, which would have particularly traumatic consequences for her physical and mental health.

3.5 According to the author, the Swiss authorities have not taken proper account of all the information relating to the sexual offences she reported. The State party has merely stated that there was no reason to believe that Italy would be unable to offer her an appropriate setting in which she could be treated for the trauma resulting from the violence and the inhuman and degrading treatment to which she was subjected in Somalia. The Swiss authorities have also called into question the author's statements about the sexual violence to which she was subjected in Italy without examining the matter in depth. Furthermore, the author finds it regrettable that the State party has merely pointed to the guarantee contained in Directive 2011/95/EU of the European Parliament and of the Council,¹² that asylum seekers should have non-discriminatory access to housing and health care. It has not examined whether Italy is implementing that provision in practice, despite information suggesting the contrary, namely, the author's statements and reports by non-governmental organizations, the media and international organizations.

⁹ CEDAW/C/GC/32, para. 22.

¹⁰ Ibid., para. 23, and *M.E.N. v. Denmark* (CEDAW/C/55/D/35/2011), para. 8.9.

¹¹ CEDAW/C/GC/35, paras. 16 and 31.

¹² Directive 2011/95/EU of the European Parliament and of the Council 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.

3.6 The author maintains that it was not reasonable to expect a woman suffering from psychological trauma caused by sex slavery to leave her husband while pregnant in order to resettle in another country, where she would be left alone with the child she was expecting.¹³ In view of these considerations, the State party's attitude can only be described as discriminatory towards the author.

3.7 In view of the foregoing, the author considers that the State party has not taken the necessary measures to prevent her from falling victim once again to trauma and prostitution. There is a real risk that she would be subjected to acts of discrimination under the Convention, in particular sexual violence, if she were sent back to Italy. It follows that her removal would violate articles 2 (d) and 6 of the Convention.

State party's observations on the admissibility and merits of the communication

4.1 On 29 May 2018, the State party submitted its observations on the admissibility and merits of the communication. The State party recalls the facts of the case, in particular that the author was granted subsidiary protection in Italy in 2013, and was transferred to a camp in Sicily where most of the occupants were men and where she was sexually harassed. In June 2015, she married a Somali national who had been granted subsidiary protection in Switzerland. The author left Italy for Switzerland on 2 November 2015 and applied for asylum on 10 November 2015. On 1 March 2016, the State Secretariat for Migration decided not to consider the application and ordered the author's return to Italy. On 14 July 2016, the author was transferred to Italy.

4.2 The State party stresses that, on 24 November 2015, the State Secretariat for Migration conducted a screening interview with the author to ascertain her personal data. A fingerprint check in the Eurodac system revealed that the author had already been registered as an asylum seeker in Italy on 8 November 2013. On 15 December 2015, the State Secretariat for Migration sent the Dublin Unit of the Ministry of the Interior of Italy a request to take the author back under article 18 of the Dublin III Regulation. On 28 December 2015, the Dublin Unit informed the State Secretariat for Migration that the author was a beneficiary of subsidiary protection in Tuscany. On 6 January 2016, the State Secretariat for Migration completed the Dublin procedure and granted the author a hearing with regard to its decision not to consider her application and to send her back to Italy. On 12 January 2016, it requested Italy to readmit the author. On 16 January 2016, the author claimed that she had stayed in a camp that had accommodated men almost exclusively and that, while there, she had been subjected to violence, in particular sexual violence. She had tried in vain to be moved to a different centre and had been forced to live on the streets. On 29 January 2016, the Italian Ministry of the Interior agreed to the request addressed to it by the State Secretariat for Migration on the grounds that the author had been granted subsidiary protection in Italy until 11 November 2019.

4.3 On 1 March 2016, the State Secretariat issued a decision of non-consideration in respect of the author's asylum application on the grounds that she had been granted subsidiary protection in Italy, a State considered safe by the Federal Council. The State Secretariat also recalled that Italy was bound by Directive 2011/95/EU of the European Parliament and of the Council, in which are set out the minimum standards that applicants from third countries or stateless persons must meet to qualify for international protection. Under the Directive, persons enjoying subsidiary protection have the same rights as Italian nationals in respect of access to health care, the labour market and social insurance. If those requirements had not been fulfilled, the author would have to assert her rights in Italy. The State Secretariat for Migration also noted

¹³ The author was pregnant at the time of the initial communication and gave birth to a daughter in February 2018.

that Italy was governed by the rule of law, had a police force that was willing and able to protect the author, and could offer her the necessary care.

4.4 On 14 March 2016, the author filed an appeal with the Federal Administrative Court and, on 22 March 2016, submitted a medical certificate stating that she was undergoing psychiatric treatment and psychotherapy, that she had symptoms of a severe post-traumatic state and that enforcing the decision to return her to Italy could have serious consequences for her mental health. On 24 March 2016, the Court dismissed her appeal on the following grounds: the violence she had allegedly been subjected to in Italy fell under the jurisdiction of the Italian authorities; the author had tried to mislead the Swiss authorities about her status in Italy, as a result of which her statements about the lack of support from the Italian State were not credible; sending the author back would not breach article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights); the author could apply for family reunification from Italy; the judicial system and the police in Italy were functioning, and there were no specific indications that the author had not been afforded protection in the past; the author had access to the medical care she needed in Italy and did not appear, on the basis of her state of health, to be a vulnerable person whose health or life might be in danger if she were sent back.

4.5 On 14 July 2016, the author was transferred to Italy at the Ponte Chiasso border crossing and handed over to the Italian police. The State Secretariat for Migration had informed the Italian authorities by fax of 6 July 2016 that the author suffered from post-traumatic stress disorder and had sent them her medical certificate with a translation into Italian.

4.6 On 12 August 2016, the author came back to Switzerland clandestinely. She applied for asylum and, at the same time, requested a change of canton so that she could live with her husband. In particular, she claimed that, after her removal to Italy, she had been left at the border to fend for herself. She had spent 12 days in Como, sleeping in public parks in the company of other migrants. Her medical file had not been transmitted to the Italian authorities. She held that, given her state of health and the reception conditions in Italy, it was not reasonable to send her back to that country. She submitted a medical report dated 13 July 2016 and indicated that, on 7 July 2016, she had given notice to the authorities of her intent to get married. On 25 August 2016, the State Secretariat for Migration granted the author a hearing. By letter dated 5 September 2016, the author made additional comments, stating that, in Italy, she would not have access to the medical care she needed. She submitted a medical certificate dated 31 August 2016 in which a sudden worsening of her symptoms was noted, her removal to Italy having caused new trauma.

4.7 On 10 October 2016, the State Secretariat for Migration decided not to consider the author's asylum application, noting that her medical certificate did not show that she needed specialized treatment and care unavailable in Italy. Medical services in that country were fit for the treatment of any type of illness. Regarding the risk of suicide, the State Secretariat pointed out that the manifestation of a tendency towards autoaggressive acts following an order to leave Switzerland was not a sufficient ground to argue that removal would be unreasonable.

4.8 On 20 October 2016, the author filed an appeal with the Federal Administrative Court. On 5 December 2016, the Court referred the case back to the State Secretariat for Migration because it had failed to request the agreement of Italy. On 12 January 2017, the Ministry of the Interior of Italy agreed to readmit the author. On 25 January 2017, the State Secretariat decided not to consider the application and confirmed the decision to send the author back to Italy. In doing so, it noted that the author had not substantiated her claim that she had received no support when she was transferred to

Italy on 14 July 2016. Also, she was now aware that it was her responsibility to report to the *questura* in Florence after her handover to the Italian authorities. According to the State Secretariat, there was no evidence that the author had sought support from the Italian authorities unsuccessfully and had had no other option than to leave Italy as a result. There was also no indication that Italy had refused her social and medical care.

4.9 On 2 February 2017, the author filed an appeal with the Federal Administrative Court against the decision of the State Secretariat for Migration of 25 January 2017. She included several certificates and alleged that breaches had been committed under article 3 of the European Convention on Human Rights and under articles 3, 14 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She claimed, on the basis of reports by Médecins sans frontières, that Italy was unable to meet her needs as a vulnerable person. On 9 May 2017, the State Secretariat for Migration assigned the author to the canton of Sankt Gallen for the duration of the asylum procedure. On 19 July 2017, the Court rejected the author's appeal. On 16 August 2017, the author asked for her case to be reconsidered on the grounds of her pregnancy and her civil marriage in Switzerland. On 22 August 2017, the State Secretariat for Migration denied her request. The author filed an appeal with the Federal Administrative Court. On 29 September 2017, the Court dismissed the appeal as dilatory and abusive. The Court found that, apart from her pregnancy, invoked belatedly, the author had introduced no new evidence and that the actual aim of her petition was to obtain the re-examination of matters of fact and law already considered by the State Secretariat for Migration and the Court.

4.10 The State party holds that the arguments adduced before the Committee have been examined circumstantially on several occasions and that the communication contains no new information or evidence that would change the findings contained in the decisions of the State Secretariat for Migration and the Federal Administrative Court. The State party notes that the only new claim brought forward concerns trafficking in persons, but that the link to her particular case is not clearly explained. The State Secretariat for Migration and the Court have issued several decisions and rulings in which they have examined and made determinations on the author's claims. In particular, the State party has considered whether in Italy, the author, given her situation, would be at risk of violations of her rights under article 3 of the European Convention on Human Rights and under articles 3, 14 and 16 of the Convention against Torture, or under article 3 of the Convention on the Elimination of All Forms of Discrimination against Women. The Court has also examined whether the principle of family unity and the protection of family life has been upheld.

4.11 The State party recalls that it is for the authorities of States parties to evaluate the evidence or the application of national law in a particular case, unless it can be established that the evaluation was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice.¹⁴

4.12 The State party notes that, in her communication, the author does not confine herself to making general and stereotypical allegations, but, moreover, raises contradictory claims. First, she maintains that she was taken to the Italian border by car and abandoned there. Then, she goes on to state that, with assurances from the Italian authorities that she would be given the care her situation requires, she might perhaps consider living in Italy in conditions that were appropriate and in keeping with her needs given the particular trauma she has suffered.

¹⁴ The State party refers to *S.J.A. v. Denmark* (CEDAW/C/68/D/79/2014), decision of inadmissibility of 6 November 2017, para. 7.8 and references.

4.13 The State party notes that the author has not demonstrated any gender-based discrimination in respect of access to accommodation and specialized medical care in Italy, and that she has established no link between the failure on the part of the Italian authorities to offer her appropriate reception conditions and the violations of the Convention that she alleges. Nor has the author credibly demonstrated that she applied to the Italian authorities to obtain suitable protection.

4.14 The State party considers that, in substance, the author's claims are aimed at challenging the manner in which the Swiss authorities assessed the circumstances of her case, applied the provisions of legislation and reached conclusions. The Swiss authorities concluded that the author's version of events lacked credibility and was not sufficiently substantiated. No other conclusion can be drawn on the basis of the limited information provided by the author in support of her communication. In view of the foregoing, the State party invites the Committee to declare the communication inadmissible for lack of substantiation, under article 4 (2), of the Optional Protocol.

4.15 If, however, the Committee considers the articles invoked by the author to be applicable by Switzerland, the State party is of the view that it has not violated the Convention, for the reasons set out below.

4.16 With regard to article 2 of the Convention, the State party recalls that the Committee has found violations of this article in cases other than those involving non-refoulement.¹⁵ Furthermore, in two recent communications concerning Denmark and involving non-refoulement – specifically, the return of the authors to Somalia – the Committee, while not underestimating the concerns that might legitimately be expressed with regard to the general human rights situation in Somalia, in particular concerning women's rights, held that the authorities of the State party had given sufficient consideration to the authors' asylum claims. The Committee therefore found that the authorities of the State party had conducted the examination of those claims in a manner respecting its obligations under the Convention.¹⁶ The State party maintains that, in the present case, the Swiss authorities have examined the author's asylum application in a manner respecting the State party's obligations under the Convention.

4.17 The State party emphasizes in respect of the claims relating to the lack of appropriate support for vulnerable asylum seekers in Italy in general and the impact of the Mediterranean crisis in particular, access to treatment in Italy and conditions of accommodation – arguments already adduced by the author before the Federal Administrative Court – that those circumstances affect the entire population and are not within the scope of article 2 of the Convention. Moreover, it is not for the Swiss authorities to ensure that, following a transfer to Italy, persons granted international protection have sufficient means of subsistence. Having examined the author's claims, the competent Swiss authorities concluded that there was no evidence that the author would be at risk of being subjected to serious gender-based violence in Italy or that the Italian authorities would not afford her effective protection against gender-based violence. The author has not provided, in her communication, any evidence that would reverse that finding.

4.18 The State party recalls that Italy, as a State party to the Convention and the Optional Protocol, is obliged to apply their provisions. Italy is also bound by the Charter of Fundamental Rights of the European Union and various other treaties and

¹⁵ The State party cites, among others, *Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice on behalf of Goekce et al. v. Austria* (CEDAW/C/39/D/5/2005), *L.R. v. Republic of Moldova* (CEDAW/C/66/D/58/2013) and *Medvedeva v. Russian Federation* (CEDAW/C/63/D/60/2013).

¹⁶ *F.F.M. v. Denmark* (CEDAW/C/67/D/70/2014), para. 8.8, and *A.M. v. Denmark* (CEDAW/C/67/D/77/2014), para. 8.6.

regulations concerning fundamental rights, including the Council of Europe Convention on Action against Trafficking in Human Beings and Directive 2011/95/EU of the European Parliament and of the Council. Thus, Italy is obliged to ensure the safety of asylum seekers and must, inter alia, guarantee beneficiaries of international protection access to health care, accommodation and employment under the same conditions as its nationals. In addition, Italy has an effective judicial system capable of investigating cases of violence and punishing the perpetrators, as needed. Consequently, the State party considers that it has not violated article 2 of the Convention.

4.19 The State party then notes the author's claims that, as a victim of forced marriage and domestic violence, her rights under article 3 of the Convention would be violated if Switzerland returned her to a country in which she would not have access to the specialized treatment she needs, while separating her from her husband and father of her child. The author has already raised these claims at the national level, and they have been carefully examined. The State party stresses that the author would be able to obtain the required treatment in Italy, including mental health care if necessary, and could undertake therapy there. According to the State party, the author's state of health, though not to be downplayed, has not changed since the Federal Administrative Court judgment of 29 September 2017, and Italy has undertaken to provide specialized care for vulnerable persons granted international protection.¹⁷ Thus, there is no evidence that Italy would be unable to offer the author an appropriate setting for treatment of the trauma she has suffered. It will be for the Swiss authorities to inform their Italian counterparts of the author's medical situation when her removal is carried out, as they did on the occasion of her earlier transfer.

4.20 Regarding the author's claim that it would not be reasonable to transfer her because she and her child would be separated from her husband, the State party notes that it has already been examined by the national authorities, which concluded that the couple could reside in Italy, by way of an alternative. In addition, her husband could initiate a family reunification procedure, the outcome of which the author could await in Italy, or she could start such a procedure herself in that country. Neither the complexity of the procedure, nor the uncertainty as to its length, are insurmountable obstacles to the couple's ultimately leading a family life, in Switzerland or in Italy. Accordingly, article 3 of the Convention has not been violated.

4.21 Lastly, the State party argues that there has been no violation of article 6 of the Convention. The national authorities carefully examined that claim and found that the author had never reported having been a victim of sexual violence between being transferred on 14 July 2016 and coming back to Switzerland. As for the author's allegations that she was subjected to sexual violence during her first stay in Italy, the Swiss authorities noted that it was up to the author to report any such violence to the Italian authorities and request their aid.¹⁸ The Swiss authorities also noted that the judicial system and the police in Italy were functioning, and that there was no evidence that the author had not been afforded protection in the past. Moreover, the author never raised trafficking in persons before the Swiss authorities during the asylum procedure.

¹⁷ The State party refers to the adoption of the Decree of 3 April 2017 concerning the guidelines for assistance, rehabilitation and mental health treatment for persons granted refugee status or subsidiary protection who have been victims of torture, rape and other serious forms of psychological, physical or sexual violence, which was published in the *Gazzetta Ufficiale della Repubblica Italiana* of 24 April 2017.

¹⁸ The State party refers to *D.G. v. Netherlands* (CEDAW/C/61/D/52/2013).

Author's comments on the State's party's observations

5.1 On 22 October 2018, the author submitted her comments on the State party's observations.

5.2 The author observes that the Committee has noted with concern the lack of clarity regarding the direct applicability of the provisions of the Convention in Switzerland and has urged the State party to further clarify the issue of direct applicability within the national legal order.¹⁹ Furthermore, the Committee has expressed concern that, in accordance with the principle of monism, the decision to directly apply provisions of the Convention is at the discretion of the Federal Court and other judicial authorities at the federal and cantonal levels.²⁰ The Committee recommended that the State party ensure effective enforcement of the rights enshrined in the Convention and provide women with appropriate remedies in the courts for violations of the rights protected by the Convention.²¹

5.3 The author rejects the State party's argument that the communication is not sufficiently substantiated and reiterates her claims under articles 2 (d) and 6 of the Convention. She points out that she is a vulnerable rejected asylum seeker with a baby in her charge, a former victim of sexual abuse, and emphasizes that she would run a real and foreseeable risk of ending up on the street, homeless and exposed to prostitution, if sent back to Italy. She asserts that the Swiss authorities disregarded these claims because she was a beneficiary of subsidiary protection in Italy. She reaffirms that she was sent back to Italy without the Italian authorities being informed of her medical situation. It is explicitly stated on the fax of 6 July 2016 submitted by the State party that the document did not reach the Italian authorities;²² the author adds that, whether or not the Italian authorities received the document, the State party had an obligation to ensure the proper receipt of this information.

5.4 The author refers to the jurisprudence of the Committee against Torture, which concluded in 2018 that the current system in Italy does not afford adequate access to specialized treatment for asylum seekers suffering from trauma and other mental health conditions.²³ According to the author, living conditions for asylum seekers in Italy, particularly vulnerable persons with mental health problems such as the author, should be characterized as intolerable. These poor reception conditions are confirmed by numerous sources, cited in the initial communication. On reading these reports, it is clear that the author will not be provided in Italy with effective rehabilitation as a victim of sexual violence and ill-treatment. Failure to provide such rehabilitation would create a situation of anxiety and would have especially traumatic consequences for her mental and physical health. Given her fragility and her current state, the living conditions to which she would be exposed in Italy in the event of her removal would evidence a lack of respect for her dignity and would constitute cruel, inhuman and degrading treatment.

5.5 The author argues that the State party's observation that she did not seek assistance from the Italian authorities is without foundation. In fact, the author was not taken to the appropriate Italian authority, nor was she informed where she should go. A victim of serious trauma, abandoned at the border in a State in which she was at risk of being subjected to further sexual violence, the author was forced to follow

¹⁹ CEDAW/C/CHE/CO/4-5, paras. 12 and 13.

²⁰ Ibid., para. 12.

²¹ See Swiss Confederation, "Guide to the Convention on the Elimination of All Forms of Discrimination against Women for the Legal Profession", part 3.

²² The author notes that it is stated on the fax in German "Übertragungsfehler, besetzt, keine antwort, kein faxverbidund", which means "Sending error, busy, no response, no fax connection".

²³ The author refers to *A.N. v. Switzerland* (CAT/C/64/D/742/2016).

other migrants who, she hoped, would guide her, her only hope being to rejoin her husband in Switzerland. She slept in the public parks in Como in inhuman and degrading conditions.

5.6 According to the author, the State party thus fell short of its obligations under the Convention by concluding that, because she was a beneficiary of subsidiary protection in Italy, her removal could be enforced. Had it made an adequate individual assessment of her case, the State party would have recognized the exceptional circumstances she was facing and the imperative need to protect her as a victim of forced marriage and serious sexual abuse.

5.7 The author notes that it is imperative for her to be in a stable environment, which will be the case in Switzerland, where her husband, with whom she has a child and an effective family life, resides. The author again refers to the jurisprudence of the Committee against Torture, which has held that separating a vulnerable person from the family support that he or she enjoys and depriving that person of specialized treatment constitutes a violation of the Convention against Torture.²⁴ As for the State party's argument that the author could settle in Italy with her husband and child, the author contends that no facility is available in which they could be accommodated in Italy and that she will receive no assistance from the State, despite enjoying subsidiary protection. She adds that the couple is integrated in Switzerland, where her husband is gainfully employed. She maintains that it is inconceivable to require a couple to settle with a small child in Italy, a country of which, moreover, she has bitter memories and which she associates with trauma similar to that which she experienced in Somalia.

5.8 The author claims that she has sufficiently substantiated the trauma she suffered, again citing the content of her medical certificates, including the risk of suicide in the event of removal referred to therein. Citing the concluding observations on the seventh periodic report of Italy, in which the Committee found that there was a lack of services for refugees, particularly women with specific needs and vulnerabilities,²⁵ the author concludes that the State party has not taken the necessary measures to prevent her from falling victim once again to trauma and trafficking in persons and that there is a real risk that she would be subjected to acts of discrimination under the Convention in the event of her return, which would constitute a violation of articles 2 (d) and 6 of the Convention.

5.9 Concerning the application of article 2 (d) of the Convention, the author repeats that, contrary to its assertions, the State party is placing her at risk of being discriminated against on the basis that the entire population is similarly affected. The author recalls, however, that it is incumbent on the State party to take all necessary measures to avoid discrimination of any kind against her. The Committee has already noted with concern: the lack in Italy of a comprehensive and harmonized framework, including clear procedures, guidelines and standards, for the identification of and provision of assistance to individuals with specific needs and vulnerabilities, especially refugees and asylum seekers who are women and girls. It also noted with concern: the insufficient number of reception centres and the overcrowding and substandard conditions in existing centres owing to the increasing number of refugees and asylum seekers entering the country; the lack of services provided to refugees and asylum seekers placed in administrative detention, in particular to women with specific needs and vulnerabilities; and the insufficient financial support given to civil society organizations working with women refugees and asylum seekers.²⁶

²⁴ The author refers to *A.N. v. Switzerland*.

²⁵ CEDAW/C/ITA/CO/7, para. 15.

²⁶ *Ibid.*

5.10 On the issue of gender-based violence, the Committee expressed concern about: the high prevalence of gender-based violence against women and girls in Italy; the underreporting of gender-based violence against women and the low prosecution and conviction rates, resulting in impunity for the perpetrators; the cumulative impact and intersection of racist, xenophobic and sexist acts against women; and the regional and local disparities in the availability and quality of assistance and protection services, including shelters, for women who are victims of violence, as well as the intersecting forms of discrimination against women from minority groups who are victims of violence.²⁷

5.11 With regard to trafficking in persons, the Committee noted with concern: the absence of a comprehensive gender-sensitive law on trafficking in persons; the low prosecution and conviction rates; the lack of adequate mechanisms to identify and refer victims of trafficking in need of protection; the lack of adequate resources to allow for the effective implementation of the existing protection system, in particular for women migrants, refugees and asylum seekers who are victims or at risk of being victims of trafficking; and the lack of systematic rehabilitation and reintegration measures.²⁸

5.12 Given these concerns, the assumption that the safety of asylum seekers is ensured in Italy must be reversed in the case of the author. The fact that there is a judicial system is not sufficient, since that system must also be functional. In the present case, there remains a latent risk of dysfunction. By accepting that risk, the State party is failing in its obligations under the Convention.

5.13 With regard to article 3 of the Convention, the author rejects the State party's arguments concerning the capacity of Italy to provide assistance to asylum seekers who are victims of torture, noting that, according to reports from non-governmental organizations, access to treatment for victims of trauma is virtually non-existent, and that the Committee, in its concluding observations on the seventh periodic report of Italy, expressed concern about the reduction in public funds allocated to health care, which was having a detrimental impact on the health of women, in particular those belonging to disadvantaged and marginalized groups.²⁹

5.14 As for article 6 of the Convention, the author rejects the State party's argument that it was up to her to report the sexual violence to which she had been subjected and request the aid of the Italian authorities. In fact, the possibility of so doing is not guaranteed in Italy. The Committee, in its concluding observations on the seventh periodic report of Italy, expressed concern about the difficulties faced by women in claiming their rights owing to legal illiteracy, the costs and length of procedures, insufficient legal aid, gender bias within the judiciary and the lack of reparation.³⁰

5.15 In view of the foregoing, the author asserts that there is a real risk that she would be subjected to acts of discrimination under the Convention if she were sent back to Italy and concludes that her removal would constitute a violation of articles 2 (d) and 6 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to

²⁷ Ibid., para. 27.

²⁸ Ibid., para. 29.

²⁹ Ibid., para. 41.

³⁰ Ibid., para. 17.

rule 66 of its rules of procedure, the Committee may decide to consider the admissibility of the communication separately from its merits.

6.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 The Committee observes that the State party did not challenge the admissibility of the communication on the grounds of non-exhaustion of domestic remedies. Accordingly, it considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from examining the communication.

6.4 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.³¹

6.5 The Committee notes, with regard to article 3, the author's claim that, if she were sent back to Italy, the State party would not ensure her full development for the purpose of guaranteeing her the exercise and enjoyment of her human rights. The Committee notes that these claims are not sufficiently substantiated in the communication and the author's comments. In the absence of any other pertinent information on file, the Committee considers that part of the communication to be inadmissible under article 4 (2) (c) of the Optional Protocol.

6.6 The Committee notes that the author, relying on articles 2 (d) and 6 of the Convention, maintains that, if the State party sent her back to Italy, she would be exposed to a risk of serious forms of gender-based violence and to prostitution. The Committee also notes the State party's argument that the communication should be declared inadmissible under article 4 (2) (c) of the Optional Protocol, owing to a lack of substantiation.

6.7 The Committee notes the author's claims that she was a victim of sexual slavery and ill-treatment in Somalia and of sexual assault during her first stay in Italy. The Committee also notes the concerns of the State party that the author's claims lack foundation, given that she could have sought the protection of the Italian authorities; it further notes that she has not provided any evidence that the Italian authorities failed to protect her. The Committee recalls that States parties must apply the principle of proof more flexibly in the case of women victims of violence, taking into account the fact that, in many countries, some women do not have the means to obtain all the evidence. The Committee concludes that the author has sufficiently substantiated her claim for the purposes of admissibility and that it is not precluded on those grounds from proceeding to a consideration of the merits in relation to articles 2 (d) and 6 of the Convention.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the author and the State party, as provided for under article 7 (1) of the Optional Protocol.

7.2 The Committee observes that the author claims to have been kept captive and subjected to degrading treatment by a member of the group Al-Shabaab in Somalia, to whom she was married by force; that she was regularly beaten and raped while held captive; that, as a result of the rapes, she gave birth to a child, who was taken from her by force; and that she became pregnant twice more but was forced to have abortions. The Committee notes that the author decided to flee via Libya to Italy, where she applied for asylum on 8 November 2013 and was granted subsidiary

³¹ See, for example, *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011), para. 8.10.

protection. She states that, during her stay in Italy, she was a victim of sexual violence in a refugee camp and lived on the streets for a certain period. The author argues that her asylum application was not assessed in the light of the evidence she submitted and that the Swiss authorities did not take into account the fact that she runs a real, personal and foreseeable risk of becoming a victim of serious forms of discrimination against women, in particular gender-based violence, and of being exposed to prostitution, given the migrant crisis in Italy and the lack of structures able to ensure her protection.

7.3 The Committee notes the State party's contention that the author has not demonstrated that there are substantial grounds for believing that she is in danger of being subjected to serious gender-based violence if returned to Italy, where she was granted subsidiary protection in 2013; that there are no specific indications that the author was not afforded protection in Italy in the past; that the author could have access to the medical care she needs in Italy and is not, on the basis of her state of health, a vulnerable person whose health or life might be in danger if she were sent back; and that the authorities of the State party conducted the examination of the author's asylum claims in a manner respecting its obligations under the Convention. Moreover, the Committee notes the State party's assertion that the couple could reside in Italy, by way of an alternative; and that the author's husband, who is gainfully employed, could initiate a family reunification procedure in Switzerland, the outcome of which the author could await in Italy, and that neither the complexity of the procedure, nor the uncertainty as to its length, are insurmountable obstacles to the couple's ultimately leading a family life.

7.4 The Committee notes that, in substance, the author's claims are aimed at challenging the manner in which the State party's authorities assessed the circumstances of her case, applied the provisions of national law and reached their conclusions. The Committee recalls that it is generally for the courts of the States parties to the Convention to evaluate the facts and evidence or the application of national law in a particular case,³² 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.³³ The Committee notes that nothing on file demonstrates that the examination by the authorities of the author's claims regarding her fears as to the risks she would face upon her return to Italy suffered from any such defects. The Committee notes that, despite generalized statements made by the author regarding perceived inefficiencies in the asylum procedures of the State party, they are not alleged to have amounted to, or provoked, discrimination or rendered decisions made by authorities arbitrary in the author's case. Moreover, it is for each sovereign State party to determine the nature, structure and procedures of its own asylum system, as long as basic procedural guarantees set down in international law are provided.

7.5 In the light of the foregoing, while not underestimating the concerns that may legitimately be expressed with regard to the general situation of services for asylum seekers and vulnerable persons in Italy, the Committee considers that the authorities of the State party gave sufficient consideration to the author's asylum applications and offered her reasonable alternatives. The Committee therefore considers that the authorities of the State party examined the author's asylum applications in a manner respecting the State party's obligations under the Convention. The Committee notes, however, that the State party is obliged to ensure that the Italian authorities are

³² See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5.

³³ See, for example, *N.Q. and S.A. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/63/D/62/2013), para. 6.6.

informed of the author's mental health state, given the trauma she has suffered, so that she can be provided with support from the appropriate services.

8. Acting under article 7 (3) of the Optional Protocol, the Committee concludes that the author's asylum proceedings and the decision to proceed with her removal to Italy do not constitute a breach of articles 2 or 6 of the Convention.
