United Nations CAT/C/64/D/742/2016

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

Advance unedited version

Distr.: General
3 September 2018

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 742/2016 *,**

Submitted by:	A.N. (represented by the Centre Suisse pour la Défense des Droits des Migrants – CSDM)
Alleged victim:	Switzerland
Date of communication:	12 April 2016 (initial submission)
Date of decision:	3 August 2018
Subject matter:	Deportation to Italy
Procedural issues:	Insufficient substantiation of claims, inadmissibility ratione materiae
Substantive issues:	Risk of torture, right to rehabilitation
Articles of the Convention:	3, 14, 16

* Adopted by the Committee at its sixty-fourth session (23 July – 10 August 2018).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Félice Gaer, Abdelwahab Hani, Claude Heller Roussant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.

GE.18-09031(E)

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1.1 The complainant is A.N., an Eritrean national born in 1987 and subject to a deportation order from Switzerland to Italy. He submitted a complaint on 11 April 2016, further complemented on 2 February 2017. He claims that his deportation would constitute a violation by the State party of his rights under articles 3, 14 and 16 of the Convention. He is represented by counsel, Boris Wijkström, from the Swiss Centre for Defence of the Rights of Migrants.

1.2 On 21 April 2016 the complaint was registered. On 6 February 2017, the Committee, acting through its Rapporteur on New Complaints and Interim Measures, decided to issue a request for interim measures under rule 114 (1) of the Committee's rules of procedure and requested the State party not to deport the complainant while the complaint was being considered by the Committee. On 13 February 2017, the State party informed the Committee that, in application of the interim measures request, the complainant will not be deported during the examination of the communication.

The facts as presented by the complainant[1]

2.1 The complainant was living in Hagaz province in Eritrea, where he was member of a football team. Around January 2008, the players of another football team spent one night in his house and left the country without authorisation the following day. The complainant ignored the players' plan to leave the country. The act of leaving the country without authorisation is illegal and punishable as a criminal offence in Eritrea. Later that day, three soldiers came to the complainant's house with an order of arrest, accusing him of having helped the football players leave the country. He was handcuffed and taken to a prison in Agordat.

2.2 The complainant was detained in Agordat for two months. He endured one to two interrogations under torture per week with the purpose of making him reveal the names of the persons who helped the players leave the country. During the interrogation sessions, his hands and feet were tied up, he was battered with sticks, kicked, slapped, punched, insulted and humiliated. His interrogator threatened to kill him on several occasions and he regularly asked the wardens of the prison why the complainant was still alive and why they had not killed him yet. After two months, the complainant was transferred to the prison of Hamashai Medeber where he was detained for another two months, out of which he spent one and a half in isolation. In April 2008, he was taken to Sembel prison in Asmara where he was sentenced to 7 years of imprisonment for attempting to leave the country illegally. The sentence was later shortened to 5 years for reasons that were never explained to him. The complainant never had the opportunity to contest his sentence in any way; he did not have access to a lawyer and was never brought before a judge. In Sembel he was in isolation for six months in a cell that only had very small windows on the top. In April 2010, he was transferred to Jufa prison, in Karen, where he was isolated for six months in a small cell of one square metre. In January 2013, having completed his sentence, the complainant was released. In sum, he endured torture, ill-treatment, malnourishment, illness and verbal abuse and threats on a daily basis during his detention.

2.3 In June 2013, the complainant tried to leave the country but the authorities arrested him in Alabou. He was imprisoned in Adi Omer. The complainant describes this prison as a huge underground prison made of earth, where he often heard pieces of earth falling from the ceiling and where there were snakes. He was constantly battered covered in oil to reduce the scarves. He was tied to a chair with his hands behind his back and interrogated. He was hit with sticks and with rubber. He was told he would not leave the prison alive. He was hit on his lower abdomen and subsequently suffered from haematuria (blood in his urine). He did not receive any medical treatment. He was frequently confronted with the screams of others being tortured, which affected him severely. In July 2013, he was transferred to Aboy Rugum where he was forced to follow military training until December 2013. Then, he was sent to

[1] The account of events prior to the complainant's arrival in Switzerland comes from the reconstruction elaborated by the specialized trauma clinic for victims of torture and war (CTG) of the University Hospital of Geneva obtained during 12 months of therapy, contained in a report dated 14 December 2016.

Kareen as a soldier, with the task of surveying the border and arresting persons likely to leave the country.

2.4 In July 2014, unable to continue imposing as a soldier on others the same fate that he had suffered, the complainant left Eritrea, crossing on foot from the Eritrean border city of Agordat into Sudan. At Kassala he was intercepted by the Sudanese authorities who transferred him to a refugee camp at Wedi Sherify for a brief period. He was then transferred to Shegereab for two months and continued from there to Khartoum where he stayed until July 2015. From Khartoum, he crossed the Sahara by car into Libya. After reaching Tripoli, he was kidnapped and detained for 10 days by a gang of smugglers who demanded 3500 US dollars for each of the 42 migrants in his group. None of them could pay the ransom and they were ill-treated until their release by a rival gang of smugglers.

2.5 The complainant boarded an overcrowded boat for the crossing to Italy. After a short time at sea, the boat was intercepted by the Italian authorities (an Italian navy or coast guard) and he was brought to Italy and transferred to Milano. At a police station in Verona, the Italian authorities took his finger prints. After four days, during which the complainant was sheltered by an NGO, he travelled onwards to Switzerland by train. He submits that he never formally submitted an asylum application in Italy.

2.6 On 9 September 2015, he requested asylum in Switzerland. On 16 September 2015, the complainant was interviewed by the Swiss authorities to register his asylum request.

2.7 By letter of 23 October 2015, The Secretariat of State on Migration (SSM) notified to the complainant its decision to order his removal from Switzerland to Italy in application of the Regulation (EU) No. 604/2013 of the European Parliament and of the European Council of 26 June 2013, the so called "Dublin III" Regulation, which applies in Switzerland by virtue of an association agreement. According to the letter, under the terms of the Dublin III Regulation, the general rule is that the first Member State that an asylum applicant comes into contact with becomes the Member State responsible for the examination of the claim for international protection. Since the complainant had passed through Italy where his fingerprints were registered, Italy was responsible for adjudicating his claim.

2.8 The complainant is being treated since 2 November 2015 at the specialized trauma clinic for victims of torture and war ("Consultation pour victims de torture et de guerre" or CTG) of the University Hospital of Geneva. According to a medical report of this department co-signed by two doctors (Dr. Emmanuel Escard, psychiatrist, and Dr. Wania Roggiani internist),[2] the complainant presents a combination of physical symptoms and psychological disorders that constitute post-traumatic stress disorder (PTSD), a clinical picture typically found on victims of violence, and he has begun to construct a therapeutic relationship with his physicians which is the necessary precondition for the healing process. According to his treating physicians, it is critically important for the complainant to continue to benefit from the specialized psychiatric care of the CTG. They warn of the dire consequences of a forcible interruption of the treatment, including chronical PTSD and an evolution towards chronic associated post-traumatic disorders such as grave depression, anxiety, personality or identity disorders, with serious repercussions on his psychosocial health. Finally, a forced removal would separate the complainant from his brother who also lives in Geneva. According to the report, the complainant's brother provides him with stability and moral support and his proximity is essential to the success of the treatment he follows. The doctors fear that separation form his brother could negatively affect the psychological health of the complainant, exposing him to a very dangerous slide.

2.9 On 3 November 2015, the complainant appealed the SSM decision of 23 October 2015 to the Federal Administrative Tribunal (FAT) without legal counselling. In his appeal, he claimed that the Italian reception system for asylum seekers was collapsed and could not provide even the most basic vital needs of food and shelter. The complainant requested an extension to provide medical evidence from the CTG of the University Hospital of Geneva, as he had just started his treatment. He also requested that a pro bono lawyer be appointed to

[2] The complainant attaches a medical report, dated 15 March 2016.

represent him in his appeal. On 10 November 2015, the FAT considered the appeal manifestly ill-founded and rejected it, charging the court costs to the complainant.

2.10 On 12 April 2016, the complainant submitted his complaint to the Committee, it was registered on 21 April 2016.

2.11 On 29 September 2016, the State party submitted to the Italian authorities a "Standard form for exchange of health data prior to a Dublin transfer" attaching the complainant's medical certificate translated into English. On 12 October 2016, the complainant was deported to Italy. He arrived in Malpensa around 12pm and was taken by police officers to an office where his finger prints were taken. He was given some documents, without any explanation on their content. Even if the complainant does not read English or Italian and only understands very little oral English, no interpretation was offered. After waiting for two hours, he was given his personal belongings and was asked, in English, if he knew anybody in Milan, to which he answered he did not. He was then asked to wait in the airport for a seat in a room next to the luggage to be vacant to spend the night there. He still had not received anything to eat. He asked three times what he was supposed to do but nobody answered. From 5pm to 7.30pm he was asked to wait outside of the airport. During that time, police officers passed by and asked for his identification. At that point he received a call from an acquaintance living in Milan who asked him to go to the train station where he could find a temporary shelter with Caritas. At 9.30pm he found the shelter and queued for 4 hours, but he did not get a place to sleep or eat there. He had no choice but to sleep outside. The next day he started queuing at 1pm and he got a place in the shelter. The complainant describes the situation as chaotic, with hundreds of asylum seekers sleeping in the streets with no assistance from the authorities. He realised that in Italy he had no chance of a having a shelter assigned to him and would be obliged to sleep on the streets, with no means to overcome his basic needs, and that he would have no access to medical healthcare. The complainant did not have access to any information on how to file an asylum application and nobody asked him to provide information about his health.

2.12 On 14 October 2016, the author decided to return to Switzerland and on 20 October 2016 he filed a new asylum application. He noted that he is a victim of torture in need of specialised medical care, which he could not receive in Italy, attaching a medical report.[3] The medical report states that the author had been treated for 12 months once or twice a week by the CTG of the University Hospital of Geneva, that he is severely traumatised by the acts of torture and ill-treatment suffered in Eritrea and has a severe PTSD with a high tendency to isolate himself. It also reiterates that the author needs the support of his brother, with whom he has a close and dependant relationship and that if the complainant was deprived of the specialised treatment for victims of torture or a stable social environment, he could fall into a depression, with a high probability that he may commit suicide. Drafted after the 12 months of therapy and thanks to the close therapeutical relationship built between the doctors and the complainant, the report provides a detailed accounts of his story in Eritrea and of the acts of torture he has suffered.

2.13 On 28 November 2016, the SSM submitted to the Italian authorities a "Standard form for request for taking back" the complainant. The form did not include any information about his special needs.

2.14 On 22 December 2016, in the absence of a response from the Italian authorities, the SSM decided to deport the complainant to Italy in accordance to Dublin III Regulation. On 24 January 2017, the FAT rejected the complainants appeal. The Court considered that, in spite of the medical report, the complainant is not dependant. It further considered that it has not been proven that the complainant is critically ill or appears to be close to death and could not be guaranteed any nursing or medical care in the country of deportation.

[3] Medical report dated 14 December 2016, submitted by the complainant to the SEM on 16 December 2016. The report is attached to the additional information submitted by the complainant on 2 February 2017.

The complaint

3.1 The complainant claims that his forced return to Italy would violate his rights under article 3, 14 and 16 of the Convention. He submits that, if returned to Italy, he would be exposed to a situation amounting to cruel, inhuman or degrading treatment and deprived of any opportunity for rehabilitation.

3.2 He claims that Italy is no longer able to meet the needs of asylum seekers or to ensure access to basic services such as shelter and essential medical care. This is particularly true for victims of torture, who have specific medical needs. According to the complainant, he would not have access to a real asylum application procedure in Italy. This situation would leave him no reasonable choice but to seek protection elsewhere, exposing him to a risk of chain refoulement to his home country.

3.3 The complainant notes that, given the current migration influx, Italian authorities cannot guarantee adequate reception and accommodation conditions to preserve their dignity. The complainant submits that the decision by the European Council[4] to relocate a total of 39,600 asylum seekers from Italy to other EU constitutes an express recognition by the EU institutions that Italy has become unable to process the applications of asylum seekers thus exposing them to the risk of fundamental rights violations, including violations of the non-refoulement principle. The European Council decision itself characterises the situation in Italy as exceptional, "emergency situation" and "crisis situation". The European Court of Human Rights (ECHR) –in the case *Tarakhel v. Switzerland*[5] has also noted the serious problems faced by Italian authorities since 2011 to receive asylum seekers, including significant difficulties to accommodate them and ensure adequate living conditions and access to medical care. Both the ECHR and the Human Rights Committee[6] have recognised the need to obtain personal assurances from the Italian authorities in cases of deportations to Italy in application of Dublin III Regulation.

3.4 The complainant adds that, according to a report by the Swiss Refugee Council (OSAR report),[7] shelters in Italy are deemed inadequate to hold persons in a situation of vulnerability, such as torture victims. These victims may likely end up living in the streets following their return to Italy or in squats governed by migrants, which are paying and inadequate for persons in a situation of vulnerability.[8] According to a recent report by Doctors Without borders (MSF),[9] in December 2015, of the over 100,000 migrants accommodated in reception centres in Italy, nearly 80,000 are placed in Extraordinary Reception Centres (CASs); 19,000 are in centres part of the Protection System for Asylum Seekers and Refugees

[4] See Council Decision (EU) 1523/2015, decision of 14 September 2015, paras. 13 and 14: "Due to the ongoing instability and conflicts in the immediate neighbourhood of Italy and Greece, it is very likely that a significant and increased pressure will continue to be put on their migration and asylum systems, with a significant portion of the migrants who may be in need of international protection. This demonstrates the critical need to show solidarity towards Italy and Greece and to complement the actions taken so far to support them with provisional measures in the area of asylum and migration. At the same time, Italy and Greece should provide structural solutions to address exceptional pressures on their asylum and migration systems. The measures laid down in this Decision should therefore go hand in hand with the establishment by Italy and by Greece of a solid and strategic framework for responding to the crisis situation and intensifying the ongoing reform process in these areas. In this respect, Italy and Greece should, on the date of entry into force of this Decision, each present a roadmap to the Commission which should include adequate measures in the area of asylum, first reception and return, enhancing the capacity, quality and efficiency of their systems in these areas, as well as measures to ensure appropriate implementation of this Decision with a view to allowing them to better cope, after the end of the application of this Decision, with a possible increased inflow of migrants on their territories".

[5] See European Court of Human Rights, *Tarakhel v Switzerland* (application No. 29217/12), judgement of 4 November 2014, para. 120.

[6] See *Jasin v Denmark* (CCPR/C/114/D/2360/2014), para. 8.9 and *Tarakhel v Switzerland*, para 122.

[7] The complainant cites a country report on Italy by the "Organisation Suisse d'Aide aux Réfugiés" (OSAR), October 2013.

[8] OSAR Report, *op. cit.*

[9] Doctors without borders, "Neglected trauma: asylum seekers in Italy: an analysis of mental health distress and Access to healthcare", 15 July 2016.

(SPRAR); and just over 7,000 are located in government centres for the initial reception of asylum seekers.

3.5 According to OSAR,[10] access to medical treatment is limited, in particular specialised psychiatric treatment, given the absence of information on how to access it, and the lack of interpretation services for consultations with specialists. In addition to finding a high risk that asylum seekers may live in the streets, the report finds that persons living in the street in Italy have no access to psychological treatment of the kind that the complainant requires.

3.6 The complainant claims that he was denied access to a lawyer both in the first instance and on appeal, that the FAT rejected his offer to provide medical evidence, and that the FAT adopted a single-judge simplified procedure and imposed court costs on him despite his proven indigence. He argues that these facts constitute a violation of his right to an effective remedy contained in article 14 of the Convention. Furthermore, in light of the above information, and the complainant's own experience when he was deported to Italy, he would likely not be able to access accommodation or specialised medical treatment in Italy comparable to the treatment he is already receiving in Switzerland. The separation from his brother will also have particularly traumatising consequences on his mental health and entail a risk of re-traumatisation. The lack of emotional support and guarantees of access to accommodation and specialised medical treatment in Italy will prevent the complainant's rehabilitation as a torture victim, in violation of article 14 of the Convention.

3.7 Finally, the complainant argues that his situation as a victim of torture suffering from severe PTSD and a dependency on his brother as explained in his medical report, together with the lack of health care and social support network in Italy, constitute exceptional circumstances that would render his deportation to Italy a cruel inhuman and degrading treatment in violation of article 16. For the same reasons, the complainant's deportation to Italy would violate the principle of non-refoulement and article 3 of the Convention.

State party's observations on the admissibility and merits

4.1 In its submissions dated 21 October 2016 and 2 March 2017, the State party contested the admissibility of the complainants' allegations in relation to articles 14 and 16 of the Convention rationae materiae. According to the State party, obligations to provide redress, compensation and rehabilitation contained in article 14 are limited to victims of acts of torture committed within the territory of the State party, or by or against one of its citizens. The primary aim of this article being to re-establish the dignity of the victim, States parties have a margin of appreciation in how they achieve this. Neither article 14 nor the Committee's General Comment No. 3[11] exclude the possibility of cooperation between States parties to ensure rehabilitation. Victims do not have a right to obtain a specific measure from a service provider of their choice in the State of their choice. The State party also notes that the Committee's jurisprudence has established that the scope of the non-refoulement obligation described in article 3 does not extend to situations of ill-treatment envisaged by article 16.[12] Since Italy has recognised the competence of the Committee to receive and examine individual complaints, the complainant may file a new complaint and request interim measures if Italy was to expel him to Eritrea.

4.2 The State party notes that Italy is party to a number of international instruments of human rights, prevention of torture and status of refugees. It notes that Italy's capacity to shelter refugees is certainly under high pressure at present, but is in no way collapsed, as recognised by the European Court of Human Rights (ECHR), inter alia, in Mohammed Hassan et al v. the Netherlands and Italy. Some of these decisions by the ECHR concerned vulnerable persons. The State party also considers that the asylum procedure is not in structural failure in Italy, as is the case in Greece. It notes that in the case Tarakhel v. Switzerland, quoted by the complainant, the Court did not oppose the transfer of asylum seekers to Italy, but only requested, in the circumstances of a family with small children, that

[10] OSAR Report, *op. cit.*

[11] See the Committee's general comment No. 3 (2012) on the implementation of article 14 by State parties.

[12] See *TM v. Sweden* (CAT/C/31/D/228/2003), para. 6.2 and *BS v. Canada* (CAT/C/27/D/166/2000) para. 7.4.

personal assurances be requested. If the complainant was to find himself in a situation attempting to his dignity or to any of his human rights in Italy, he may claim his rights directly before the Italian authorities. However, he has left the Italian territory before the authorities could examine his application, not giving the State the opportunity to decide on the matter or to provide him with an adequate shelter. The State party considers that the complainant has not substantiated his claims that the Italian authorities provided him with information leaflets without translation in so far as he did not submit a copy of these leaflets. The State party finally reminds that the complainant has not claimed being victim of torture or any other treatment prohibited by article 3 of the Convention in Italy. In those circumstances, the State party considers that all allegations in connection with article 3 are ill-founded.

4.3 The State party further considers that, should allegations under article 14 of the Convention be considered admissible, they do not disclose a violation. The State party notes that the complainant is a young man with no dependants and that there are no reasons to think that his health problems are serious or invalidating. He has been able to live without his brother for several years and has been able to arrive in Europe without his help, meaning his brother's presence is not essential. The current situation of the complainant does not allow to consider him a particularly vulnerable person. The complainant's medical records were transmitted to Italy, and this country has a medical system very similar to that in Switzerland. The ECHR has already decided, in a case involving the transfer of an asylum seeker under psychiatric treatment to Italy, that there was no reason to believe that the complainant would not benefit from access to appropriate medical care.[13] There is no reason to think that Italian authorities will refuse adequate treatment to the complainant to the point that his health or his existence would be endangered.

4.4 In relation with the complainant's allegations that he has not had access to an effective remedy in the State party, the State party reminds that the complainant managed, even without legal assistance, to file an appeal to the FAT; that, according to the applicable law, a person may not be dispensed of court fees when an appeal is manifestly inadmissible; that the complainant was able to cover the fees and that the FAT may accept further evidence, only if it could clarify the facts and it enjoys a margin of appreciation on this matter. Furthermore, the State party notes that single-judge decisions are agreed upon by a second judge and that, in case of disagreement, they are brought to a three-judge chamber. The State party concludes that the complainant has had access to an effective remedy.

4.5 The State party also considers that, should allegations under article 16 be considered admissible, they are ill-founded. The State party recalls that, according to the Committee's jurisprudence,[14] only in very exceptional circumstances may a removal per se constitute cruel, inhuman or degrading treatment and the aggravation of the condition of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of article 16. In the current complaint, the complainant has not argued or substantiated such exceptional circumstances to conclude that the removal per se would constitute cruel, inhuman or degrading treatment.

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

5.1 In his submission dated 16 June 2017 the complainant clarifies that he did not return immediately to Switzerland, giving then the Italian authorities the opportunity to provide him with a shelter. He considers that the assumption by the State party that he did not give a chance to the Italian authorities to provide any shelter is not based on any evidence. He submits that he does not possess substantial evidence on his stay in Italy, but that all the information that he has provided is coherent. However, he was never heard by the State party's authorities on this matter.

5.2 The complainant notes that the State party recognises that article 14 of the Convention includes the obligation of cooperation to protect the right to rehabilitation, but that it has

[13] See European Court of Human Rights, *A.S. v Switzerland* (application No. 39350/13), judgment of 30 June 2015, para. 36.

[14] See *Y.G.H. et al v. Australia* (CAT/C/51/D/434/2010) para. 7.4 and *M.M.K. v Sweden* (CAT/C/34/D/221/2002) para 7.3.

never engaged in cooperation with Italian authorities regarding his treatment: it merely informed the Italian authorities of his medical conditions, but no reply was provided. He submits that he is not making the choice to be treated in Switzerland, but simply to access to the treatment he needs, which is not possible in Italy. The complainant distinguishes between the obligation to provide redress, compensation and rehabilitation contained in article 14, and considers that only redress and compensation are obligations limited to victims of acts of torture committed within the territory of the State party, or by or against one of its citizens. The right to rehabilitation that he is claiming has no geographical limitation, as provided by the Committee's General Comment No. 3 on article 14 of the Convention according to which States parties' obligations to provide rehabilitation to torture victims cannot be postponed.[15] This obliges States parties to ensure that a torture victim has access to the most comprehensive available rehabilitation.[16] Furthermore, the complainant notes that, should the State party's argument about the geographical limitation of the obligations under article 14 be taken into account, Italy would have no obligation towards his rehabilitation. The State party is thus incurring in a contradiction and this argument should be left aside. The complainant notes that, currently, the State party is fulfilling its obligation through the medical treatment he is receiving at the CTG of the University Hospital of Geneva.

5.3 Regarding the allegation by the State party that the scope of article 16 does not extend to deportations, the complainant notes that the Committee, in its General Comment 2, has considered that article 3 obligations extend also to cruel, inhuman and degrading treatments,[17] and that this follows the jurisprudence of the Human Rights Committee[18] and the European Court of Human Rights.[19] Suggesting that the complainant should submit a complaint against Italy if he were to be deported to Eritrea from there would be deferring the State party's responsibility towards the protection of the complainant's human rights.

5.4 The complainant notes that the authorities of the State party have not undertaken any individual evaluation of his case. The State party has not invoked any report on which it bases its statement that Italy has the necessary medical infrastructure to treat his psychological needs. Instead, it merely relies on judgments of the ECHR which are mostly from 2013, namely before the high influx of migrants in 2015 and 2016. Today a number of reports describe the lack of access to accommodation and medical treatment for asylum seekers in Italy. The complainant cites, in particular, the most recent report by the Swiss Refugee Council (OSAR 2016 report)[20] according to which there are structural failures in the current sheltering system, in particular living conditions and the dissemination of information. Chance often determines if an asylum seeker is addressed to the relevant shelter. Consequently, some persons may end up living in the streets and waiting months before they can submit an asylum request. The latest Asylum Information Database (AIDA) report underlines that the living conditions in shelters are not suitable for the residence of asylum seekers.[21] Furthermore, a regional report by the International Rehabilitation Council for Torture (IRTC) also describes the lack of specific procedures in place in Italy to ensure the identification of torture victims.[22] Despite an improvement in the identification of torture victims following the implementation of the "NIRAST project" between 2007 and 2012, such project ended in 2012 due to lack of funding.[23]

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15 See the Committee's General Comment No. 3, para. 12.

16 See the Committee's General Comment No. 3, para. 12.

17 See the Committee's General Comment No. 2 (2008) on the implementation of article 2 by State parties, para. 6.

18 See Human Rights Committee, General Comment 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, article 7, para. 9.

19 See European Court of Human Rights, *MSS v. Belgium and Greece* (application No. 30696/09), judgement of date 21 January 2011; *VM and others v. Belgium* (application No. 60125/11), judgment of date 17 November 2016; and *Tarakhel c Switzerland.*

20 Organisation Suisse d'aide aux réfugiés (OSAR), « Conditions d'accueil en Italie »; 15 August 2016.

21 AIDA Country report 2016.

22 IRCT 2016 regional report "Falling through the cracks: Asylum procedure sand reception conditions for torture victims in the European Union".

23 The NIRAST project (Italian network of asylum seekers who are torture survivors) was created to

5.5 According to reports by Doctors without Borders,[24] many accommodation centres for asylum seekers lack psychological support services. Although accommodation centres should facilitate access to medical services through the Italian public health system, such access is not always guaranteed, and the lack of a timely monitoring system and sanctions makes the implementation of these services discretionary. Also, social exclusion of asylum seekers and lack of interpretation and translation services seriously limit potential access to health care services. In any event, medical services provided through the Italian health care system are not specially conceived to treat conditions typically affecting asylum seekers and refugees, which are largely different from those affecting the Italian population.[25] Doctors Without Borders has determined that "existing procedures for mental health assessment within the Italian health system are inadequate or completely absent", that "the identification of vulnerabilities and transfer of patients to ad hoc medical facilities is slow and often non-existent", and that "there is a lack of culturally appropriate human and financial resources and mental health services to treat asylum seekers".[26]

5.6 The complainant adds that the migration wave in Italy in 2016 collapsed the reception system and that migrants have to wait for weeks or months before being able to file an asylum claim and to get access to the reception system.[27] In light of this, informal accommodation structures have been put in place, but they are not adapted to receive persons in vulnerable situations. Poor living conditions in these centres worsen the mental health of asylum seekers with psychic conditions. The complainant therefore argues that living conditions in Italy for asylum seekers, who like him, are in a vulnerable situation and suffer PTSD, are unbearable.

5.7 The notion of "situation of vulnerability" should not be limited to families with children but should include persons belonging to a particularly vulnerable group, like victims of torture, such as the complainant.[28] In this connection, the complainant takes note of the State party's claim that Tarakhel v. Switzerland is irrelevant because it refers to the case of a family with small children. However, he notes that the ECHR recognised in this case that asylum seekers belong to a particularly vulnerable group, needing special protection and that shelter could be inaccessible to some asylum seekers in Italy.

5.8 The complainant argues that, in *A.S. v Switzerland* referred to by the State party, the ECHR failed to take into account the special needs of a torture survivor with respect to rehabilitation and the fact that this is a freestanding civil right.[29] The ECHR reviewed its jurisprudence on the matter of removals of persons with health problems in Paposhvili v. Belgium to consider that removals that would constitute a violation of article 3 of the European Convention of Human rights include the removal of "a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy". The ECHR also established that if, after an analysis of the situation in the receiving country there remained doubts as to the accessibility of the necessary treatments, individual assurances must be requested before the

treat asylum seekers who were torture victims by providing access to rehabilitation services and specialised medical and psychological treatment. This project ran out of funding in 2012.

[24] Reports by Doctors without Borders, "Neglected Trauma: Asylum seekers in Italy: an analysis of mental health distress and access to healthcare", of 15 July 2016, and "Fuori Campo, Richiedenti asilo e rifugiati in Italia: insediamenti informali e marginalità sociale", March 2016.

[25] The complainant cites the Italian Refugee Council (CIR) report "The streets of integration – Experimental research on the qualitative and quantitative level of integration of beneficiaries of international protection present in Italy for at least three years", June 2012.

[26] Doctors without Border, "Neglected Trauma", op. cit. The report further states that "Cultural mediation is often absent or else is carried out by Italian staff within the health system", "the environment is often unsuitable and overcrowded", extraordinary reception centres are often in isolated locations, making integration impossible.

[27] Doctors without Borders report "Fuori Campo", op. cit.

[28] See *V.M et al v Belgium*.

[29] REDRESS brief to the Committee Against Torture on Communication No. 700/2015 *D v Switzerland*, of 27 July 2016.

removal.[30] The complainant reiterates that the State party did not request individual assurances in his case.

5.9 The complainant also notes that the State party questions the gravity of the state of his health. By doing so, the State party questions the evaluation of professionals and the content of detailed medical reports without providing any evidence to the contrary.

5.10 The complainant concludes that the exceptional circumstances of his case justify that his removal to Italy would constitute a violation of articles 3, 14 and 16 of the Convention, but that the State party failed to undertake an individual evaluation of his case.

Additional submission by the complainant

6. On 21 July 2017, the complainant sent a medical report by the CTG of the University Hospital of Geneva certifying that he is still under treatment and currently suffering an episode of depression of medium to severe intensity. The doctors recommend that the complainant continue his psycho-therapeutical treatment.

Issues and proceedings before the Committee

7.1 Before considering any claim submitted in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 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.

7.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. In the present case, the Committee notes that the State party has admitted that all available domestic remedies were exhausted. Accordingly, the Committee considers that the requirements of article 22, paragraph 5 (b), of the Convention have been met.

7.3 The Committee notes the State party's argument that the complainant's allegations under articles 14 and 16 are inadmissible ratione materiae because obligations to provide redress, compensation and rehabilitation contained in article 14 are limited to victims of acts of torture committed within the territory of the State party, or by or against one of its citizens and because the scope of the non-refoulement obligation described in article 3 does not extend to situations of ill-treatment envisaged by article 16. The Committee also notes the complainant's arguments that the right to rehabilitation has no geographical limitation, as provided by the Committee's General Comment No. 3 on article 14 of the Convention according to which States parties' obligations to provide rehabilitation to torture victims cannot be postponed and that the Committee, in its General Comment No. 2, has considered that article 3 obligations extend also to cruel, inhuman and degrading treatments,[31] and that suggesting that he should submit a complaint against Italy if he were to be deported to Eritrea from there would be deferring the State party's responsibility towards the protection of the complainant's human rights. The Committee considers that State parties' obligations towards rehabilitation of victims of torture requires it to ensure that its legal system allows for such protection in situations where, under some circumstances, deportations may raise questions regarding State party's obligations under article16. Accordingly, the Committee finds the complainants allegations under articles14 and 16 admissible ratione materiae.

7.4 Since no other issues regarding the admissibility of the communication arise, the Committee declares it admissible, as raising issues under articles 3, 14 and 16 of the Convention, and proceeds to its examination on the merits.

[30] See European Court of Human Rights, *Paposhvili v. Belgium* (Application No. 41738/10), judgement of 13 December 2016, para. 183.

[31] See the Committee's General Comment No. 2 (2008) on the implementation of article 2 by State parties, para. 6.

Consideration of the merits

8.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

8.2 The issue before the Committee is whether the removal of the complainant to Italy would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture or ill treatment upon return to Italy. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights.[32]

8.4 The Committee recalls its General Comment No. 4 on the implementation of article 3 in the context of article 22 of the Convention, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or a member of a group which may be at risk of being tortured in the State of destination; and that the Committee's practice has been to determine that "substantial grounds" exist whenever the risk is "foreseeable, personal, present and real".[33] The Committee further recalls that the burden of proof is upon the complainant who has to present an arguable case –i.e. to submit circumstantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real. However, when the complainant is in a situation where he/she cannot elaborate on his/her case (...) the burden of proof is reversed and it is up to the State party concerned to investigate the allegations and verify the information on which the communication is based.[34] The Committee gives considerable weight to findings of fact made by the organs of the State party concerned; however, it is not bound by such findings and will make a free assessment of the information available to it in accordance with article 22, paragraph 4 of the Convention, taking into account all the circumstances relevant to each case.[35]

8.5 In the present case, the Committee takes note of the complainant's allegation that, if transferred to Italy, he would likely have no access to accommodation, nor to the specialized medical and psychiatric treatment or emotional support from his brother, all of which he requires as a victim of torture. This would leave him no reasonable choice but to seek protection elsewhere, exposing him to a risk of chain refoulement to his home country. The complainant has provided extensive reports describing the largely deficient reception conditions for asylum-seekers in Italy. These include the insufficient capacity of accommodation centers for asylum seekers, including Dublin returnees, the deficient living conditions in those centers, and the very limited access to medical and specialized psychiatric treatment for asylum seekers. This situation is compounded by the lack of adequate procedures to systematically identify torture victims. Although the State party, on 29 September 2016, informed the Italian authorities of the complainant's health situation in a "Standard form for exchange of health data prior to a Dublin transfer", the Committee notes that this form did not establish that the complainant is a victim of torture. It also notes that the State party did not request individual assurances from the Italian authorities and that they did not respond to the submission of his medical report. Furthermore, on 12 October 2016 the complainant was transferred to Italy where he claims he was not provided shelter on the first night, was not provided information on health care or on filing an asylum application in a language he could understand, and he did not receive any medical assistance. On 28 November 2016, the SSM submitted to the Italian authorities a "Standard form for request

[32] See the Committee's General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, para. 43.

[33] Ibid, para. 11.

[34] Ibid, para. 38.

[35] Ibid, para. 40.

for taking back". The Committee notes that this form did not include any information about the complainant's health and special needs, and that the State party's authorities decided to transfer the complainant to Italy again, despite the absence of a response.

8.6 The Committee considers that it was incumbent upon the State party to undertake an individualized assessment of the personal and real risk that the complainant would face in Italy, in particular considering his specific vulnerability as an asylum-seeker and victim of torture, rather than relying on the assumption that he is not particularly vulnerable and would be able to obtain adequate medical treatment there.[36]

8.7 The Committee notes the State party's claims that there are no reasons to think the complainant's health problems are serious or invalidating, or to believe that his brother's presence is essential to him. However, the Committee also notes that the complainant has provided three medical reports with very detailed information regarding his vulnerability as a victim of torture, his special needs and the necessity for him to remain close to his brother, the validity of which has not been challenged by the State party. The Committee notes the complainant's statement that the lack of specialized medical and psychiatric treatment, together with the probable lack of accommodation and the absence of any family support in Italy, would prevent his full rehabilitation as a victim of torture. The Committee observes that the complainant has been receiving in Switzerland specialized psychiatric treatment for victims of torture, and that the continuation of this treatment is necessary for his rehabilitation. According to the 14 December 2016 medical report, the interruption of the specialized treatment for victims of torture and of the stable social environment provided by his brother would put the complainant at risk of an irreparable harm, as his depressive state would worsen to such an extent that he would be likely to commit suicide. The Committee further notes that this precarious situation endangering the life of the complainant would leave him no reasonable choice but to seek protection elsewhere, exposing him to a risk of chain refoulement to his home country.

8.8 Against this background, the Committee considers that the State party should have ascertained whether appropriate rehabilitation services in Italy were actually available and accessible to the complainant in order to satisfy his right to rehabilitation as a torture victim, and to seek assurances from the Italian authorities to ensure that the complainant would have immediate and continuing access to such treatments until he needs them. In the absence of any information from the State party suggesting that such assessment took place in the present case, and in view of the complainant's health situation, the Committee considers that the State party failed to sufficiently and individually assess the complainant's personal experience as a victim of torture and the foreseeable consequences of forcibly returning him to Italy. The Committee therefore considers that by deporting the complainant to Italy, the State party would deprive him of his right to rehabilitation, and that this situation would by itself amount, in the circumstances of the complainant, to ill-treatment. Accordingly, forcibly returning the complainant to Italy would constitute a breach of articles 14 and 16 of the Convention.

8.9 The Committee recalls that according to its General Comment 2, the obligation to prevent ill-treatment overlaps with and is largely congruent with the obligation to prevent torture and that, in practice, the definitional threshold between ill-treatment and torture is often not clear. Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment[37]. It further recalls that according to the same General Comment, the protection of certain minority or marginalized individuals or populations, such as asylum seekers, especially at risk of torture is a part of the obligation to prevent torture or ill-treatment[38].

8.10 The Committee also recalls that States parties should consider whether other forms of ill-treatment that a person facing deportation is at risk of experiencing could likely change so

[36] See, in this line, *Jasin v. Denmark*, op.cit., para. 8.9.

[37] See the Committee's General Comment No. 2 (2008) on the implementation of article 2 by State parties, para. 3.

[38] Ibid para. 21

as to constitute torture before making a non-refoulement assessment. In this regard, severe pain or suffering cannot always be objectively assessed and it depends on the negative physical and/or mental repercussions that the infliction of violent or abusive acts has on each individual, taking into account all relevant circumstances of each case, including the nature of the treatment, the sex, age and state of health and vulnerability of the victim or any other status or factors.[39] The Committee notes that in the complainant's case, the ill-treatment that he would be exposed to in Italy, together with the absence of a stable social environment provided by his brother, would entail a risk of his depressive state worsening to the extent that he would be likely to commit suicide and that, in the circumstances of this case, this ill-treatment could reach a level comparable to torture The Committee is therefore of the view that the deportation of the complainant to Italy would constitute a breach of article 3 of the Convention.

9. The Committee, acting under article 2, paragraph 7, of the Convention, concludes that the complainant's deportation to Italy would constitute a breach of articles 3, 14 and 16 of the Convention.

10. The Committee is of the view that, in accordance with articles 3, 14 and 16 of the Convention, the State party has an obligation to refrain from forcibly returning the complainant to Italy and to continue complying with its obligation to provide the complainant, in full consultation with him, with rehabilitation through medical treatment. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.

[39] Ibid, paras. 16 and 17.