Beyond Presumed Safety under Dublin System: Gender-Sensitive *Non-Refoulement* in K.J. v. Switzerland (2025)

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Title: Oltre la presunta sicurezza nel sistema di Dublino: il principio di non respingimento sensibile al genere nel caso K.J. contro Svizzera (2025)

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1. - In its Views adopted on 4th of July 2025 in *K.J. v. Switzerland* (CEDAW/C/91/D/169/2021, 04-07-2025), the Committee on the Elimination of Discrimination against Women (CEDAW Committee) held that Switzerland's decision to transfer an Afghan refugee woman (a survivor of gender-based violence) to Greece, under Regulation (EU) No. 604/2013 (Dublin III Regulation), would violate articles 2(c)-(f), 3 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), if implemented. Although Switzerland is not a Member State of the European Union, it participates in the Dublin system pursuant to the EU-Switzerland Association Agreement, which incorporates the Dublin III Regulation into the Swiss legal order (see EU-Switzerland Association Agreement, OJ. L. 53, 27-2-2008). In this context, the Committee found that the Swiss authorities had relied on a general and abstract presumption of safety attributed to the receiving State, rather than conducting a concrete and individualised assessment of the author's personal circumstances.

While not calling into question the Dublin system as such, the Committee made clear that safety presumptions cannot operate automatically. Where credible signs of serious vulnerability remain, the transferring State retains a responsibility to ensure protection. In particular, the Committee concluded that the Swiss authorities had failed to accord due weight to the author's specific vulnerability as a survivor of gender-based violence and to the real, personal and foreseeable risk of serious harm she would face upon transfer (§§ 7.6-7.8).

K.J. v. Switzerland marks a significant evolution in CEDAW jurisprudence. It raises the interpretive threshold beyond earlier Views, notably *A.T. v. Hungary* (CEDAW/C/32/D/2/2003, 26-01-2005), by requiring a woman-centred and individualised risk assessment that prioritises effective protection over formal allocations of responsibility. Methodologically, it deserves attention because it introduces a distinctly trauma-informed approach to credibility and risk assessment, forcing authorities to take into account the psychological impact of trauma on survivors' capacity to disclose experiences of violence.

Read together with other two Communications decided during the

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Committee's ninety-first session, namely *Z.E. and A.E. v. Switzerland* (CEDAW/C/91/D/171/2021, 04-07-2025) and *C.O.E. v. Switzerland* (CEDAW/C/91/D/172/2021, 02-07-2025), the Views expose structural tensions inherent in the Dublin system's presumption of mutual trust. In this respect, they resonate with the case law of the European Court of Human Rights (ECtHR), which has repeatedly required States to move beyond abstract assumptions of safety when individual vulnerabilities are at stake (ECtHR, *Tarakhel v. Switzerland*, 29217/12, 4-11-2014, § 104; ECtHR, *S.M. v. Croatia*, 25-06-2020, § 296). They also align with the Court of Justice of the European Union's with the Court of Justice of the European Union's consistent position that presumptions of equivalence cannot be maintained where serious and duly substantiated risks to the individual are established. Similar concerns have been expressed regarding the continued reliance on abstract trust despite structural deficiencies affecting vulnerable asylum seekers (see also D. Thym, *A Bird's Eye View on ECJ Judgments on Immigration, Asylum and Border Control Cases*, in 21(2) *Eur. J. Mig. & L.* 166–193 (2019)). While formally non-binding, the Committee's Views retain systemic relevance. By clarifying CEDAW's interpretive role in removal and transfer decisions, they may influence domestic judicial practice and EU-level interpretation through the systemic integration of international human rights law, pursuant to Article 31(3)(c) of the 1969 Vienna Convention on the Law of Treaties.

This note argues that *K.J. v. Switzerland* is particularly significant in "gendering" the principle of *non-refoulement*. It highlights a heightened standard of scrutiny applicable to transfers under the Dublin system, introduces a trauma-informed methodological shift in risk assessment, and exposes the problematic nature of mutual trust presumptions, while also acknowledging the practical and institutional limits of CEDAW's influence within the European asylum architecture.

2. – The Communication concerns K.J., a woman of Afghan nationality belonging to the Hazara ethnic group. After fleeing Afghanistan as a child, she grew up in Iran, where, at the age of seventeen, she was forced into a customary marriage with an older man. She reported that, throughout the marriage, she had been subjected to severe sexual and domestic violence, including marital rape, in a legal and social environment in which it as not criminalised, and victims of domestic violence had limited access to effective protection or remedies (§§ 2.1-2.4). After escaping Iran, K.J. was exposed to further episodes of sexual violence during her journey, including near the Iraqi Turkish border. She arrived in Greece in October 2017, first to Lesvos and later to Athens, where she reported additional sexual assaults; following one of them, she underwent an illegal abortion (§ 2.6).

In November 2018, the Greek authorities granted K.J. refugee status. She maintained, however, that this formal recognition did not translate into effective safety and support: after housing and financial assistance ended in August 2019 due to her new status, she became homeless and remained without access to medical and psychological care (§§ 2.5-2.6). During the same period, she consistently reported that her former husband was searching for her, a circumstance that, on her account, impacted significantly her movements within Greece and further aggravated an already fragile mental health condition (§§ 2.7-2.8). In September 2019, K.J. travelled to Switzerland and applied for asylum. The Eurodac, the database containing all information regarding asylum applicants, revealed that she had previously been granted refugee status in Greece, consequently the Swiss authorities considered Greece responsible for her protection and initiated a take-back procedure under the Dublin III Regulation, without examining the substance of her asylum claim (§ 2.8). By a decision of 20 January 2020, the State Secretariat for Migration ordered her transfer back to Greece, stating that the author came

under the protection of the Office of the United Nations High Commissioner for Refugees (UNHCR) and other organisations there (§ 2.9). K.J. appealed to the Federal Administrative Court and emphasised her vulnerability as a survivor of gender-based violence, she relied on medical documentation describing severe mental health conditions, including post-traumatic stress disorder, panic disorder, suicidal ideation and major depression (§§ 2.11-2.13). In its judgment of 3 February 2020, the Court dismissed the appeal, stating that Greece constituted a safe country, and that adequate protection and medical treatment were available there, relying on the presumption of safety inherent in the Dublin system (and later called into question by the CEDAW Committee). Following requests for reconsideration of the claims were also rejected by the State Secretariat for Migration and the Federal Administrative Court. In the domestic proceedings, the authorities considered that K.J. had not substantiated a sufficiently concrete and individualised risk of serious harm in the event of transfer, and they noted that allegations of sexual violence experienced in Greece had been raised at a later stage (§§ 2.10-2.13). As the Committee further made explicit, the failure of the domestic authorities to engage with this evidence revealed the absence of a trauma-informed assessment. The delayed disclosure and fragmented accounts were treated as undermining credibility rather than as possible consequences of gender-based violence and psychological trauma (§§ 7.6-7.8). Following the Federal Administrative Court's final rejection of her asylum claim and the confirmation of the transfer decision, the author submitted her communication to the CEDAW Committee under the Optional Protocol, deliberately bypassing an application to the European Court of Human Rights. This procedural choice underscores the distinct added value of CEDAW Committee as a forum for addressing gender-specific vulnerabilities in transfer decisions. Unlike the ECtHR's predominantly general scrutiny of *non-refoulement* claims under Article 3 ECHR, the CEDAW framework enables a targeted examination of discrimination against women under Articles 2, 3 and 12 of the Convention, including the incorporation of trauma-informed standards that remain largely underdeveloped in Strasbourg case law.

While the communication was pending, the Committee requested *interim* measures pursuant to Article 5 of the Optional Protocol and Rule 63 of its Rules of Procedure, calling on Switzerland to suspend the applicant's transfer to Greece (CEDAW/C/91/D/169/2021, 04-07-2025 § 1.2). Switzerland complied with the request the following day, effectively halting the removal.

3. – Before the Committee, the author submitted that Switzerland had violated her rights under Articles 2(c)-(f), 3 and 12 of the Convention, read in conjunction with the Committee's General Recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, by ordering her transfer to Greece without a genuinely individualised and gender-sensitive assessment of the risks she would face there. She argued that the Swiss authorities had relied in substance on a general presumption of safety attached to the receiving State, instead of engaging with her personal circumstances as a survivor of repeated gender-based violence and as a person with severe mental health conditions. She also maintained that her removal would expose her to a real and personal risk of inhuman or degrading treatment, renewed sexual and gender-based violence, "revictimisation", and that it would trigger a serious deterioration of her mental health. In support of these claims, she relied on her experience, in Greece, after the recognition of the refugee status, including the loss of housing and material assistance, the absence of adequate medical and psychological care, and the continuing threat posed by her former husband, who was searching for her (§§ 3.4-3.5). She also contended that disrupting an established therapeutic pathway, given her diagnoses, would expose her to a risk of irreparable harm (§§ 3.6-3.7).

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Finally, she challenged the credibility assessment adopted domestically, arguing that delayed disclosure of sexual violence in Greece should have been assessed in light of trauma, fear, and vulnerability rather than treated as undermining the reliability of her account (§§ 3.1-3.4).

In contrast, Switzerland objected to the admissibility of the communication, stating that the author had failed to exhaust domestic remedies and that her claims were insufficiently substantiated. In particular, the State emphasised that allegations of sexual violence suffered in Greece had not been raised during the initial administrative asylum proceedings, but had only emerged at a later stage, preventing the domestic authorities from examining them at the right time (§§ 4.1-4.3). As for the merits, Switzerland reported that the domestic authorities had carried out a careful assessment of the author's circumstances and had concluded that her transfer to Greece would not expose her to a treatment contrary to the Convention, given the existence of legal safeguards and support mechanisms in the receiving State). The State party relied, *inter alia*, on the fact that Greece is a Member State of the European Union, equipped with effective institutions and international organisations, a legal framework prohibiting violence against women, and access to medical and psychological care for refugees (§§ 4.4-4.7). It further argued that the author had not demonstrated the existence of a real and personal risk of renewed gender-based violence or of a serious deterioration of her mental health in the event of transfer. According to the State party, the presence of international and nongovernmental organisations and public healthcare services in Greece was sufficient to ensure that the author would be able to obtain protection and treatment if necessary. On this basis, Switzerland concluded that the transfer decision was compatible with its obligations under the Convention (§§ 4.8-4.9).

4. – As regards admissibility, the Committee rejected the State party's objection concerning the exhaustion of domestic remedies. It observed that, in the course of the domestic proceedings, the author had brought the essential elements of her complaint to the attention of the national authorities, including her particular vulnerability as a survivor of gender-based violence and the risks associated with her transfer to Greece. The domestic authorities were therefore in the position to examine the substance of the alleged violations (§§ 6.1-6.3).

This conclusion was, however, not unanimous. In a joint dissenting opinion, Committee members Hiroko Akizuki, Rangita de Silva de Alwis, Corinne Dettmeijer-Vermeulen and Jelena Pia-Comella considered the communication inadmissible under Article 4(2)(c) of the Optional Protocol (Annex, §§ 1 and 7). The dissent accorded decisive weight to the late disclosure of the sexual violence allegedly suffered in Greece, to inconsistencies identified in the author's account, and to what was deemed an insufficient substantiation of the claims (Annex, §§ 3-5). Read in context, the dissent functions as a "stress test" for the Committee's evolving trauma-informed approach to admissibility in cases involving survivors of gender-based violence. It brings to light a structural tension between two competing adjudicative logics. The first, embraced by the dissenting members, prioritises evidentiary rigour and procedural discipline, treating temporal proximity, internal coherence and early disclosure as key indicators of credibility. From this perspective, strict admissibility thresholds serve as a safeguard against unsubstantiated claims, guarding against the potential instrumentalisation of vulnerability narratives in the absence of solid corroboration (see also *General Recommendation*, 35, § 18, cautioning against the misuse of gender stereotypes).

The majority, by contrast, extended trauma-informed reasoning to the admissibility stage itself. It accepted that delayed or fragmented disclosure of sexual and gender-based violence may constitute a consequence of trauma rather than an inherent indicator of unreliability (CEDAW/C/91/D/169/2021, 04-07-

2025 §§ 7.6-7.8; *General Recommendation*, 35; *General Recommendation*, 33). On this reading, insisting on early and "linear disclosure" increases the risk of reproducing stereotyped assumptions about how survivors of sexual violence "should" recount their experiences, thereby marginalising gender-based violence or confining it to evidentiary forms that conform to rigid narrative expectations (lacking in taking into account the emotional impact of this kind of experiences). Such an approach could be in tension with the requirement of a non-discriminatory assessment under Articles 2 and 3 of the Convention (*Z.E. and A.E. v. Switzerland*, CEDAW/C/91/D/171/2021, 04-07-2025 §§ 7.4-7.6; J. Freedman, *Gendering the International Asylum and Refugee Debate*, Londra, 2015, 87-92). In the circumstances of the case, the Committee accepted that, although the author had not raised the allegation of sexual violence suffered in Greece during the initial administrative phase of the asylum procedure, she had subsequently relied on it in the course of the domestic judicial proceedings, thereby bringing the substance of her claim before the national system (§ 6.3). It further noted that the author had undergone a full asylum procedure followed by a re-examination procedure, that her request for suspensive effect had been denied. She had explicitly raised her vulnerability, fear of return to Greece and risk of serious harm before the Federal Administrative Court in Switzerland (§ 6.4). Against this background, the majority concluded that the delayed disclosure of sexual and gender-based violence could reasonably be explained by the effects of trauma and should not, in itself, preclude admissibility (§ 7.8). The dissenting minority, by contrast, interpreted the same delay primarily as unjustified and symptomatic of internal inconsistencies undermining the credibility of the communication (Annex, §§ 3-5).

Turning to the merits, the Committee focused on the author's violence history and vulnerability through two lenses: whether removal posed a "real, personal and foreseeable risk" of serious gender-based violence, triggering extraterritorial application of the Convention and whether domestic authorities conducted a sufficiently individualised, gender-sensitive risk assessment. With regard to the first aspect, the Committee took note of the author's undisputed status as survivor of severe gender-based violence inflicted from an early age in the Islamic Republic of Iran and during her flight near the Iraqi-Turkish border, as well as of the sexual violence she reported having suffered in Greece, including repeated rapes in Lesbos and in Athens (§ 7.2). It further observed that this prolonged exposure to violence had resulted in a serious deterioration of her mental health, leading to diagnoses of depression, post-traumatic stress disorder and episodic panic disorder, as consistently confirmed by psychiatric medical reports issued in the State party. *Per* settled practice, the Convention applies extraterritorially where a real risk materialises upon transfer, not through its direct application within the receiving State, but as a consequence of the transferring State's responsibility for the exercise of its jurisdiction in deciding to affect the transfer (§ 7.3; *M.N.N. v. Denmark*, CEDAW/C/55/D/33/2011, 15-07-2013 § 8.10; *R.S.A.A. et al. v. Denmark*, CEDAW/C/73/D/86/2015, 15-07-2019 § 7.7). Moreover, interpreting Article 2(d) of the Convention in light of general international human rights law, the Committee reaffirmed that States parties must refrain from acts or practices of discrimination against women and ensure that public authorities act accordingly. This obligation encompasses the principle of *non-refoulement*, which prohibits returning a person to a jurisdiction where she would face serious human rights violations, including torture or other cruel, inhuman or degrading treatment or punishment (§ 7.4). The Committee further reiterated that gender-based violence constitutes a form of discrimination within the meaning of Article 1 CEDAW and that State responsibility may arise not only for acts attributable to State agents, but also where authorities fail to exercise due diligence in preventing and responding to violence committed by non-State actors

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(see *General Recommendations*, 19 and 35).

At the same time, it is relevant to note that the Committee clarified that gender-based violence does not automatically preclude return. What is required is an assessment of whether, on a case-by-case basis, the woman would face a real and personal risk of such violence in circumstances where effective protection cannot reasonably be expected in the receiving State. It is only where this threshold is met that transfer may amount to a violation of the Convention (§ 7.4).

Against this background, the central issue identified in the present case lays in the methodological approach adopted by the domestic authorities. Although they took into consideration the seriousness of the author's situation, their assessment remained largely formal and generic, failing to capture the complexity of the trauma suffered and its implications for future risk. As noted in the literature, credibility assessments relying on linear and formalised reasoning tend to discount the psychological effects of trauma on disclosure patterns and risk narration, particularly in cases involving survivors of gender-based violence. Such methodologies systematically underweight the complexity of trauma in forward-looking risk assessments, thereby reproducing gendered biases in adjudication (for example, J. Freedman clarifies that women are often disadvantaged in asylum procedures because they do not fit the expected model of the 'ideal refugee', which is based on assumptions of consistency, immediacy and coherence in the narration of persecution, pp.87-92; cf. CEDAW *General Recommendation 35* § 33). In particular, in K.J. three main inadequacies emerged. First, the authorities relied on a general presumption of safety attached to the receiving State, rather than examining whether protection would be effectively available to the author in light of her specific vulnerabilities, including the continuity of specialised psychiatric care, the risk of homelessness following the termination of reception measures, and the accessibility of support mechanisms for survivors of gender-based violence (§§ 7.6-7.8). Second, although medical and psychiatric evidence documenting severe psychological fragility was presented by the author, it was not meaningfully integrated into a forward-looking assessment of the risk associated with transfer (§§ 7.2, 7.7). Third, the delayed disclosure of sexual violence was treated primarily as a credibility deficit, without adequate consideration of the impact of trauma on disclosure patterns, an approach the Committee regarded as reflective of gender stereotypes and incompatible with a non-discriminatory assessment (§§ 7.5-7.6). The Committee, moreover, emphasised that survivors of sexual and gender-based violence often require time before being able to disclose their experiences and that it is therefore insufficient to dismiss allegations solely because they are raised at a later stage of the proceedings. Due account must be taken of "*the time often required in order for victims to be able to speak about such violence*", particularly where mental health issues are documented (§ 7.8).

On this basis, and acting under Article 7(3) of the Optional Protocol, the Committee concluded that the author's transfer to Greece would constitute a violation of Articles 2(c)-(f), 3 and 12 of the Convention (§ 8). As individual remedies, it recommended that Switzerland reopened the author's asylum application, refrain from carrying out the transfer, and ensure the continuation of specialised medical and psychological care (§ 9(a)). As general measures, it called on the State party to ensure that women survivors of gender-based violence who already hold refugee status are not transferred under the Dublin III Regulation without a genuinely individualised, trauma-informed and gender-sensitive assessment of the real, personal and foreseeable risk they would face in the receiving State (§ 9(b)).

5. – While formally non-binding, the Committee's Views produce specific (and relevant) effects under Article 7(4) of the Optional Protocol. States parties are

required to give them due consideration, to submit information on measures taken to implement the recommendations within six months, and to ensure their appropriate dissemination (CEDAW/C/91/D/169/2021, 04-07-2025 § 10). Through this follow-up mechanism, the Views operate as authoritative interpretations of the Convention, providing concrete guidance on the scope and content of States' obligations. Part of the literature converges on their *de facto* impact despite the absence of formal binding force. As Hodson observes, CEDAW Views contribute to processes of normative transformation through evolutionary, gender-specific adjudication that incrementally reshapes interpretive standards (see L. Hodson, *Women's Rights and the Periphery: CEDAW's Optional Protocol*, in 25 *Eur. J. Int. L.* 561 (2014)).

As mentioned before, *K.J. v. Switzerland* should be read in conjunction with two further Views adopted by the CEDAW Committee in July 2025, namely *Z.E. and A.E. v. Switzerland* (CEDAW/C/91/D/171/2021, 04-07-2025) and *C.O.E. v. Switzerland* (CEDAW/C/91/D/172/2021, 02-07– 2025). Considered together, these cases provide a comprehensive overview of the Committee's approach to the principle of *non-refoulement* in situations involving women who are survivors of gender-based violence or trafficking and who are subject to transfer under the Dublin III Regulation. In each instance, the Committee was faced with transfer decisions directed to States presumed, on the basis of mutual trust and formal equivalence, to offer adequate protection within the European asylum system, while their actual capacity to ensure effective protection in practice was specifically called into question.Nonetheless, the Committee clarified that gender-based violence does not automatically preclude return but may engage *non-refoulement* obligations under the Convention where an individualised assessment establishes either a real, personal and foreseeable risk of renewed serious violence, or the absence of effective protection in practice in the receiving State, taking into account the woman's specific vulnerabilities and post-recognition conditions.

In the second case, *Z.E. and A.E. v. Switzerland*, the Committee examined the situation of an Afghan woman, Z.E., a survivor of dramatic sexual and gender-based violence since childhood, and her brother. Both had been recognised as refugees in Greece. Following recognition, however, Z.E. experienced more sexual abuses in Lesvos by a man living in the tent next to them, in a context in which no effective protection was available (CEDAW/C/91/D/171/2021, 04-07-2025 §§ 2.1-2.2). In assessing the possible transfer to Greece, the Committee (once again) rejected the Swiss authorities' approach, based on the presumption of safety of the receiving State. It emphasised instead that the absence of a concrete and individualised assessment of Z.E.'s specific vulnerability, rendered the transfer incompatible with the Convention. In continuity to K.J. case, the Committee further recalled that:

> "Under international human rights law, the non-refoulement principle imposed a duty on States to refrain from returning a person to a jurisdiction in which he or she might face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment. The Committee also considers that gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, was discrimination within the meaning of article 1 of the Convention, and that such rights included the right to life and the right not to be subjected to torture. The Committee further developed its interpretation of violence against women as a form of gender-based discrimination in its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19[...]. A State party would therefore violate the Convention if it returned a person to another State where it was foreseeable that serious gender-based violence

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> would occur. Such a violation would also occur when no protection against the identified gender-based violence can be expected from the authorities of the State to which the person is to be returned" (§ 9.4).

A comparable approach emerges in *C.O.E. v. Switzerland*, which concerned a Nigerian woman who had been trafficked to Italy and subjected to severe sexual exploitation, death threats, moreover her documents were stolen from her, and she was forced to become a sexual worker to pay her debts. She managed to escape to Switzerland but, there, the authorities ordered to transfer her back to Italy, under the Dublin III Regulation, relying on the assumption that adequate protection and medical care would be available in Italy (CEDAW/C/91/D/172/2021, 02-07-2025 §§ 2.1-2.10). Indeed, the Committee found a violation on the ground that the Swiss authorities had failed to assess, in practice and on an individualised basis, whether the author would face an inevitable risk of renewed trafficking and serious psychological harm upon return, thereby relying on abstract assurances of protection rather than examining the effectiveness of such protection in light of her specific vulnerability as a survivor of trafficking suffering from suicidal ideation (§ 7.6). Indeed, it considered that "it was incumbent upon the State party to undertake an individualized assessment of the real, personal and foreseeable risk that the author would face in Italy, as a survivor of trafficking in persons forced prostitution and severe gender-based violence who suffers from suicidal ideation as a consequence of such violence and the fear of returning to that country" (§ 7.6). Although the factual context differed from the first two cases, the Committee relied on the same core elements, including the obligation of due diligence and the requirement to conduct an individualised assessment of the real, personal and foreseeable risk faced by the author.

6. – The Views adopted at the Committee's ninety-first session should be situated within its broader engagement with removal and transfer decisions involving women exposed to gender-based violence. Although the Convention does not contain an explicit *non-refoulement* clause, the Committee has progressively articulated removal-related obligations by interpreting Articles 2 and 3, read in conjunction with Article 1, as imposing duties of prevention where return would expose women to discriminatory harm. This orientation can be traced back to earlier communications. For example, In *M.N.N. v. Denmark*, the Committee clarified that the Convention may have extraterritorial effect where the author would face a "real, personal and foreseeable risk" of serious gender-based violence upon return (CEDAW/C/55/D/33/2011, 15-07-2013 § 8.10). A similar approach was confirmed in *R.S.A.A. et al. v. Denmark*, where the Committee emphasised that risk assessments must be concrete and individualised and cannot rely solely on general information concerning the receiving State (CEDAW/C/73/D/86/2015, 15-07-2019 §§ 7.7-7.8). In *A. v. Denmark*, it further clarified that, once a *prima facie* risk has been substantiated, removal may engage State responsibility under the Convention even in the absence of direct involvement by State agents in the anticipated harm (CEDAW/C/62/D/53/2013, 19-11-2015 § 8.6). What distinguishes the July 2025 Views from this earlier practice is not a revision of the substantive threshold governing *non-refoulement*, but rather the articulation of *how* risk is to be identified in cases involving women who are survivors of gender-based violence. The requirement that transfers must not expose the individual to a real, personal and foreseeable risk of serious harm remains unchanged. What is added is a trauma-informed lens for risk assessment, which takes into account the applicant's specific vulnerability, the impact of past violence on credibility and disclosure, and the concrete risk of destitution, re-victimisation, or deterioration of mental health in the receiving State (see, *ex multis*, *K.J. v. Switzerland*,

CEDAW/C/91/D/169/2021, 04-07-2025, §§ 7.3-7.5). Rather than focusing exclusively on the formal grant of international protection in the receiving State, the Committee directs attention to the actual conditions awaiting the individual after recognition. In doing so, it acknowledges that, for women who have experienced severe forms of violence, protection cannot be assessed solely in legal or institutional terms, but must be evaluated in light of the material, social and therapeutic context in which they are expected to rebuild their lives (§§ 7.5-7.8). This approach is consistent with the Committee's established interpretation of gender-based violence as a form of discrimination under Article 1 CEDAW, as elaborated in General Recommendations 19 and 35. By conceptualising such violence in structural rather than episodic terms, the Committee requires protection to extend beyond formal guarantees and calls for an assessment of whether safeguards operate effectively in the individual's concrete circumstances. From this perspective, an equality-based understanding of violence against women makes it possible to capture forms of harm that may not always reach the traditional high thresholds of torture or inhuman or degrading treatment, yet nonetheless have a profound and lasting impact on women's enjoyment of their rights, particularly in contexts of displacement and trauma (see A. Edwards, *Violence against Women under International Human Rights Law*, Cambridge, 2011, 213–218; J. Freedman, *Gendering the International Asylum and Refugee Debate*, Londra, 2015, 87-92). Attention to post-recognition living conditions also brings into focus what has been described as the risk of *nomina nuda*: situations in which rights are formally recognised but deprived of their capacity to operate as effective guarantees of substantive protection (see S. Pitto, "*Nomina nuda tenemus*", in questa *Rivista*, 2021, 723). In *K.J.*, what therefore deserves attention is not only the outcome, but the methodological framing of *non-refoulement* itself. While situating the prohibition of *refoulement* within general international human rights law, the Committee grounds it directly in Articles 2 and 3 of the Convention, read in conjunction with Article 1. In doing so, such principle is not treated as an external constraint derived solely from refugee law or the prohibition of torture, but as an obligation flowing directly from CEDAW, confirming its role as a lens of systemic integration within international human rights law (see C. McLachlan, *The Principle of Systemic Integration and Article 31(3)(c) VCLT*, in 54 *Int. Comp. L. Quart.* 279 (2005)).

From this perspective, exposure to gender-based violence often compounded by homelessness, lack of access to healthcare and disruption of long-term psychological treatment ceases to appear as a collateral effect of migration control and is instead understood as a manifestation of discrimination engaging State responsibility where authorities fail to exercise due diligence in assessing whether protection will be effective *in practice*.

Finally, read together with *Z.E. and A.E. v. Switzerland* and *C.O.E. v. Switzerland*, *K.J.* highlights a recurring and structural gap within European asylum systems: the disconnection between formal recognition of protection and the "protection as actually experienced". Secondary movements should not automatically be interpreted as abusive conduct undermining the Dublin system; in certain contexts, they may signal serious deficiencies in the post-recognition phase, particularly for women whose vulnerability persists well beyond the grant of refugee status.

This conclusion directly engages with the rationale of the Dublin system, which rests on mutual trust and presumptions of equivalence (see V. Moreno Lax et al., *Accessing Asylum in Europe*, in *Eur. Yearbook on HR*, 2018, 609-612). The July 2025 Views do not reject responsibility-allocation mechanisms as such but clarify that their legitimacy cannot rest solely on formal compliance or abstract assumptions of safety. It ultimately depends on their capacity to secure effective protection through individualised assessment, in line with European judicial

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practice qualifying presumptions of equivalence where serious risks or structural deficiencies emerge (ECtHR, *M.S.S. v. Belgium and Greece*, 21-01-2011, 30696/09; CJEU, *N.S. and Others*, C, 21-12-2011,411/10; CJEU, *Jawo*, 19-03-2019, C-163/17; ECtHR, *Tarakhel v. Switzerland*, 4-11-2014, 29217/12, § 104).

7. – In conclusion, from a critical perspective, these cases highlight how the situation experienced by women after recognition may be far removed from the presumptions of safety on which the Dublin system continues to rest. Responsibility-allocation mechanisms remain largely grounded in abstract assumptions of equivalence between States, while insufficiently engaging with the concrete realities faced by women who remain exposed to violence, persecution, risks and interruption of essential medical and psychological care. What emerges is a realistic (and probably necessary) step away from the automatic operation of presumptions of safety, in favour of a stronger insistence on individualised assessment where vulnerability clearly persists beyond recognition. This move resonates with doctrinal critiques of formalistic protection models, which have long warned against the risk of "protection on paper" detached from effective enjoyment of rights in practice (A. Edwards, *Violence against Women under International Human Rights Law*, Cambridge, 2011, 213-218; S. Pitto, *op. cit.*).

Against this background, the Committee's Views offer three clear insights, introducing a gender-sensitive lens into transfer decisions. First, they clarify the scrutiny standard for women survivors of gender-based violence: authorities must conduct a genuinely individualised, trauma-informed evaluation of real, personal, and foreseeable risks upon transfer (including mental health impacts and therapeutic continuity) beyond abstract legal safeguards (CEDAW/C/91/D/169/2021, 04-07-2025 §§ 7.2, 7.6-7.8). This reflects CEDAW's extraterritorial reach where serious harm is foreseeable (§§ 7.3-7.4). Second, the Views qualify Dublin presumptions of safety. While not rejecting allocation mechanisms, they hold that general equivalence assumptions cannot discharge due diligence where severe vulnerability persists; concrete evidence of effective protection "in practice" is required (§§ 7.6-7.8). Third, they mandate a methodological shift in credibility assessment, rejecting trauma-blind approaches that see delayed disclosure as a signal of incredibility (cf. *General Recommendation*, 35).

Whether this new approach is sufficient to bridge the gap, between formal protection and the "protection in practice", for example the situations actually experienced by women survivors of gender-based violence, remains uncertain. This uncertainty is particularly visible within a system such as Dublin, which continues to rely on presumptions of safety and mutual trust, despite its increasingly evident fragility. As several authors have noted, when presumptions of equivalence are maintained in the face of persistent vulnerability, they risk to become not only ineffective but normatively unsustainable (see D. Thym, *A Bird's Eye View on ECJ Judgments on Immigration, Asylum and Border Control Cases*, in 21 *Eur. J. Mig. & L.* 166 (2019)). This is further exacerbated by the non-binding nature of the Committee's views, the systemic incentives embedded in responsibility-allocation mechanisms that prioritise efficiency over individualised assessment, and by the structural and capacity constraints faced by receiving States in ensuring effective post-recognition protection.

The question that ultimately remains is whether presumptions of equivalence can continue to be normatively defensible where protection is not secured in practice. As the limitations and practical shortcomings of such assumptions become increasingly evident, reliance on them is even harder to justify, both legally and ethically. The presumption that all Member States are capable of offering equivalent levels of protection, in the absence of an effective assessment of

each State's actual capacity to ensure safety and continuity of care, appears not only ineffective but, in some instances, even "harmful" (see K. M. Walter, *Vulnerable People or Vulnerable Borders? EU External Migration Policies and Gendered Vulnerability*, in Migration and Diversity, 2023, pp. 65–76). Despite the Committee's recommendations, the persistent lack of a genuinely personalised and trauma-informed approach risks perpetuating an abstract model of protection that remains disconnected from the lived realities of vulnerable women. In this context, it becomes even more difficult to sustain assumptions of equivalence as a normative principle, insofar, as they fail to respond to the concrete protection needs of victims of gender-based violence.

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